



Navigating your way Offshore

SOLOMON HARRIS
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Coming and Going-
U.K. Tax Considerations
For Moving to Cayman, and
U.S. Tax Compliance for Cayman
Residents

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Part 1:

Coming and Going- U.K. Tax Considerations for
Moving to Cayman

The Cayman Perspective

Part 2:

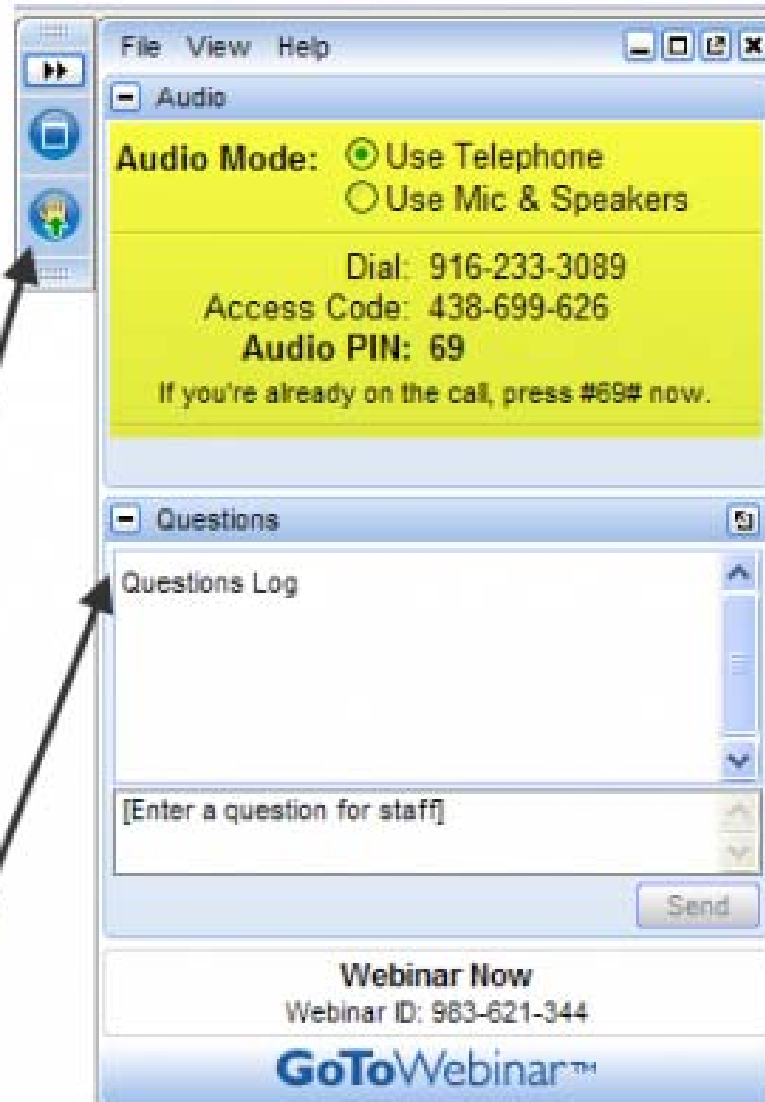
U.S. Tax Compliance for Cayman Companies and
Residents- An Update;

Brief update on AIFMD.

Housekeeping

During the session, you can use this button to "Raise Your Hand" if you have a question.

If there are more questions than can be answered during a session, the Organizer may ask that you type in questions in the Question Log so that they may be addressed later, via email.



Coming and Going- U.K. Tax Considerations for Moving to Cayman

Paul Hotchkiss

November 17, 2010

Agenda

- How to leave the UK effectively – the law and guidance
- Taking up an employment
- Retiring to Cayman
- Starting a new business in Cayman
 - Setting up your new Cayman business?
 - What about your existing UK business?
- Issues to consider as a Caymanian resident
- Long term tax planning

Introduction

- Leaving the UK – everyone is doing it
- Important to get it right
- There are many things that require consideration before, during and after you have left
 - Tax
 - Legal
 - Lifestyle
- Once you've left, then you may want to think about the long term

