

Dealing with HMRC investigations into offshore accounts

This memorandum has been prepared for the assistance of our clients in connection with information notices issued by HM Revenue & Customs ("HMRC"). It is intended to provide only a summary and it is not intended to be comprehensive in scope. It is strongly recommended that you seek specific legal advice on such matters and we would be pleased to assist in this respect. A series of briefings on other specific aspects of Guernsey and Jersey law has been produced by Ogier and is available on our website www.ogier.com.

The memorandum has been prepared on the basis of the law and practice in Guernsey and Jersey as at 15 October 2009. Whilst it contains a summary of some of the provisions of the HMRC notices it does not purport to offer any English law advice.

HMRC Notices

On 12 August 2009 HMRC was authorised, pursuant to the Finance Act 2008, to issue information notices (each a "Notice") to a large number of UK financial institutions requiring delivery of certain information and documents to HMRC.

The Notice requires a recipient to produce certain information and documents, which are within its power or possession, relating to account holders who have an address within the United Kingdom and who hold a non-United Kingdom account. A non-United Kingdom account is an account (which term is defined to extend to accounts of any description however identified or marketed) where the money or assets relevant to the account are held outside of England, Wales, Scotland and Northern Ireland.

The Notice sets out certain restrictions as to its scope.

Information held by offshore subsidiaries or branches

To the extent that a financial institution that receives a Notice in the United Kingdom has a subsidiary or maintains a branch in the Channel Islands, consideration should be given as to how the institution responds in respect of customer information that is available to the local subsidiary or branch. Primarily the recipient of the notice and the Channel Islands subsidiary or branch will need to ensure that there is no breach of the duty of confidentiality owed to customers and that there is compliance with data protection legislation. How an

institution responds to a Notice will depend on the particular factual position applying to that institution. Some points to consider will include:

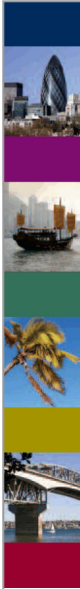
- The legal structure which underpins the nature of the Channel Island business - including whether it is structured as a subsidiary or branch;
- The local rules as to confidentiality, how these apply in each case and how they are affected by any contractual arrangements made between the Channel Island entity and its customers;
- The extent to which the onshore financial institution has documents or information relating to customers of the subsidiary or branch available to it without the need to access the written records or computer network (and servers) which support the offshore business;
- What arrangements need to be made to secure compliance with the Data Protection (Bailiwick of Guernsey) Law, 2001 and the Data Protection (Jersey) Law, 2005 when dealing with Channel Island customer information;
- Whether, if an onshore institution already has *de facto* access to subsidiary or branch customer information, such information was delivered in breach of any duty of confidentiality and, if so, what might be done about that; and
- How any information which is available should best be collated.

The above series of consideration points it is not exhaustive. In essence each situation should be considered on its facts - a point HMRC themselves effectively impliedly acknowledge.

About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. The Group advises on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.



Dealing with HMRC investigations into offshore accounts

Contact details

Guernsey Legal

Caroline Chan
+44 (0) 1481 752262
caroline.chan@ogier.com

Nick Gamble
+44 (0) 1481 752257
nick.gamble@ogier.com

Marcus Leese
+44 (0) 1481 737152
marcus.leese@ogier.com

Roger Le Tissier
+44 (0) 1481 737150
roger.le.tissier@ogier.com

William Simpson
+44 (0) 1481 737163
william.simpson@ogier.com

Jersey Legal

Chris Byrne
+44 (0) 1534 504264
chris.byrne@ogier.com

Edward Mackereth
+44 (0) 1534 504320
edward.mackereth@ogier.com

Matthew Swan
+44 (0) 1534 504238
matthew.swan@ogier.com

Nicholas Ward
+44 (0) 1534 504244
nicholas.ward@ogier.com

Marc Yates
+44 (0) 1534 504220
marc.yates@ogier.com

www.ogier.com

This client briefing has been prepared for clients and professional associates of the firm. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Ogier includes separate partnerships which advise on BVI, Cayman, Guernsey and Jersey law. For a full list of partners please visit our website.