



THE US IN AN INTERNATIONAL WORLD

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International dialogue

Global reporting requirements and the challenges of supporting multi-jurisdictional clients were the topics of debate at a recent *STEP Journal* roundtable, sponsored by BDO and held in New York

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- Wendy Walton

In October 2017, 15 private client experts gathered in New York for a roundtable discussion sponsored by BDO. The subject was the challenges for international advisors presented by the move towards worldwide transparency and reporting, and of working with clients in multiple jurisdictions. The key theme of the conversation was the increased international reporting standards, and the pressure these put on clients and advisors across jurisdictions as well as generations. The discussion also covered how practitioners can find the line between effectively advising clients and ‘policing’ non-compliance.

Stanley A Barg of Kozusko Harris Duncan was chair of the roundtable. He started the discussion with the observation that surprisingly few US clients understand their cross-jurisdictional reporting responsibilities – especially those who live outside the US.

BDO UK’s Wendy Walton, Head of Global Private Client Services, set the scene globally: ‘A recent census from Wealth X¹ shows that there are 2,397 billionaires in the world – and 102 of them reside in New York. The average

age of a billionaire is 64, so we can anticipate that trillions of dollars will be passed to the next generation in the next two decades. We will see lots of challenges in advising them around opportunities, risks and threats.’ Succession planning is not a simple task for these families in a time of global mobility.

Craig Witcher of BDO US added: ‘It is an effect of globalisation that over the last 17 or 18 years the estimated numbers of Americans living abroad has nearly doubled. Most are going to Canada, Mexico and EU countries.’

Advisors dealing with high-net-worth individuals (HNWIs) are consequently facing the dual challenge of heightened reporting requirements and multi-jurisdictional clients, many of whom do not necessarily understand the rules facing them.

A NEW ERA OF REPORTING

For many, the key reporting requirement is the Common Reporting Standard (CRS), approved in 2014 by the OECD, which requires participating jurisdictions to collect and exchange information from their financial institutions on an annual basis.

‘CRS hasn’t just moved the goal posts of international financial information reporting, it’s dismantled them and shipped them round the world, so that they will encompass everything,’ said Richard Morley of BDO UK. ‘The international implications are already very widespread.’

The effects of CRS are also having unforeseen consequences – for example, in the world of philanthropy.

John Canady of National Philanthropic Trust UK explained that if clients set up philanthropic structures in the UK as trusts, they may fall under CRS reporting: ‘It’s a nightmare for a family if all grants from their family charitable trust are subject to CRS reporting. We suggest they use donor-advised funds (DAFs), which are not subject to CRS requirements, are easy to use and administer, and are compliant under the UK Charity Commission and US Internal Revenue Service (IRS). We set up in the UK as a dual-qualified DAF, which means donations to the DAF are recognised simultaneously in both the UK (by HMRC) and the US (by the IRS). We also are getting requests for DAF structures in other countries, which shows the demand from cross-border families to have multi-jurisdictional charitable structures.’

Brown Advisory’s Steven Hoch echoed Morley’s sentiment: ‘Within a relatively short period of time there have been some huge game-changers: the *Foreign Account Tax Compliance Act* (FATCA), CRS, the removal of Swiss bank secrecy, the Panama Papers... How many high-net-worth families internationally really understand ➡



how much transparency has changed? And how many are in limbo, not really fully compliant, and still at great risk of getting in trouble?’

COMPLEXITY RISKS NON-COMPLIANCE

While CRS has not been adopted in the US, advisors still face equivalent challenges as a result of the sheer complexity of the US reporting rules for taxable assets.

For many, non-compliance will be due to misunderstanding rather than fraudulent activity. Citing a client who did not realise assets in Ireland were reportable in the US, Jack Nuckolls of BDO US noted: ‘We are unique in the world because we tax our citizens on their worldwide income, so it’s easy to fall within that trap: it’s an example of the complexity of our system and the innocence of clients.’

This was a shared viewpoint: that many HNWIs are still unaware of what their obligations are in terms of wealth planning, local laws, and US and international reporting requirements.

And it was not just US citizens living globally about whom roundtable participants expressed compliance concerns: another issue is the perception by some HNWIs that the lack of CRS makes the US an ideal place to move their wealth.

‘We see a lot of Asian money going to the US,’ explained BDO Singapore’s Kylie Luo. ‘Singapore has traditionally seen a lot of wealth coming from neighbouring countries, such as Indonesia and the Philippines. However, Singapore is very serious about CRS and the automatic exchange of information, because we want to maintain our reputation as a key financial centre. So because security and privacy will remain key driving forces for many wealthy individuals, people are then looking to the US as a destination for their wealth, because there is no CRS – even though the US originated FATCA.’

This raises new challenges for US advisors. Barg added that, in light of clients moving assets to the US, it is necessary for practitioners to ask what due-diligence

requirements they have, and to question how they should act if they are aware a client is moving a trust to the US to avoid CRS.

Morley responded: ‘You have to ask why someone is restructuring their affairs. If they simply can’t cope with the administrative burdens of reporting and would prefer to avoid it, there’s nothing wrong with that; there’s nothing wrong with people structuring their affairs globally in a way that suits their purposes, as long as it is compliant. But if there were tax implications behind it, we’d have an issue with that. From a non-US perspective, if it was felt that the growth of trust companies in the US, especially in certain states, was down to non-compliant tax issues, then there would surely be real pressure mounting on the US to ensure global compliance.’

