The New Reality of Global Tax Transparency & Structuring Solutions for your Clients

One of the key developments for practitioners in recent years has been the Automatic Exchange of Information (AEOI) between jurisdictions, which is aimed at combatting tax evasion by hiding financial accounts offshore. The year of 2014 will likely go down in financial services history for finally putting the nail in the coffin of tax evasion. FATCA and the Intergovernmental Agreements (IGAs) were effectively introduced in 2014 to combat tax evasion by US persons. But FATCA is just the beginning.

New global regulations similar to FATCA are rapidly being introduced. At the request of the G20, the OECD has established the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the AEOI Standard) – which comprise the Model Competent Authority Agreement (Model CAA) and the Common Reporting Standards (CRS). The Model CAA and CRS were published in July of 2014 and are currently being finalized for global implementation. The AEOI standards is modelled closely after the IGA model 1, but instead of identifying and reporting US persons, the AEOI standard is aimed at identifying and reporting tax residents of all participating reporting jurisdictions. This represents what is now a determined global attempt to prevent tax evasion.

Commitment of 93 jurisdictions

During the last Global Forum meeting held in Berlin on 29-30 October 2014, 93 countries have committed to adhere to this Standard and to implement it in line with the agreed timeline. Broadly, there are two groups of countries – the “early adopters”, involving 58 jurisdictions which have agreed to AEOI by September 2017 regarding information corresponding to fiscal year 2016, thus starting per 1 January 2016. Another 35 jurisdictions, including Switzerland, Singapore and Hong Kong, will start automatic exchange a year later. The 93 countries/groups of countries which are directly or indirectly committed to the Global Standard AEFAI (GATCA) includes all G20, all BRIC, all OECD, all EU, and many offshore jurisdictions. This list is continuously updated on the following websites: http://eoi-tax.org or http://www.oecd.org/tax/transparency/AEOI-commitments.pdf

Global tax transparency

The world has changed, and with the AEOI Standard applicable worldwide, confidentiality is effectively over. Due to AEOI between participating countries, foreign bank accounts and foreign assets held directly or indirectly by an individual resident in the participating countries will likely become known to the tax authorities of an individual’s country of tax residence. New information that was not yet disclosed will trigger tax audits, assessments and penalties.

Due to the introduction of anti-abuse legislation (Blacklist, CFC regime, GAAR, etc.) or other domestic tax disclosure rules in many jurisdictions, your clients may have to disclose the assets/entities of their structure or may have to report the income from that structure in their personal income tax return, regardless of whether such income is actually distributed to them.

Responding to change

The process of global tax transparency will require significant compliance efforts by financial institutions worldwide. That will affect all of us - particularly in the areas of wealth planning and structuring. The compliance efforts for bankers and wealth planners, boils down to compliance at three levels. First, client entities (including funds, personal investment companies, trusts, foundations, etc.) in any structure must comply with tax regulations and legislation in the country where the entity is established. Second, each entity must comply with FATCA and in accordance with the relevant IGAs and Multilateral CAAs. And third, the ultimate beneficial owner (UBO) must comply with tax reporting requirements and other regulations in the country where the UBO is tax resident.

Creating a compliance advantage

While AEOI through different reporting frameworks creates more compliance requirements for financial institutions, advisers and clients, it does not necessarily have to only create a negative impact. For example, transparency creates an excellent opportunity for advisers to improve their knowledge about a client. Wealth managers should pivot their discussions with clients around the impact of these new regulations – to learn more about their citizenships, tax residences and the structures set up in the past.

In particular it is especially important for wealth advisers to discover whether tax mitigation, deferral of disclosure, asset protection and/or estate planning to transfer wealth to the next generation is the ultimate objective for their clients. We encourage UBOs to speak to their tax advisors to determine whether tax disclosure requirements are all properly met and to discuss the most optimal legitimate solution for them.

The time to hide assets is over. “Do not ask, do not tell,” will not work in the future, nor is it ethical. Use proper tax planning, pay your fair share of taxes and sleep well at night!

