Tax Seminar Jersey

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Speakers

Paul Eastwood

Tax Partner
KPMG in the Crown Dependencies
Jersey
peastwood@kpmg.com

Chris Lowe

Tax Director
KPMG in the Crown Dependencies
Jersey
chrislowe@kpmg.com

Derek Scott

Partner
KPMG in the UK
London
derek.h.scott@kpmg.co.uk

Agenda

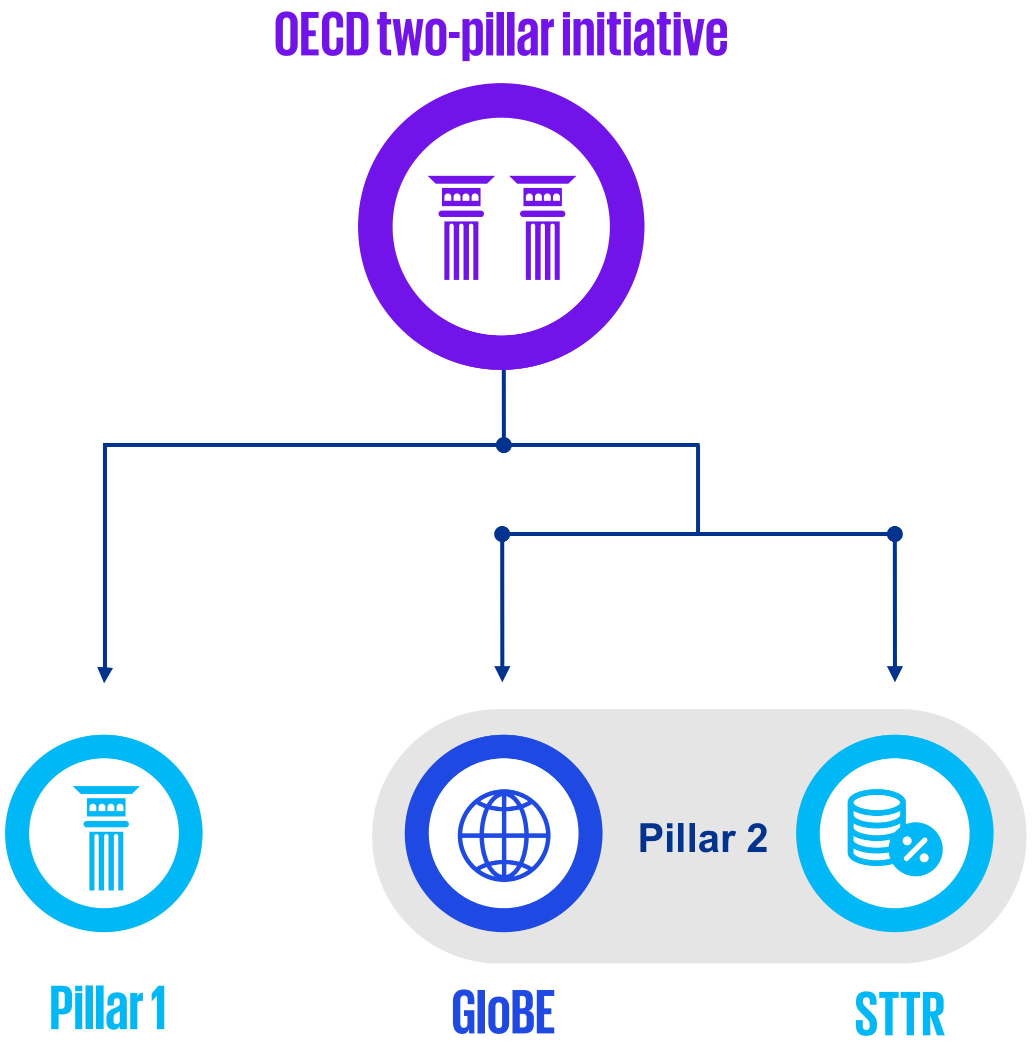
01	**Introduction**	Paul Eastwood
02	**Tax update – including economic substance compliance activities**	Paul Eastwood
03	**FATCA/CRS inspections and update**	Chris Lowe
04	**Dealing with HMRC enquiries and disclosures**	Derek Scott
05	**Q&A and wrap up**	Paul Eastwood

