

71 Queen Victoria Street, London EC4V 4AY

Wedlake Bell

Telephone: 0207 3953000

DISCLOSURE & BREXIT UPDATE

**CAMILLA WALLACE
SEPTEMBER 2018**



INTRODUCTION TO WEDLAKE BELL

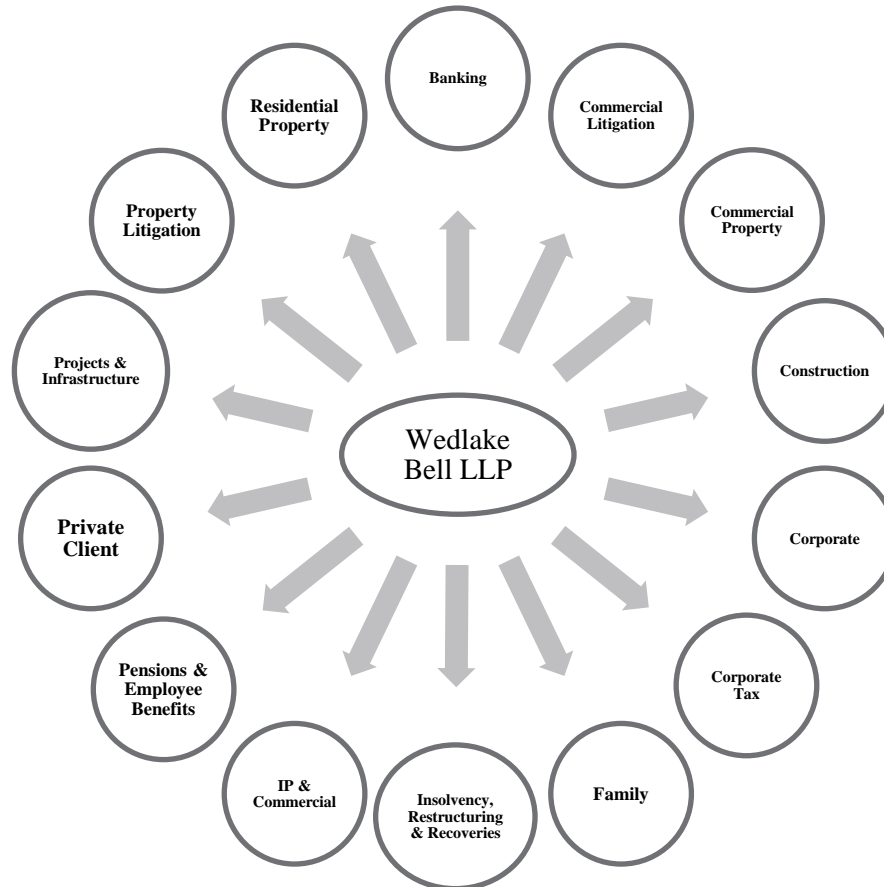
Who are Wedlake Bell?

- Top 90 UK law firm based in London
- Founded in 1780
- 66 partners supported by over 175 lawyers and support staff

Who do we advise: both UK and international clients:

- High net-worth individuals & private investors
- Trustees and Family Offices
- Charities
- FTSE100 companies to owner-managed companies
- Banks & financial institutions

WEDLAKE BELL PRACTICE AREAS



PRIVATE CLIENT GROUP PRACTICE AREAS


How can we help?

- Wills & Succession Planning
- Probate & Trust Administration
- UK Tax Planning
- Inward investment
- Inheritance, Trusts and Probate Dispute Resolution
- Protection & Planning for the Vulnerable
- Charities
- Family
- Residential Property


DISCLOSURE UPDATE



BRAVE NEW WORLD

- 
- Global trend for greater tax transparency
 - Political pressure to make world elite to pay “fair share” of tax
 - Anti-Money Laundering Legislation and Anti-Terror laws
 - IRS and FATCA

BRAVE NEW WORLD

- 
- What does this mean for family privacy?
 - What personal information (inc. names/addresses/asset values/dates of birth/tax residency)?
 - Where is this information stored and what is it used for?
 - Who can access it?
 - Increased compliance burdens on Family Offices/Trustees/Financial Institutions

DISCLOSURE REGIMES

■
The main disclosure regimes are:

- **FATCA** – U.S. legislation (Foreign Account Tax Compliance Act)
- **CRS** – the OECD’s “Common Reporting Standard”
- **PSC** - Register of Persons with Significant Control – the “PSC” register
- **LEIs** – “Legal Entity Identifier code” – where investments are traded on the London Stock Exchange
- **UK Trust Register** – part of 4th Anti-Money Laundering Regulations – took effect from June 2017
- **Requirement To Correct** – part of the UK’s Finance (No.2) Act 2017 – obligation to report undeclared offshore non-compliance by 30 September 2018
- **EU Mandatory Disclosure Regime** – disclosure of reportable cross-border arrangements – took effect 25 June 2018
- **Beneficial Ownership Register** – Register of Overseas Entities Bill 2018

RTC (REQUIREMENT TO CORRECT)

- **When?** – UK tax regime – taxpayers with undisclosed offshore non-compliance must disclose on or before 30 September 2018 or face likely higher penalties
- **Why?** – make the most of the opportunity before penalties are increased – unlikely an opportunity like this will be offered again in the near future
- **Who?**
 - Any UK taxpayer or trustee who owns or holds offshore assets
 - Any UK taxpayer who has an interest in offshore assets (such as a beneficiary of an offshore trust)
 - Any UK taxpayer who has moved income or the proceeds of sale from a UK asset, offshore
 - Trustees of offshore trusts with UK tax liabilities
 - Executors of a UK domiciled person who held offshore assets at death

RTC (REQUIREMENT TO CORRECT)

- **What?** – Required to report all undisclosed offshore non-compliance to HMRC using the digital disclosure service
- Examples:
 - rent from overseas holiday home
 - interest/income from overseas inherited assets ten year anniversary IHT charge for offshore trust
- **What if I don't comply?**
 - HMRC will likely find out by 30 September via the “Common Reporting Standard”, a global tax information exchange regime
 - New minimum penalties of 150% of tax involved increasing to 200% of tax involved
 - Criminal penalties could also be applied
- **Timeframes?**
 - The last 4 years for reasonable behaviour
 - The last 6 years for unreasonable (e.g. careless) behaviour
 - The last 20 years for deliberate behaviour

EU DOTAS (“EU MANDATORY DISCLOSURE REGIME”)

- **When?**
 - Came into force at EU level on 25 June 2018
 - Member states must transpose the relevant EU Directive by 31 December 2019 (i.e. within the Brexit transition period) and implementing legislation must be in force by 1 July 2020
 - The UK government is due to consult on the Directive in 2019
- **Why?** – The UK has not yet implemented the regime but as any planning after 25 June 2018 which falls within the scope of the Directive will eventually need to be disclosed, practitioners need to plan for the regime now
- **Who is in scope?** – Your advisers – us! The regime applies to "intermediaries" which is broadly anyone who makes available for implementation or manages the implementation of a "reportable cross-border arrangement". The intermediary must be regulated by a professional body
- **What if I don't comply?** – There will be a penalty regime and this is to be set by the member states

EU DOTAS (“EU MANDATORY DISCLOSURE REGIME”)

■ What?

- Details of the taxpayer and arrangements are shared with HMRC who pass the information on to the relevant tax authorities in the EU on a quarterly basis from 31 October 2020 via a new EU central directory
- "**Cross-border**" broadly means an arrangement concerning more than one member state or a member state and a third country
- "**Reportable**" means the arrangement exhibits at least one "hallmark" and satisfies the "main benefit test". There are various of these covering a range of different scenarios and they should all be checked but three examples are:
 1. arrangements involving the transfer of assets to a jurisdiction not bound by an automatic exchange of information with the state of the taxpayer's residence;
 2. arrangements that use jurisdictions with inadequate AML legislation or weak transparency requirements; and
 3. arrangements involving a non-transparent legal/beneficial ownership chain in a different jurisdiction to the beneficial owners' jurisdiction of residence which results in the beneficial owners being unidentifiable.
- The "main benefit test" is very broad and requires that a tax advantage is a main benefit reasonably expected to be derived from the arrangements

REGISTER OF OVERSEAS ENTITIES – DRAFT UK LEGISLATION

- Public register maintained by Companies House
- Lists owners (and their shareholders) of UK land: freehold or leasehold ≥ 7 yrs
- Regime operational by 2021
- "Overseas entity" = overseas company, partnership or entity with legal personality
- Trusts as direct owners excluded (but subject to UK Trust Register)
- Overseas trusts with offshore company owning UK property caught, those with "significant influence or control" over the trust (trustees, settlor, protector, person with a power of appointment) will need to be named BUT beneficiaries should not need to be disclosed (unless they exercise control)

REGISTER OF OVERSEAS ENTITIES

- Follows PSC regime: "control" not true beneficial "ownership":
 - > 25% of the shares; or
 - > 25% of the voting rights; or
 - they have the right to appoint/remove a majority of the board of directors; or
 - they have a right to exercise, or actually exercise, significant influence/control; or
 - in relation to trusts, the trustees meet one of the above conditions in relation to an overseas entity and an individual has control over trust activities.