Structuring Solutions for HNWI’s

For HNWI’s who look to mitigate the impact of taxes on the return on their investments, your clients’ structure may no longer meet its requirements and objectives. However, there may still be potential solutions. Any solutions must be tailor-made based on each UBOs specific circumstances and the tax and legal regulations in his country of residence. However, clients must realize that some of these structures may also need to be disclosed in the future. In general some solutions can be categorized as follows:

1. Disclosure to local tax authorities
   - Make sure all (foreign) assets you own or control and all related income are properly reported to the Tax Authorities in the country(ies) where you are a tax resident and pay the Personal Income Tax
   - Voluntary disclosure of foreign accounts/entities and related income with or without local Amnesty regimes
2. Invest in non-financial assets (e.g.: real estate)  
   - Take your money out of the bank account and put it in real estate, jewelry, fine art.

3. Structure financial assets to distance yourself from ownership and control of income generating assets.  
   - Contribute your assets to an irrevocable discretionary trusts and private foundations  
   - Create a Limited Partnership where you are not the managing partner (LLP/CV/STAK solution)  
   - Transfer your assets to a POINT structure - Pooled Omnibus Investment Trust  
   - Use your assets as payment of premium on Single Premium Variable Life Insurance Policy (insurance wrapper)  
   - Invest in a mutual / private equity fund that does not give you control and does not generate current income (only long term capital gains)  
   - List your investment vehicle at a recognized securities exchange (e.g. DCSX), with regularly traded shares  
   - Gift to children, charity or to a socially responsible project  

4. Migration / residency change  
   - Become (tax) resident in a low/zero tax location, e.g. Curacao, Malta, Dubai, UK non-domiciled residency. All have attractive schemes  
   - This migration could also be temporary with or without transfer of control, then after a certain period abroad UBO can migrate back with step up in base.

Example for HNWI in Latin America or Asia  
Traditionally, HNWIs in Latin America or Asia have used a BVI entity, which in the new regulatory environment is no longer a robust solution. The BVI entity may have investment accounts with banks in Hong Kong or Switzerland. Under local tax legislation such a stake in BVI entity may be subject to CFC regime and accordingly its undistributed income has to be disclosed by the UBO as taxable income. Exchange of information was based on TIEA upon request under a DTA, but will soon be automatically exchanged under the AEOI standard.

To anticipate such tax transparency, in various countries in Latin America and Asia the following structure can be considered:

**UBO Compliant Solution**  
- Irrevocable Discretionary trust (New Zealand, Cayman, Singapore) or Private Foundation (SPF Curacao or Panama)  
- Assets protection and tax deferral  
- Non-blacklisted, solid jurisdiction  
- Complex estate planning  
- No minimum value or limited choice of assets

**FATCA aspects and solutions**  
- Avoid 30% withholding and penalties  
- Classification as FFI or NFFE,  
- Registration vs sponsorship  
- Identification and reporting of reportable accounts  
- Preparing W8-BEN-E  
- Full compliance pack for classification, sponsorship, reporting

Legislation in various countries is different in its implementation, thus one must take a country-based approach to this new environment. Amicorp is well positioned to implement and operate this tailor made solution given our global presence and unique service offering.

**Our FATCA and CRS Services and structuring solutions**  
Given these global transparency and domestic disclosure developments mentioned in this Aminews, now is the time to determine whether your clients’ current structures still provide the benefits they were designed for, whether the structure needs to be adjusted along with the tax disclosure aspects of existing structures, and where necessary, take anticipating measures for your clients.

Contact the Private Client leadership group across Amicorp who can assist you with the FATCA and CRS services which Amicorp has developed, including:

- FATCA classification of entities  
- Registration of FFIs or sponsorship  
- FATCA compliance program, including due diligence to identify reportable accounts  
- Annual reporting of reportable accounts  
- Corporate directorship  
- Entity compliance review  
- Implement and operate structuring solutions

**This link takes you to Amicorp’s FATCA Services flyer.**

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