

Quarter 2 2018

Wealth Wise

High net worth & family offices

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US tax reform – how it affects you

The US passed new tax legislation in December last year (Tax Cuts and Jobs Act – TCJA) which is the most sweeping reform in over 30 years. It will have a profound impact on businesses, high net worth individuals and trusts and family offices with US investments.

Overall, despite its significant technical flaws, it is a good piece of legislation. There are many areas for which guidance is needed because the application of the rules is still unclear. For most individuals and all businesses, it adds complexity and it penalizes certain individual high income earners.

The business provisions are permanent however the majority of the individual provisions are temporary, generally set to expire after 2024.

A summary of the more significant changes is as follows:

- a modest reduction in the individual tax rates (39.6% to 37%) but loss of many deductions;
- a reduction in the amount of US source income subject to tax from fiscally transparent entities engaged in certain activities;
- expanded attribution rules for determining Controlled Foreign Corporation ('CFC') status;
- a doubling of the exemption from transfer (gift, estate and generation skipping) taxes to US\$11.2 million per person (the US\$60,000 exemption for foreign persons is unchanged);
- the elimination of a popular planning

technique for non US individuals with US beneficiaries;

- a change in the way a foreign partner in a US partnership will be taxed on the sale of the partnership interest;
- a one-time mandatory repatriation of earnings of specified foreign corporations to US corporations and some individual shareholders at generally favorable rates;
- a significant reduction in the corporate tax rate (35% to 21%);
- a new limit on the deductibility of interest expense for most businesses;
- liberalized asset recovery provisions;
- a new tax incentive for US-based exporters;
- a new, poorly named, global intangible low taxed income ('GILTI') tax on US shareholders of CFCs that have returns on their tangible assets in excess of an IRS specified amount;
- a new base erosion and anti-abuse tax ('BEAT'), which is effectively a minimum tax on corporations that have significant payments to affiliates outside the US.

The new rules are extremely complex and their application is unclear in many cases. The US tax authorities have acknowledged this and are committed to issuing guidance over the course of the coming year.

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Individuals, trusts and other entities with investments in the US should review their existing holdings. In many cases some restructuring or change in form of entity may be appropriate to either take advantage of favourable provisions or avoid application of onerous ones.

Moore Stephens is monitoring the guidance process closely and working with clients to ensure they are positioned properly in light of these new rules. Please contact a Moore Stephens professional to discuss how they might apply to you.

Operational due diligence

Any analysis of investment failures over the past decade has consistently highlighted operational issues over and above investment strategy as the root cause of failure.

First and foremost are people issues, with regulators around the world taking every opportunity to remind us that the right people, values and culture are the first line of defence against failure.

Most family office investment funds now take pre-investment due diligence seriously on potential fund investments and direct private equity opportunities. Often using standardised checklists such as the due diligence questionnaire issued by the [Institutional Limited Partners Association](#).

There are many elements to operational risk, all of which need careful assessment before making a fully informed investment decision. It is equally important to monitor the operational risk associated with outstanding investments on an ongoing basis. We look to support our clients on operational due diligence, including:

People

- analysis of key personnel
- organisational chart
- remuneration structure

Governance

- fund structure
- management structure
- regulatory oversight
- advisory board oversight
- tax and automatic exchange of information
- financial stability

Trading Operations

- risk management framework
- strategy compliance
- asset allocation

Financial reporting

- valuation modelling
- NAV reporting

- internal control over financial reporting accounting framework
- policies and procedures
- performance reporting
- benchmarks

Technology

- cyber security
- GDPR
- business continuity and disaster recovery

Outsourcing

- fund administrators
- custodians
- bankers
- brokers

For more information please get in touch.

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Are you prepared for the requirement to correct?

The requirement to correct (RTC) legislation is now in force and concerns all taxpayers with overseas income or assets.

The purpose of the RTC rules is to encourage taxpayers with overseas interests to ensure that their historical UK tax position is corrected by 30 September 2018. Those who do not do so by that date will be exposed to greatly increased penalties.

Since the introduction of automated information exchange, HMRC has had access to an increasing amount of information. The worldwide standard for information exchange, the Common Reporting Standard, becomes fully effective later this year and the introduction of these new RTC measures has been timed to coincide with this.

The RTC applies to pre April 2017 tax liabilities relating to income or assets held outside of the UK including, amongst other things:

- income from financial assets or real estate;
- income arising in connection with offshore structures;
- remittances to the UK;
- dividends paid offshore; and
- carried interest.