REGISTER OF OVERSEAS ENTITIES

- Existing landowners: need to register w/in 18 months of the commencement of the legislation (2021)
- Future landowners: prior registration w/Companies House as Land Registry will not register them as proprietors without a registration ID number
- Restriction on title will prevent a disposition of land w/out entity being registered at Companies House and fully compliant
- Companies House register updated annually
- Criminal sanctions for non-compliance by the officers of the entity **and** the beneficial owners

CONCLUDING THOUGHTS ON PRIVACY PLANNING

- Different jurisdictions have different classification requirements (e.g. under CRS) – may give some (limited) opportunities to reduce disclosure – but for how long and note EU DOTAS?
- Consider keeping letters of wishes more generic and not naming individuals as far as possible
- Choose names of entities carefully – avoid using family names, sequential numbers etc.
- Being misinformed is not a defence – penalty regime likely to still apply
- Failure to comply will limit scope for investment and access to many jurisdictions

BREXIT UPDATE



BREXIT: TIMELINE

- **23 June 2016** – UK votes out
- **29 March 2017** - Article 50 triggered
- **8 June 2017** – UK election
- **19 June 2017** – official EU/UK talks begin
- **11 September 2017** – Withdrawal Bill passes second reading
- **24 September 2017** – German election
- **19/20 October 2017** – European Council Summit on Brexit
- **May 2018** – UK local government elections
- **7 May 2020** – UK election
- **20 September 2018** – EU leaders discuss Brexit but summit ruled out
- **17/18 October 2018** – Final EU Summit to negotiate Brexit deal – **LIKELY TO BE MISSED**
- **November 2018** – Opportunity for emergency EU summit if the deadlock continues

BREXIT: TIMELINE

- **Winter 18/19** – UK parliament must approve negotiated deal, prior to EU approval
- **29 March 2019** – UK leave the EU
- **May 2019** – European Parliament elections
- **13-14 December 2019** - EU summit
- **21 January 2020** - Powers for MPs to influence ministers' next steps will kick in
- **21-22 March 2020** - Final EU summit UK can attend
- **Before 29 March 2020** - Parliament must pass EU (Withdrawal Agreement) Bill
- **29 March 2020** - at 2300 GMT UK leaves the EU & Special Summit of the 27 remaining EU States shortly thereafter
- **7 May 2020** – First UK election having left EU
- **23-26 May** - Elections for the European Parliament in 27 EU countries (the UK no longer represented)
- **31 December 2020** - Last date of the transition period

BREXIT: POLARISATION OF OPINION

Pros	Cons
<ul style="list-style-type: none">➤ Increase in capital spending➤ Devaluation of sterling➤ Freedom of negotiation➤ Control of immigration➤ Independence from ECJ➤ The Great British Rebate....	<ul style="list-style-type: none">➤ Culturally unacceptable, negative messaging➤ Huge political and economic uncertainty➤ Householder squeeze➤ Stagnant productivity➤ No single market➤ Insignificance as a global trading nation➤ less economic and political clout➤ Lack of skilled negotiators

BREXIT: OPTIONS

- **Norway** – EFTA & EEA
- **Switzerland** – EFTA & bilateral agreements
- **FTA** – Free Trade Agreement with the EU
- **Turkey** – Customs Union
- **WTO** – World Trade Organisation membership
- **Current proposals** – Customs Partnership or Frictionless Border?

BREXIT: WHERE ARE WE AT THE MOMENT?

- **Labour** – Soft Brexit
- **Liberals** – No Brexit
- **Conservatives** – Chequers or Hard Brexit?
- **Post the “Great Repeal Bill”** – aka The EU (Withdrawal) Act 2018
- **Immigration/visas post Brexit**
- **Tax & Estate Planning**
- **What’s happening on the ground?**
- **Can we change our minds?!**

CONTACT US



CAMILLA WALLACE

Head of Private Client Group

Partner

cwallace@wedlakebell.com

DD: 0207 4061678