01

Tax update

Paul Eastwood

Overview



Key:

- Minimum Standards
- Common Approach

Pillar 1: Key aspects

Groups in scope – Turnover EUR20 billion and Profitability above 10%

Exclusions – Extractives and Regulated Financial Services

Market profit allocations – 25% of profit above 10% margin

Jurisdictional taxing rights – €1 million (€250,000 if GDP less than €40 billion)

Sourcing – Where goods/services used/consumed - “reliable method”

Paying entities – Those with residual profits

Unilateral Measures – Digital Service Taxes and other relevant measures

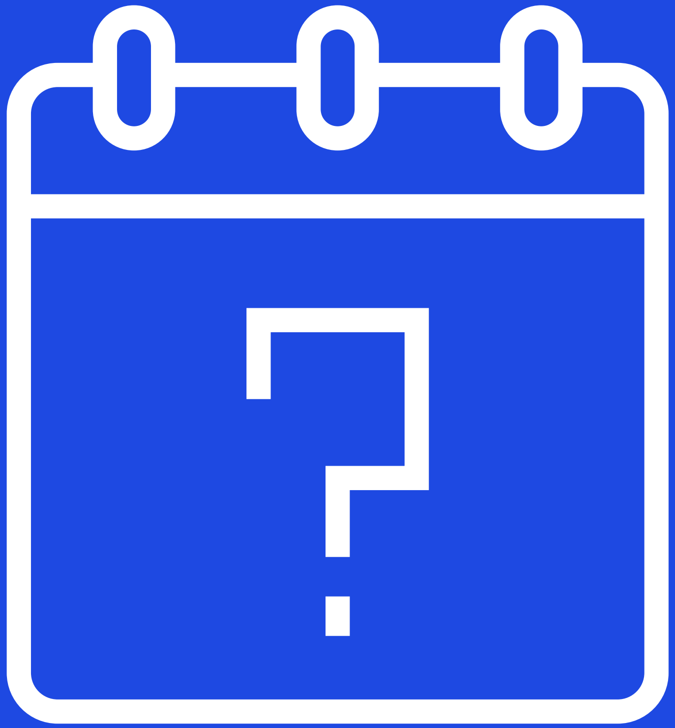
Pillar 2: GloBE rules

- Groups with €750m consolidated annual revenue
- 15% minimum effective tax rate: jurisdictional basis
- Income Inclusion Rule (IIR)
- Undertaxed Payments Rule = back-up to IIR
- Jurisdictions can introduce domestic top-up tax
- Model Rules and Commentary now published
- EU Minimum Tax Directive still not agreed within the Member States

Pillars 1 and 2: Response of the Crown Dependencies

- CDs have agreed to implement minimum standards
  - Pillar 1
  - Pillar 2 Subject To Tax Rule
- No decisions yet on GLoBE
- Jersey “Tax policy reflections” paper April 2022:
  - no plans to change domestic corporate tax regime for companies outside scope of GLoBE
  - final decision on GLoBE will **not** be taken based on any desire or need to raise revenue
  - it would appear logical to implement a domestic minimum tax in Jersey