How to leave the UK effectively

The law and guidance

Ceasing UK residence – Part 1

- The three ways to leave....
- Take up employment or self-employment
 - Statute
 - Section 830 ITA 2007
 - Trade/employment
 - Ignore accommodation
 - Trade not carried on in UK/employment – incidental duties
 - Guidance
 - HMRC 6
 - Full time contract of employment
- Leaving permanently or indefinitely
- Reed v Clark

Ceasing UK residence – Part 2

- When do you leave?
- If you have left, what will this mean?
 - '90 day' rule
 - '183 day' rule
 - Transit days
 - Income tax - splitting the tax year (remember it's a concession...)
 - Capital gains tax – generally no split year

Ceasing UK residence – Part 3

- Where it goes wrong?
 - Employment contract
 - Not 'full time'
 - Didn't actually leave – no 'distinct break'
 - Gaines-Cooper
 - House and spouse left behind
 - Other assets retained
 - Visits too frequent
- Evidence required!

Taking up an employment

Taking up 'real' employment

Cayman

- Find somewhere to live
- Work permit
- Start work

UK

- Timing
- Retain house?
- No need to sell assets or sever ties
- Spouse and children can remain in the UK
- Inform HMRC you have left

Retiring to Cayman

Leaving permanently

Cayman

- Schooling
- Buying a house (can rent first)
- Open bank accounts
- Register with Government agencies/Doctor/Dentist

UK

- Timing
- Finalise UK affairs
- Sell house (rent on long-term basis)
- Close all bank accounts
- Tell all relevant authorities that you are leaving (TV licencing, DVLA, HMRC)
- Sever domestic ties – Doctor/Dentist etc
- Consider ownership of assets
- Family must leave UK too
- Do not visit UK regularly
- Inform HMRC

Starting a new business in Cayman

Setting up your new business in Cayman

- Commonplace to leave the UK and start up the same business in Cayman as was carried on in the UK
- You can either leave permanently or to work in new entity
- If employment what issues require consideration?
 - Full time
 - Must leave to take up the contract
- What problems can arise in the UK?

What about your existing UK business?

What problems can arise in your UK business?

- Risks
 - Disposal of assets
 - Restrictions
- Assets
 - Value of assets held (Goodwill/ customer lists/ brand name)
 - Existing contracts - what generates the profits
- Restrictions
 - Employment contracts – restrictions on set up of competing operation
- What about historic reserves – what to do with them: timing of dividends

Can you simply move your business?

- Parallel running
- Wind down UK operation slowly
- Stop trading in UK and start in Cayman

Tax issues to consider as a Caymanian resident

Tax issues

What will you need to consider?

- Tax advice
 - How will you be personally taxed in the UK?
 - How to minimise tax on business profits and personal investments
- Record keeping
 - In case of HMRC enquiry

How will you be personally taxed in the UK?

- No Capital gains tax
- Income tax
 - Rented property
 - Bank interest
 - UK Dividends
 - Loan interest
- Inheritance tax

How to minimise tax on business profits and personal investments

- Your business
 - Corporate residence
 - Permanent establishment
 - Transfer pricing
- Personal investments
 - Corporate ownership
 - Pension transfer
 - Use of trusts (see below)

Record keeping

- Why is this important?
- What records are useful?
 - Diary
 - Airline tickets
 - Bank statements/credit card bills
 - Utility records
 - Dates of key events
 - Key documentation
- Where to keep your information?

Long term tax planning – you are never going back

What do we mean?

- Escaping UK tax altogether
- Inheritance tax
 - Planning?
 - Look at available reliefs and assets held
- Domicile
- You are never going back - Never say 'never'

Domicile

- Domicile...everyone has one.
- Acquiring a domicile of choice
- The 'three year' rule
- When does it all start from?
- The '17 out of 20 year' rule
- Burden of proof
- What if you get it wrong and who will know?
- Hedging your bets? UK IHT friendly assets

Can you set up a trust?

