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Our ref Tax/OPEN/-1/MPN

By email to mandatorydisclosure.rules@hmrc.gov.uk

Dear John

Response to Mandatory Disclosure Rules Consultation

Simmons & Simmons LLP is an international law firm which has advised many businesses on DAC 6 as implemented in the UK and numerous EU jurisdictions. I set out below our observations on and responses to some of the questions posed in HMRC's mandatory disclosure rules consultation.

Questions 3 and 4

Whilst we understand that the OECD model rules envisage reporting of pre-existing arrangements back to 29 October 2014, we query whether such an approach is reasonable and proportionate from a compliance perspective for businesses. We welcome the proposed mitigations – in particular, the reporting obligations only applying to promoters and only in respect of CRS avoidance arrangements. However, in our experience, even the DAC 6 look back period to 25 June 2018 presented some practical challenges for businesses due to the effluxion of time and changes of personnel etc. Here, the proposed look back period goes back to 2014 and further time has elapsed since DAC 6 was implemented. In addition, an eight year look back period to 2014 goes beyond the general record keeping requirement for UK tax purposes which is likely to present additional challenges for businesses who may no longer have copies of relevant records.

In particular, we note that the OECD model rules are only a model and other jurisdictions have not required a look back to 29 October 2014. For instance, DAC 6 as implemented in the EU does not require a look back to 29 October 2014. It may therefore be reasonable and proportionate to just apply the new mandatory disclosure rules from 25 June 2018 and treat any reports made under the D hallmarks of DAC 6 as also made in respect of the new mandatory disclosure rules.

Question 5

It would be helpful to have additional guidance on when the knowledge test for service providers may be met to clarify service providers' obligations when they are only involved in part of a wider arrangement.

We note HMRC's existing guidance at IEIM621050.

> *The defence for service providers that they did not know and could not reasonably be expected to know that they were part of a reportable arrangement exists because a service provider might only be involved in a particular part of a wider arrangement, such as a bank providing finance. It might, therefore, not have knowledge of the wider arrangements, and crucially whether the arrangement triggered any hallmarks. In such a scenario, it is reasonable that the bank is not expected to make a report, because it did not know, and could not reasonably be expected to know, that it was involved in a reportable arrangement at the time that the arrangement was entered into.*

It would be helpful if such guidance was retained with additional examples. One scenario we would be keen to see covered is where a Delaware limited partnership invests in a fund managed by a UK manager. The US has not adopted the CRS so such an arrangement could potentially be considered a CRS avoidance arrangement. As a result, it would be helpful to clarify that the UK manager is not required to investigate the rationale for the investor investing via a Delaware limited partnership if that would not be covered by the UK manager's existing due diligence process.

Question 9

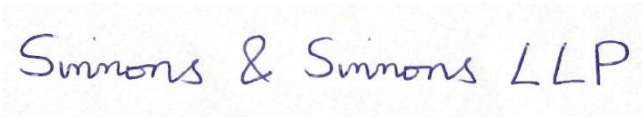
We welcome the proposal to retain in HMRC guidance the statement that "*Where a person is obliged to identify beneficial ownership under Anti-Money Laundering legislation in accordance with FATF, and successfully does so, this would generally mean that the test in hallmark D2 (c) was not met, as beneficial owners would not be unidentifiable.*" We see this as a helpful clarification for many businesses in relation to their identification of offshore opaque structures. It would be helpful if this guidance could also be extended to cover businesses which outsource anti-money laundering compliance to reputable third party service providers.

Question 12

We note that the draft regulations do not require an intermediary to disclose "*any information to the extent that it is privileged information"* whereas the existing regulations at SI 2020/25 do not require an intermediary to disclose *"any privileged information"*. It would be helpful to understand whether HMRC sees any distinction between these wordings.

If you have any queries in relation to the above, please contact Matthew Norris on +44 20 7825 3220 or at matthew.norris@simmons-simmons.com.

Yours faithfully



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