

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Tim Sanders

London
+44.20.7519.7039
tim.sanders@skadden.com

James Anderson

London
+44.20.7519.7060
james.anderson@skadden.com

Chris Hutley-Hurst

London
+44.20.7519.7176
chris.hutley-hurst@skadden.com

Jonathon Egerton-Peters

London
+44.20.7519.7159
jonathon.egerton-peters@skadden.com

* * *

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

40 Bank Street, Canary Wharf
London, E14 5DS, England
Telephone: +44.20.7519.7000

Four Times Square, New York, NY 10036
Telephone: +1.212.735.3000

WWW.SKADDEN.COM

Taxpayer Naming – The Future of UK Tax Compliance?

As part of Autumn Statement 2013, HM Revenue & Customs (HMRC) has today publicly named the banks that have newly adopted or readopted the Code of Practice on Taxation for Banks (the Code).

This publication follows the U.K. government’s announcement on October 11, 2013 of a number of key changes to the Code, the most notable of which included the proposal that HMRC be able to name publicly a bank that it considers is in breach of the Code (see *UK Government to Strengthen Code of Practice on Taxation for Banks*). HMRC has also today revised its Governance Protocol on banks’ compliance with the Code to reflect these recent changes.

Although the legislation enacting the “naming-and-shaming” provisions is not expected to be passed until the summer of 2014, that legislation will apply to any breaches of the Code that occur from today (or, if later, from when the bank agrees to adhere to the Code).

Background

The Code was originally introduced in December 2009 to encourage banks operating in the U.K. to follow the spirit, as well as the letter, of U.K. tax law. Adoption of the Code included an agreement not to engage in tax planning other than that which supports genuine commercial activity. Adoption of the Code is voluntary; further details are available [here](#).

Previously, HMRC published only figures on banks that had adopted the Code (225 banks, including all of the top 15, had previously adopted the Code). While it may have been possible to make an educated guess as to which banks had adopted the Code, no names were published. This has now changed. HMRC has today provided the full names of the 264 banks that have now adopted the Code.

Comment

Today’s publication is particularly significant as it marks a key step toward the use of the court of public opinion and the tacit threat of reputational damage to ensure tax compliance from a specified group of U.K. taxpayers and, in turn, to assist in the administration of U.K. taxes more generally. HMRC is wielding a powerful tool to ensure compliance with the Code. As a result, banks could take highly conservative approaches to transactions, even where the risk of being in breach of the Code is remote.

Going forward, before any bank believed to be in breach of the Code can be named, an independent review must take place. Banks will also be given the opportunity to seek an injunction against HMRC in order to prevent their naming (see [here](#)). This may well prove to be a critical step in the process of U.K. tax administration given the increasing reputational value of a bank’s tax compliance. In this regard, it is worthwhile noting that the minimum period between HMRC notifying the bank of its final decision to name the bank as being in breach of the Code, and HMRC publicly naming the bank, has been increased from 30 days to 90 days.

Although the Code and the rules regarding public naming are only aimed at banks, their likely success could pave the way for an expansion to other taxpayers, especially multinational enterprises that are the focus of proposals to prevent base erosion, profit shifting and double non-taxation.

About Skadden's Global Tax Controversy Practice

Skadden's Global Tax Controversy Practice combines the skills of experienced tax practitioners and dispute resolution lawyers. The group provides its clients with tactical and technical advice to ensure that tax disputes and investigations are resolved as effectively as possible through various methods such as negotiation, expert determination, or a hearing before the tribunals or the courts. The group also provides preventative advice allowing clients to ensure that their tax affairs are legally compliant with a view to avoiding lengthy and costly disputes. Members of the group are named as leading tax controversy lawyers in *International Tax Review's* 2013 Tax Controversy Leaders Guide.