- Why would you want to?
 - Succession planning
 - Asset protection
 - Children's trusts
 - Charitable trusts
- Can you?
 - Yes BUT watch your domicile!
 - 20% tax charge if you get it wrong
 - Consider a will trust?
 - IHT planning (if you do go back)

Concluding remarks

- Leaving the UK is relatively straightforward.....honestly
- Domicile = once non-UK resident – taking the next step might be more difficult
- To totally escape UK tax requires careful planning

Thank you for listening

Presented by

Paul C Hotchkiss FCCA CTA TEP

Director

Disclaimer

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Coming to the Cayman Islands

Kathryn C. Carter

November 17, 2010



Employment

- Full time (37 hours/week); “customary” terms
- One or more jobs
- At least one full tax year (April 6 to April 5)
- Accept offer from third party in Cayman Islands
- “Self-employment” situation
 - Create company, partnership, trust to carry on business



Immigration Issues

- Work permits required if non-Caymanian
 - Temporary or full
 - Must apply from outside the Cayman Islands
 - Medical exam, police clearance certificate, fees
 - Dependents - should include even if don't move
 - Salary concerns (cost of living)
- Retired - independent means test



Carrying on Business In the Cayman Islands

- Create entity (company, partnership, trust) most suitable to objectives
- Ownership - due diligence requirements for beneficial owners, directors, general partners
- Management - directors of companies, partners
- Exempted or not?
- Fees



Business Licensing Requirements

- Business primarily outside the Cayman Islands
 - Exempted Company
 - Owned by non-Caymanians
 - Trade and Business Licence
- Business within the Cayman Islands
 - Ordinary Company
 - 60% owned by Caymanians; 60% of directors are Caymanians
 - T&B Licence, LCCL Licence



Business Licensing Requirements, continued

- Regulated businesses
 - Cayman Islands Monetary Authority (“CIMA”)
 - Securities investment, funds, insurance, company managers, corporate service providers, banks, trust companies
- Staffing
 - Business staffing plan – Immigration
 - Caymanian, non-Caymanian employees



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Living in the Cayman Islands

Bank Accounts (AML requirements, credit cards)

Accommodation

- Rent or buy
- Location (Grand Cayman, Cayman Brac, Little Cayman)

Transportation

Medical Insurance

Pension participation



Wills and Estates

- Cayman will or non-Cayman will
- Probate or grant of administration
 - Entitlement to be personal representative
 - Domicile of deceased
- Resealed Grants
- One year rule



Other Trusts

- Revocable or irrevocable
- Discretionary or non-discretionary
- Beneficiaries or purposes
 - STAR trust
 - Trustee, Enforcer
- Perpetuities Period

US Tax Compliance for Cayman Residents: Update

November 17, 2010

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Introduction

- Who is subject to US income tax?
- How is the income earned by such persons monitored?
- What has changed recently, and what is the impact of these changes?

US Income Taxation

- Any individual is subject to US income tax on world-wide income if he is
 - A US citizen
 - A permanent resident (greencard holder), or
 - A temporary resident
 - (a) Present in the US for more than 30 days in the calendar year, and (b) Weighted sum of days in the US over a 3-year period exceeds 182 days, unless
 - Establishes that he was (a) present in the US on fewer than 183 days in the calendar year, and (b) has a tax home in a country with which he has a closer connection to the US

Foreign earned income exclusion

- A US citizen residing abroad may exclude a portion of his income earned abroad
 - Includes wages, earnings from self-employment
- The exact amount of the exclusion varies by the location of residence
- For many US citizens residing outside the US, the exclusion eliminates their tax liability, although they may still be required to file a tax return

How does the US monitor the amount of income earned?

- US income tax largely based on self-reporting with cross-checking through matching documentation
 - Salary, dividends and interest are self-reported on the return, with information reporting required by employers, banks, brokers, etc.
- Non-US income was largely on a self-reported basis only
 - No source of information to cross-check whether income was reported
 - Foreign Bank Account Report (FBAR) required if investment accounts held outside the US exceed a threshold
 - Lower levels of tax compliance on income earned outside the US

Recent developments

- Recent developments have radically changed the tax compliance landscape for US persons with income earned outside the US
- Increased emphasis on FBAR compliance
- HIRE Act
 - Foreign financial institutions required to agree to identify US accountholders to IRS, to close the account, or be subject to withholding tax on their US source income
 - Expanded reporting of financial assets held outside the US

Foreign Account Tax Compliance Act

- “The most important development in international information reporting in a generation”
- “We hope that all countries with developed tax systems will soon begin coming together to work on a unified information reporting system on a multi-lateral basis”
 - Comments of U.S. Internal Revenue Service Commissioner Douglas H. Shulman before the OECD, June 8, 2010