Pillars 1 and 2: Timing



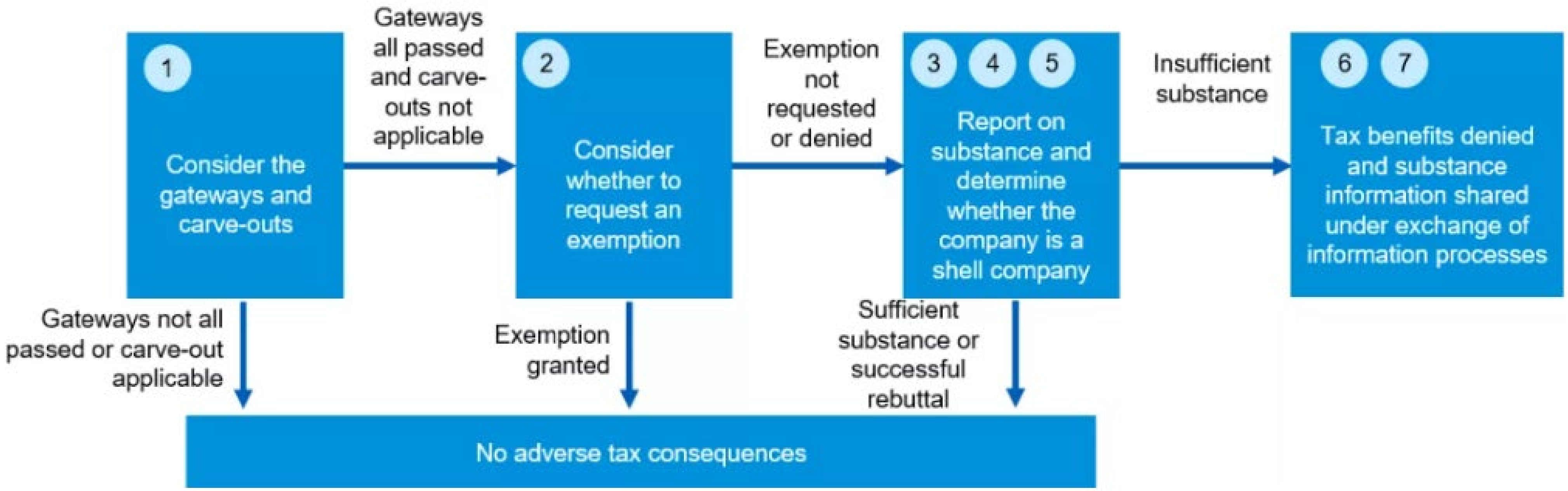
“Unshell” Directive

Proposed EU Directive aimed at addressing the use of “shell” entities and arrangements for tax purposes

Looking at entities resident within the EU

Released on same day as EU Directive on global minimum tax – but running slower

Target date still 1 January 2024 – with look back provisions



Economic Substance - update

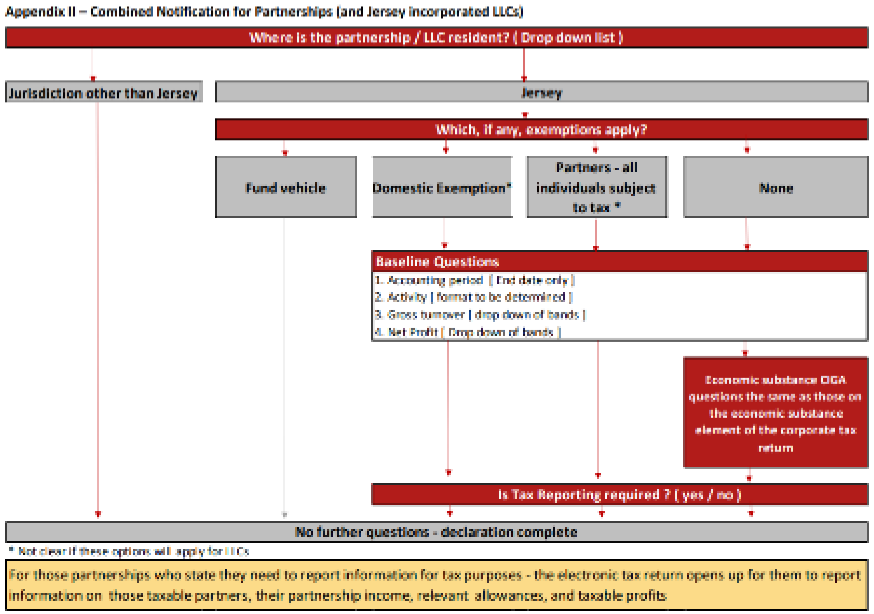
Economic Substance and Partnerships

- Firmly in the world of economic substance rules for partnerships
- Transitional rules – partnerships established after 30 June 2021 all financial periods
- Partnerships established before that date all financial periods commencing on or after 1 January 2022
- Should be undertaking classification exercise now
- Broader range of exemptions to consider – how many partnerships will actually be in-scope?
- Interaction between partnership rules and company rules throwing up some issues

Economic Substance - update

Economic Substance and Partnerships

- Tax returns for partnerships
- New annual filing requirement
- Alignment with corporate tax return filing deadline
- Population wide reporting likely in calendar year 2023 (in respect of YOA 2022)
- Another tranche of annual administration – outsourcing solution?



