SCA ONTIER

SCA ONTIER LLP
ONE NEW LUDGATE, 60 LUDGATE HILL, LONDON, EC4M 7AW, UNITED KINGDOM
TEL +44 (0) 20 7183 1701 | FAX +44 (0) 20 7183 1702
WWW.SCAONTIER.COM | WWW.ONTIER.NET

OFFSHORE TAX PLANNING – LEGALITY vs. MORALITY

The release of the Paradise Paper data has highlighted the extent of tax planning undertaken worldwide to mitigate liability to tax. This note highlights the impact on the international tax planning landscape and the key issues for consideration by clients and advisors.

What have the Paradise Papers revealed?

The Paradise Papers comprised a collection of more than 13-million files regarding the offshore tax planning undertaken by many of the world's wealthiest entities. While this generated international headlines, the use of tax havens is not necessarily illegal. It is likely that additional scrutiny of some of the complex structures employed for some of the parties named in the Paradise Papers may well reveal breach of tax avoidance laws. However, for the majority the offshore tax planning will have legally and legitimately mitigated tax liabilities.

In recent years there has been an increasing tension between the amount of tax that is legally owed by a taxpayer and the amount of tax that a taxpayer should be morally obliged to pay. For some that have undertaken offshore tax planning, paying the minimum legally required amount of tax simply will not suffice in the public eye.

The regulatory landscape

There will no doubt be considerable pressure on Governments worldwide to legislate for the 'ethical' aspects of tax avoidance, however in the meantime offshore tax planning administered for legitimate purposes will remain available to taxpayers. It is important to note the increasing trend of wider policing powers granted to tax authorities to monitor the use of offshore tax planning through a variety of cross border initiatives and laws, including:

- Disclosure of tax planning schemes by advisors and taxpayers;
- Information sharing of assets held offshore with traditional tax havens;
- Voluntary disclosure facilities or amnesties regarding individuals' offshore tax affairs;
- Global collaboration through the Organisation for Economic Co-operation and Development endorsed BEPS (Base Erosion and Profit Shifting) Project to combat tax avoidance strategies exploiting gaps in the tax rules to shift profits to low or nil tax jurisdictions.

Next Steps

It is important to note that from a legal standpoint offshore tax planning remains a viable option for many individuals and family-owned companies in terms of determining where to establish or reside, where to hold intangible assets, such as patents and software and also any succession or legacy issues.

Navigating the complex tax laws and compliance requirements will involve considerable diligence and so professional advice should always be obtained beforehand. Furthermore, as revealed by the release of the Paradise Paper data, careful consideration should also be given to the prospect of any moral or ethical scrutiny, particularly for high profile individuals or businesses.

Contacts

Ontier's global presence and expert lawyers are ideally placed to assist you and your business with the challenges and opportunities that lie ahead. If you would like advice on the tax implications of existing offshore tax planning or how to proceed with any proposed tax structuring, please do not hesitate to contact Deepash Patel (deepash.patel@scaontier.com).