FATCA

- Foreign Account Tax Compliance Act (“FATCA”) enacted into law as part of the HIRE Act in March 2010
- Requires foreign financial institutions to agree to disclose to the IRS the identity of any US person who is an accountholder or to close the account
- Imposes withholding requirement of 30% on payments of US source income to foreign financial institutions who do not enter into the agreement
- Similar requirement imposed on payments to foreign entities that are not financial institutions
- Withholding requirement is imposed on payments made after December 31, 2012, with limited grandfathering of outstanding obligations

FATCA

- Withholding is imposed on payments of US source income
 - Payments of investment income, such as interest or dividends
 - Gross proceeds of the sale of US property that generates interest or dividends
- Intention is to force disclosure, rather than to raise revenue from the withholding tax

Financial institution

- Except as otherwise provided, a financial institution means any entity that –
 - Accepts deposits in the ordinary course of a banking or similar business
 - As a substantial part of its business, holds financial assets for the account of others, or
 - Is engaged (or holds itself out as engaged) primarily in the business of investing, re-investing, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Disclosure agreement

- Payments to a foreign financial institution are subject to withholding tax unless the recipient has a Section 1471(b) agreement in place
- The Section 1471(b) agreement requires the disclosure to the IRS of the name, account number, and tax ID# of any US person that is an accountholder
- Designed to compel the financial institution to close the account of non-compliant US accountholders

Notice 2010-60: Preliminary guidance on FATCA issues

- The IRS released Notice 2010-60 on August 27, providing its first guidance as to the details of FATCA implementation, and requesting comments on certain open questions
- Notice is complex, but this presentation will focus on a few of the issues it addresses (or issues it leaves open)

Verification of account-holders status as non-US

- How does a non-US financial institution determine whether its accountholders are non-US persons?
 - Statute has a cutoff of \$50,000 for individuals
 - Various types of documentation required for accounts over the threshold

Verification of account-holder's status as non-U.S. person

- Notice provides certain rules for determining whether an institution's existing accountholders are non-US, based on whether the information contained in electronically searchable form includes certain indications of US status
- Presumptions vary based on the balance in the account, phase out based on length of time since agreement entered into

Verification of compliance

- Notice contemplates that compliance with the agreement may be verified by –
 - External auditors
 - Management certification
- Comment requested on appropriate verification procedures

Insurance companies

- The Notice distinguishes between those policies that have no cash value (term life, most property/casualty) and those that have cash value
- Some cash value policies may be viewed as “accounts” for FATCA
- The Notice requests additional comments from industry as to the scope of the reporting requirements on insurance

Small Trusts

- Notice allows for certain small trusts to be excluded from reporting, as long as the relevant information is obtained for all those with an interest in the trust
- Comment requested on the application of the small trust exception
- Unclear how effective this exclusion will be

FATCA Questions

- Implementation – how will the 1471(b) agreements be implemented, monitored?
 - How will existing accounts be treated
 - How is status as a US person dis-proved?
- What is a financial institution?
 - Investment partnerships, life insurance companies, family trusts?
- Effect – will funds split between FATCA compliant (no US investors, 1471 (b) agreement) and non-compliant (US investors, no US source income)?

Impact on the FFI

- Existing Financial Institutions – what should they be thinking about?
 - Will they be FATCA compliant?
 - Should they enter into a 1471(b) agreement?
 - Costs and expenses of compliance
 - How do they deal with investors / depositors who resist disclosure?
 - What happens if investment income becomes subject to withholding? Can the institution legally close the account of a non-compliant US person? Can the institution legally withhold from the account of a non-compliant US person?

Other developments

- ISDA documentation
 - ISDA updates to swap documentation in response to the HIRE Act
 - HIRE Act Protocol addresses responsibility for withholding, documentation, between swap counterparties

Summary

- In Notice 2010-60, the IRS began the process of releasing detailed guidance as to how FATCA is expected to work
- The Notice is detailed in some areas, but leaves other areas open
- Market developments in response to FATCA
- Financial institutions outside the US (especially those in financial centers) should begin considering the specific impact to them of FACTA implementation



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The Alternative Investment Fund Managers Directive- An Update

Simone Proctor

November 17, 2010



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Thank you for your kind attention.

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