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No room for error

EMMA MENZIES AND JOSIE CUFF ON HOW TRUST COMPANIES MAY ADAPT TO THE EVOLVING REPORTING ENVIRONMENT

FATCA, CRS, MDR, DAC6, ATAD III, ES and CCO are enough acronyms for any organisation to feel overwhelmed.[1] And these are only a handful of the regulations trust companies have had to consider over recent years, which have seen the role of trustee evolve to include the duty to discharge regulatory obligations.

As public attitudes towards tax transparency have shifted, pressure has mounted on governments to take action and recoup lost tax revenue globally. One way they have tried to achieve this is by increasing the scope of client information that they expect financial institutions (FIs) to identify, monitor, assess and report via multiple regulatory regimes. With more regimes on the horizon (the introduction of the beneficial ownership register in the UK being a timely example of this), the expectation for trust companies to react quickly and responsively to these new developments is becoming more certain.

Some larger trust companies have focused recent efforts on developing technology, advancing data analytics capabilities and recruiting regulatory reporting specialists to meet the ever-increasing demand for outsourced services for reporting activities across multiple jurisdictions. Outsourcing these services has been a sound decision for many, given the high investment costs associated with in-house compliance and enhancing capabilities, the increasing number of tax authority audits and changes to local regulations to keep up with. Outsourcing also reduces challenges companies sometimes face in gaining board-level support for continued investment, as well as removing the headache of finding candidates who are sufficiently experienced in these regimes.

Whichever model an organisation aligns with, whether focusing internally or choosing to outsource, there are some focus areas where trust companies can review, renew and adapt to enhance their level of compliance.

DATA

Many regulatory reporting regimes exist on the common assumption that FIs hold large amounts of data on persons with foreign financial interests by virtue of the services they provide. Based on this, trust companies are expected to be 'good at data'. From a *Foreign Account Tax Compliance Act*/Common Reporting Standard (CRS) perspective, data is maintained for individuals considered controlling persons of reportable trusts and their respective transactions. For DAC6, DAC7 and DAC8 and mandatory disclosure rules, monitoring takes place to identify and report scenarios that are considered to contain 'hallmarks' of CRS avoidance or structures that disguise the beneficial owners of offshore assets.

Maintaining client data (and, frequently, ensuring its accuracy) is the most fundamental requirement across reporting regimes. Large volumes of data and complicated system infrastructure mean this is not easy; however, keeping data clean and up-to-date will ensure the practitioner is a trusted data guardian for both clients and regulators.

Practitioners should focus on making data extraction seamless and traceable. This allows accurate and succinct data production for governance purposes, and impact assessments on any changes to regulations are more efficient. This also enables sound decision making to take place in the organisation for relevant next steps.

PEOPLE AND PROCESS

Confidence that employees are comfortable with the role they play to support the regulatory reporting process is essential. Generally, there are multiple touch points, from client-facing employees who have the deepest understanding of a client's circumstances, to accounting teams who understand the relevant transactions, to reporting teams who prepare the submissions and ensure they meet all regulatory requirements for each relevant competent authority. Regular training and process reviews need to take place, as well as defining clear criteria to evidence compliance with x-regime.

TAX AUTHORITY QUERIES AND INVESTIGATIONS

There are not many 'soft landings' left. Tax authorities are evolving their approach to delve deeper, past accepting self-identified disclosures and opting for full-scale audits to understand compliance levels of FIs. Building strong relationships with relevant authorities is important. This means answering their queries in a timely manner, providing input into consultations and making sure stringent checks are undertaken of regulatory reporting submissions, to ensure they are accurate. Inaccuracies adversely impact one's relationship with both the authorities and the client and can result in unnecessary probes being initiated at taxpayer level.

In a short time, the sheer amount of legislative change has been enormous and more institutions are choosing to outsource some or all of this work to providers with centralised functions.

One thing is clear, the regulatory reporting landscape will continue to evolve and demands for more complex data will increase. Trust companies need to ask themselves if they are equipped to cope with the burden of their increasing regulatory reporting duties or if they need to embrace a new approach.

#BUSINESS PRACTICE #COMPANIES #COMPLIANCE AND REGULATION

1 The *Foreign Account Tax Compliance Act*, the Common Reporting Standard, mandatory disclosure rules, EU *Directive 2011/16*, Anti-Tax Avoidance Directive, economic substance and corporate criminal offence, respectively.

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