

# Tax update

## Newsletter

**pwc**

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### ***Exchange of information for tax purposes and disclosure of Ultimate Beneficial Owners (UBOs) for corporates & other structures***

The tax world is moving towards greater transparency, including transparency of trust/fiduciary arrangements and banking details. To achieve this trend, measures are being taken at several levels: OECD, bi/multilateral dimension, European Union and finally at country level. The purpose of this newsletter is to update you on the recent developments and proposals in this area.

This newsletter is also to update you on general disclosure matters for UBOs of corporates and other structures being discussed internationally.

#### **A. Exchange of information for tax purposes**

##### **I. European Union (EU) Savings Tax Directive**

The original EU Savings Tax Directive was adopted in 2003 and was revised in March 2014 in order to strengthen the existing rules on exchange of information on savings income.

The original Savings Directive provides for the automatic exchange of information across the EU on interest payments and certain similar payments where the beneficial owner of the income is an individual resident in another EU Member State.

The main revisions in March 2014 are to:

- ❖ expand the types of income reported under the Savings Directive to include further types of income similar to interest (e.g. fixed/guaranteed return securities)
- ❖ apply the reporting to certain indirect means of holding interest bearing securities via entities or legal arrangements outside the EU which are not subject to effective taxation. The revisions provide an indicative list of such entities/legal arrangements including e.g. trusts in the Bahamas.
- ❖ enhance rules regarding the receipt of interest and similar type income by entities or legal arrangements within the EU which are not subject to effective taxation. The revisions include an indicative list of such entities/legal arrangements including e.g. trusts in Cyprus. Such entities/legal arrangements must provide details to the tax authorities upon receipt of interest and certain other types of income similar to interest.

All member states within the EU currently apply the exchange of information under the Savings Directive with the exception of Luxembourg and Austria which alternatively levy a withholding tax of currently 35% in place of exchange of information in certain cases.

Certain dependent or associated territories of EU countries have agreements with the EU to also exchange information (or withhold tax) in line with the original Savings Directive, including Jersey, Guernsey and the British Virgin Isles. Additionally the EU has agreements with Switzerland, Andorra, Liechtenstein, Monaco and San Marino for withholding tax to apply (currently 35%) or alternatively the taxpayer may allow exchange of information as an alternative to the withholding. Information can also be exchanged in the case of tax fraud.

The revisions to the Savings Directive should be transposed into each EU Member State's law by January 2016 and be practically implemented by 2017. The EU is currently working towards amending the agreements with the above mentioned non-EU countries set to bring the existing agreements with these countries in line with the 2014 revised Savings Directive.

## II. EU Directive on Administrative Cooperation in the Field of Taxation

In 2011 the EU adopted the Directive on Administrative Cooperation in the Field of Taxation ('the Admin Directive') which provides for exchange of tax information across EU Member States upon request, automatically and spontaneously. It also provides for simultaneous tax examinations by two or more EU Member States, participation in tax examinations in another EU Member State and serving of documents of another EU Member State.

Automatic exchange of information will start in 2015 for taxable periods as from 1 January 2014 for the following categories of income (and ownership in the case of immovable property) if information is available when the income concerns a resident of another EU Member State:

- ❖ income from employment
- ❖ director's fees
- ❖ pensions
- ❖ life insurance products not covered by other EU exchange of information laws
- ❖ ownership of and income from immovable property

In June 2013 the EU Commission proposed extending the automatic exchange of information to include information on the following provided they are paid, secured or held by a financial institution:

- ❖ dividends
- ❖ capital gains
- ❖ any other income generated with respect to the assets held in a financial account
- ❖ any amount with respect to which the financial institution is the obligor (i.e. is legally or contractually obliged to pay) or the debtor, including any redemption payments
- ❖ account balances

These additional items relate to income paid *directly or indirectly* to beneficial owners who are individuals, or capital held *directly or indirectly* by such individuals. These proposed amendments have not yet been agreed at EU level.

The Admin Directive may also be revised in future to ensure that tax authorities obtain and exchange information on the initial categories of income (income from employment etc.) as opposed to only doing so where the information is available. Additionally the Admin Directive may also be expanded to cover royalty income.

## III. Council of Europe - OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters ('the Convention')

This is a multilateral agreement to exchange information and provide other assistance in relation to tax matters that is gathering momentum. By 17 July 2014 over 67 countries had already signed the Convention, with more countries expected to sign in the future. For a list of signatories which is periodically updated please visit the OECD website via this link [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf).

