4th MARCH 2013

Welcome to TISAtalk, this week –

- Jeffrey Mushens, Technical Director at TISA, outlines his concerns over logistical compliance with FATCA and how TISA is engaging with the industry to implement contingency planning.
- Peter Smith, Head of Distribution Engagement at TISA, discusses the importance of client agreements and how ineffective wording could prove to be an obstacle to selling an adviser business, or reduce its value.

MAKING SENSE OF FATCA

I spent a few days in Luxembourg last week, successfully panicking people there about the requirement for contingency planning for FATCA ahead of 1st January 2014.

For those who'd like a quick recap, in 2009 the US passed FATCA with hopes of raising $100bn a year in extra tax revenue, and embarked on the most outrageously extraterritorial demonstration of economic imperialism since the imposition of duties on the import of tea in the 13 colonies – which, as we know, was a resounding success! The expected tax take is currently around $800m a year, most of which will be absorbed by the extra staff the IRS will hire, and the world is spending billions of dollars a year in order to comply.

The IRS regulations, a light read at 543 pages, have just been published. Even if you're in an IGA territory (like the UK), FFIs (Foreign Financial Institutions) will have to register with the US IRS FATCA Registration Portal. The problem is that the IRS hasn't yet published the rules saying what people will have to enter on the Portal. It will be ready by 15th July, and FFIs will have until 25th October to register. If firms don't register by then, they won't appear on the register (published 2nd December) with a GIIN (Global Intermediary Identification Number). And if firms don't have a GIIN, they might be withheld against. So, no pressure.

Of course, like all government IT projects, it will likely be delivered on time, will work first time, and not fall over under pressures of volumes. After all, they assume 500,000 FFIs will need to register; they also assumed there would only be 50 QIs (Qualified Intermediaries) and it transpires that there are 5,000 of them. Additionally, there are 1.2 million trusts in the UK alone!

What to do? We've suggested that some sensible contingency plans need to be developed, rather than just hoping everything will be fine. We shared this with our - rather shocked - audience in Luxembourg, and it will no doubt prompt continued debate at our FATCA project meetings. Feel free to sign up to the TISA FATCA project if you haven't already done so.

Jeffrey Mushens, Technical Director

MAKE SURE YOU CHOOSE THE RIGHT WORDS!

It's very interesting that a consequence of RDR and Adviser Charging has led to an oversight that could damage the value of adviser distribution businesses.

Not all companies have paid close attention to their client agreements, which could prove to be an obstacle to selling an adviser business, or reduce its value. In addition, unfortunately, several of these are poorly worded.

Advisers need to make sure their client agreements have clauses which include how an acquisition would affect charging. Prudential recently pointed out 'The ability for providers to transfer adviser charging from one adviser to another will depend on what the client agreement is.'

If the adviser sells the full legal entity of the business which has the right to receive the advice charges, it is not a problem, however this is not always the case and advisers usually sell the good will and client bases rather than the underlying firm itself.

Be warned, a well-worded agreement should make it clear that the client is giving consent for the adviser to transfer the provision of services and rights to receive adviser charges to another adviser.

Prudential continue, 'Unless you have the clause to sell the income stream and good will, and the customer has agreed that, it's very questionable whether it can be moved from one adviser to another.' I couldn't agree more.

Peter Smith, Head of Distribution Engagement

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