Complex aspects such as interests held in trusts, the consequences of offshore employments, or international tax agreements such as the UK/Swiss withholding levy all require careful consideration and specialist advice.

Time limits

Where a taxpayer is subject to the RTC provisions the 'normal' HMRC assessing time limits are also extended and frozen as at 6 April 2017 until 5 April 2021. This means that the usual 20 year assessing HMRC time limit can be extended to 24 years in cases of deliberate understatement and 10 years where the taxpayer is shown to be careless, instead of six years.

Failure to correct penalties

If taxpayers fail to correct historical understatements prior to the RTC deadline, the failure to correct (FTC) penalties will apply.

The range of penalties will be as follows:

1. A standard tax geared penalty of between 100% – 200% of the uncorrected tax liability (known as 'Potential Lost Revenue' or PLR).

2. An asset based penalty may also apply where the tax at stake is £25,000 or more. This penalty will be the lower of:
 - a. 10% of the value of the asset giving rise to the FTC penalty tax; or
 - b. ten times the PLR.
3. Where assets or funds have been moved in an attempt to avoid RTC, an offshore asset move penalty of 50% of the amount of the standard penalty will apply (in addition to the standard penalty).



The maximum theoretical FTC penalty is 1300% of the tax due.

In addition to the penalties above, if the tax involved exceeds £25,000 and the taxpayer deliberately failed to comply with the RTC requirements, HMRC may also 'name and shame' the taxpayer by publishing their details online.

The level of risk depends of course on the degree of uncertainty. If you have straightforward tax affairs or have been well advised in the past, its likely you will need to take little or no action. However, where there is uncertainty or complexity then a second look will be timely.

For more information, please contact Craig Thomson.

People profile: Anton Colella



Anton Colella, the newly appointed CEO of Moore Stephens International, is excited about the future of the network.

Anton started his career as a teacher, then more recently he was chief executive of the Scottish Qualifications Authority and since 2006, chief executive of ICAS.

He joins Moore Stephens International with experience of the challenges facing the industry, Anton comments “The accountancy and advisory world is at a crossroads, where the challenges of technology, ethics and geopolitical upheaval will present opportunities for those who are bold enough and ambitious enough to seize them.

“Moore Stephens International is extremely well placed to build on the success of the past and grasp the opportunities

of the future to enhance our position as one of the world’s leading networks.”

“This is a hugely exciting time to be joining and I will relish the opportunity of working with all our 28,000 people to bring to life our new strategy and drive our organisation forward together.”

When he is not at work, Anton enjoys spending time with his family, eating out, rugby and visiting the Highlands of Scotland.

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What is on the horizon for Moore Stephens International?

The network has grown significantly over the last decade through network expansion and broadening service offerings and target markets. A newly developed strategy will see the organisation drive substantial growth through enhanced collaboration, communication and innovation, combined with the roll-out of aligned values and brand messages.

Anton Colella’s appointment is key to the delivery of the network’s growth strategy and is part of a revised governance structure designed to drive the network forward.

Richard Moore, Chairman, said: “We are delighted that Anton has joined Moore Stephens International at this important time. He is a motivational leader and is highly respected by major firms, global professional bodies, regulators and governments. “His experience offers a unique insight into the challenges facing our business and he brings change management skills which will greatly benefit our network and its member firms.

Francis Moore in Accountancy Age’s Top 35 Under 35

Francis Moore, Associate Director in Moore Stephens’ Private Client team has been identified as a rising talent in the Accountancy Age 35 Under 35 ranking for 2018.

The ranking recognises the brightest talent in the accountancy sector, and features those ‘who have displayed innovation and dedication to lead the way and transform their respective fields’. Francis has been with the firm since 2007, and advises high net worth individuals on a range of tax issues for individuals moving to the UK from the US or Europe.

Simon Baylis, Partner in Moore Stephens private client services team comments :“Francis has developed into a highly respected member of the private client team and acts for some of our largest clients. Clients value his calm and professional manner, and he is able to build trust quickly.” Simon adds: “I am delighted that Francis has been recognised by his peers and the private client community. We very much look forward to Francis’ development as he continues to provide an outstanding service to our clients.”

For more information please go to: www.moorestephens.co.uk Follow us on Twitter: @MooreStephensUK