In addition to countries, overseas territories and dependencies of other countries have joined. For example the convention entered into force in Bermuda and the British Virgin Isles on 1 March 2014 by extension of the UK's signature to the Convention. Many European countries are signatories including Russia, Switzerland, Greece and Cyprus.

#### **IV. OECD initiative for automatic exchange of information**

In February 2014 the OECD published initial documents relating to AEOI entitled the 'Common Reporting Standard' and 'Model Competent Authority Agreement'. On 21 July 2014 the OECD released a consolidated and enhanced version of these documents entitled 'The Standard for Automatic Exchange of Financial Information in Tax Matters' ('the Standard').

The Standard provides for annual automatic exchange between governments of financial account information, including balances, interest, dividends, and sales proceeds from financial assets, reported to governments by financial institutions and covering accounts held by individuals and shell companies, trusts and similar arrangements.

The Standard includes commentary and guidance for implementation by governments and financial institutions, detailed model agreements, as well as standards for requirements for secure transmission of data.

More than 65 countries and jurisdictions have already publicly committed to implementation, while more than 40 have committed to a specific and ambitious timetable leading to the first automatic information exchanges in 2017. Cyprus, along with Greece and Bermuda, is included in the countries that have declared to automatically exchange information as from 2017.

### **B. Disclosure of UBOs for corporates & other structures**

In relation to corporate entity ownership in Cyprus the current position is that certain details of the direct registered legal owners of the company are publicly available.

As regards trusts, in 2013 Cyprus law was amended to accommodate the creation of a registry of information for trusts established in Cyprus. The law provides that CySec, the Cyprus Bar Association and the Institute of Certified Public Accountants of Cyprus (the "Competent Authority") establishes and maintains a register for every trust governed by Cyprus law. The information recorded in the trusts' registry is the name of the trust, the name and full address of every trustee, the date of establishment of the trust, the date of a change in the law governing the trust to/from Cyprus law and the date the trust is terminated. The trusts' registry is not available to the public but is available for inspection by the relevant Competent Authorities and/or the Supervisory Authorities as defined in the Prevention and Suppression of Money Laundering Terrorist Financing Law.

We set out below a selection of international initiatives regarding disclosure of corporates and other structures.

#### **I. European Union Anti-money laundering directive proposed amendments**

The EU Commission is proposing to amend the anti-money laundering directive to require EU companies to place information on their beneficial owners in a central register or data retrieval system.

The EU is also proposing that EU trusts, foundations etc place on a central register/data retrieval system information on settlors, trustees, protectors (where applicable) and on beneficiaries.

The EU Commission is not proposing that such information will be publicly available but will be accessible only by competent authorities and other entities including financial institutions,

auditors, tax advisers etc. However, earlier this year, the EU Parliament proposed that such information should be held on a public register.

The EU is expected to continue in the autumn of this year negotiations between the EU Commission, the Council of the EU and the EU Parliament in this area.

## **II. UK (including Crown Dependencies & Overseas Territories) – Public disclosure of UBOs**

Following the G8's declaration in June 2013 regarding transparency, the UK has proposals which, if enacted, will publicly disclose (via a central registry) information on **individuals** who **ultimately** own or control more than 25% of a UK registered company or who otherwise exercise control over a UK registered company or its management. Companies listed on regulated markets will be exempt from such rules.

Where a qualifying beneficial interest in a UK registered company is held through a trust, the trustee(s) or any individual(s) who control the activities of the trust should be recorded as the beneficial owner of the company. It is expected that in most cases this will require only the trustee(s) to be registered. In some cases it might be another individual, such as the beneficiary, settlor or protector of the trust who is registered.

The Queen's Speech in June 2014 referenced that in this parliamentary year the UK government will bring forward legislation to enact the above (the parliamentary year ends in May 2015).

The UK wishes to extend this proposal to companies registered in its Crown Dependencies and Overseas Territories (including, amongst others, Jersey, Guernsey, Isle of Man, Bermuda, BVI, and Cayman Isles). The BVI itself has publicly consulted on this matter and is currently considering the responses received from this consultation. It remains to be seen whether some or all of the Crown Dependencies and Overseas Territories will follow the UK's recommendations in this area.

## **III. Russia's initial thoughts on UBO disclosure**

We understand that Russia is also looking into more disclosure of corporate/entity ownership. On 17 July 2014, the Financial Monitoring Service (Rosfinmonitoring) issued a letter addressed to the government recommending the establishment of a register of the ultimate beneficial owners of Russian companies. We understand that the proposals of the Rosfinmonitoring are not to make the register public but to be accessible during civil, criminal and administrative proceedings, and upon requests of foreign states and Russian financial intelligence authorities.

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