THE COMPLIANCE POLICE

In light of such questions about client motivation, a major concern shared by those around the table was the degree to which the onus is now falling on advisors to ‘police’ clients as part of the reporting obligations.

‘A client of a prior law firm came to us for a health check of their structure, which had some UK aspects, and we asked our UK office to take a look at it. We got a call back saying they had to report it for tax avoidance,’ commented Matthew Sperry of McGuireWoods. ‘But the client had come to us for help, and we, as their lawyers, have a fundamental obligation to figure out any issues and advise them as to how to become tax compliant. Advisors serving in that manner not only serve the best interests of their clients, but also positively contribute to the global tax system.’

‘The OECD now encourages people to whistle-blow on any structures that circumvent CRS’

– Kylie Luo

Megan Worrell added: ‘UK lawyers and advisors are being put in more of a policing role than we are here in the US, despite everyone wanting stronger anti-money laundering rules. We all want transparency and compliance, but the pendulum has gone so far that we need to pull it back a little, because privacy is eroded. Clients sometimes have non-disclosed or non-declared assets for reasons not relating to tax, and that’s being ignored by our governments.’

However, Chuck Barragato of BDO US also pointed out that the evolution of ‘rules of professional conduct’ has been such that, if a client’s action does not seem correct or compliant, the advisor has a responsibility to address it in some measure. ‘But,’ he added, ‘it is an ethical decision for the professional and stops short there. Having to consider resigning from an engagement is not the same as tipping off the government – but it’s a very slippery slope. So are we going to change our approach here in the US?’

The issue is also a reputational one, as BDO US’ Jeffrey Kane stated: ‘We cannot simply blindly accept something that the client gives us that we suspect is wrong.’

‘It’s a very fine line,’ Luo agreed. ‘The OECD now encourages people to whistle-blow on any structures that circumvent CRS. Confidentiality has to be respected, but we have to be very careful, if we are to help a client to set something up, that it is not [coming] from a tax avoidance or tax evasion perspective.’

A CLIENT-FIRST APPROACH

So, when faced with reputational issues and a seemingly government-appointed responsibility to police their clients, how can advisors ensure that they



remain primarily in the position of supporting their clients and advising them appropriately?

‘There are common features, and deliveries, that we can produce for clients; but they are all individuals who need bespoke solutions,’ observed Mark Walters of BDO UK. ‘So when you add in the international dimensions of private client families, and the issues of them moving across borders, that dynamic becomes ever tougher to deal with.’

For all the roundtable participants, collaboration between all those working with a particular client – lawyers, accountants, financial planners and so on – is essential.

Walters commented: ‘Setting up a trust with multi-jurisdictional beneficiaries can be a nightmare. The ability to bring an international team together to find solutions, keeping the structure simple so that they can adapt and evolve over time, is key.’

‘When you have such a vast array of advisors helping a client, then you need to have someone who steps up to play that “quarterback role” and bring all the pieces together. Whether it’s the accounting firm, the lawyer or the bank, someone has to play that role for the client,’ agreed Witcher.

And beyond the collaboration of the team, the communication with, and education of, clients is vital. Sperry pointed out that while the first generation often understand the structure they have built, the second generation – the beneficiaries – will very likely not have the same level of comprehension.

‘In the international trust world, many of us provided advice to the grantor generation of all these entities and structures, and now we’re dealing with the beneficiary generation, who live in a very different compliance environment,’ said Hoch. ‘Adapting to that, and helping those beneficiaries to understand how the game has changed and what their responsibilities are going to be, is a real challenge.’

FUTURE CHANGE

As reporting rules tighten internationally, there is no guarantee that jurisdictions will be safeguarded from further change.

Advisors are preparing for the new ways in which clients might look to avoid reporting. In Asia, for example, Luo noted that there is increased investment in property, which for now is not reportable, while Hoch pointed to increased migration in response to tax regimes.

‘There’s even increased movement between states,’ observed Marty Cass of BDO US. ‘In Florida, we’ve seen an influx of companies and high-net-worth people from all over the country because our tax regime is so comparatively low.’

The data required for reporting under any agreement also poses a unique challenge to practitioners: not just the complexity of gathering data from clients based in many jurisdictions and compiling it for the government, but also the issues of privacy and security.

Greater numbers of clients are concerned about the extent of automatic reporting, as well as how each individual regime shares and protects the information that is collected.

‘There are also calls for governments to set up public registers of trusts and property-holding companies. But why is there a need for this information to be publicly available?’ questioned Morley. ‘Ultra-high-net-worth families have a genuine concern about their privacy and their personal security, should their wealth and assets become effectively available in full in the public domain, where compliance and reporting are satisfied. These are genuine issues that then arise.’

These questions will need to be resolved for clients worldwide. As Worrell pointed out, even without CRS, ‘with increased know-your-client rules for banks and new reporting for single-owned limited liability companies, there are clear indications that the US will be gathering more information than it used to – if not for CRS, then for other exchange agreements’.

‘In this new era of transparency, the accounting world is evolving to proactively ask clients about their foreign assets,’ added Nuckolls. ‘Silence is simply not an acceptable answer any more.’

What is clear, concluded Walton, is that we see the pace of change, the increasing complexity of tax systems, greater transparency, and private individuals who increasingly are moving internationally. This calls for an ever-greater need for communication and collaboration between professional advisors, working as a team around a client. Getting it right means that we all help each other to help our clients succeed.

1 bit.ly/2AFbFL