Economic Substance - update

<u>Economic Substance and Companies</u>

- Two rounds of ES reporting now completed
- Moving of corporate tax filing deadline – 15^{th} December?
- Still seeing a broad range of basic errors/disclosures that will prompt enquiries
- Expect compliance activities from Revenue Jersey
- Expect some “random” compliance activities – particularly around companies which have self-assessed themselves to be out of scope
- Holding companies – focus for the EU/OECD
- Are they undertaking other “relevant activities”?
- TCBs – expect compliance activities at an organisational level
- Policies & procedures – classification, identification of CIGA, identification of relevant activity expenditure, allocation of FTE

02

FATCA/CRS Inspections and update

Chris Lowe

Cover

01 Background

02 Key areas of focus

03 Approach taken by Revenue Jersey

04 Results of the TDT penalties case taken to the Commissioners

05 Must have elements for all FIs

Background

Why the focus on FATCA/CRS?

Jersey is under pressure from external agencies

- OECD Peer reviews

- IRS

- Important for Jersey plc to get this right

Increased Inspections

All need to focus our attention to get this right!

Key areas of focus

Risk framework

— Governance and Implementation

— Due diligence

— Reporting systems and procedures

Compliance pointers

— Data accuracy

— Reporting

— TINs

— Training

— Governance

— Outsourced service providers

Approach taken by Revenue Jersey

Approach

Review the returns submitted for obvious errors:

- Entity account with the name of a person
- Comparison to previous year, accounts omitted but not closed
- Lack of TINs

Requests for the position/policy on certain elements within the requirements

Requests relating to specific questions on certain accounts

Requests on US TINs

Audits – Review aspects of compliance, due diligence process and perform sample testing to assess compliance with the regulations

Common findings

- Key person risks
- Data systems pulling though incorrect data to the final xml file
- Lack of TINs

The TDT penalty case heard by the Commissioners

Issue

- Trustees issued with £300 late penalties for each Trustee Documented Trust (“TDT”) amounting to significant penalties.
- Non Reporting FI
- Legislation is unclear
- Proportionality

Result

- The Commissioners determination was that the Appeal be upheld and that a **single penalty of £300** in respect of the return submitted by the Appellant late be charged under Regulation 10 of the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015.
- Revenue Jersey are reviewing the penalties issued in order to determine repayments to be made.
- Expect a review of the penalty regime and more transparency from Revenue Jersey of the application of penalties.

03

Must have elements for all FIs

Chris Lowe

Governance and Implementation

- **Project organisation**
  - Assessing whether the FI is organised in a manner to meet evolving FATCA/CRS obligations.
- **Stakeholder collaboration**
  - Does the FI have established meetings to discuss CRS and FATCA compliance? Meeting minutes etc.
- **Roles, responsibilities and accountability**
  - Documented assessment and description of the functions relating to FATCA/CRS (on-boarding, AML/KYC, document validation, reporting, communications). Does the FI perform impact assessments based on updates to legislative guidance?
- **Training**
  - Covers all training requirements such as initial training, changes in legislation, staff turnover, updates.
- **Documentation and Record keeping**
  - The FI should prepare and keep documentation of their business operations, due diligence processes and reporting procedures relating to FATCA and CRS.

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Due Diligence

- **Accounts are identified and monitored**
  - Account balance thresholds, Excluded and dormant accounts, change of circumstances procedures, relationship managers
- **Compliance with pre-existing accounts (individual and entity)**
  - Residence address test, electronic record search, paper record search.
  - If the account exceeds threshold ($250k for entities) – obtain self certification and for each CP if PNFE and over $1m.
  - Reliance on AML/KYC procedures.
- **Compliance with new accounts (individual and entity)**
  - Obtaining and validating self certifications (reasonableness test – evidence of following up if discrepancies).
  - Review of self certifications – do they obtain all required information.

Reporting Systems and Procedures

- **Reporting systems**
  - How is the data relating to FATCA/CRS maintained? If multiple systems what controls are in place to reconcile data to source data?
- **Data extraction**
  - Data validation checks should be performed to help ensure that all reportable information has been correctly transposed from the FI's internal systems.
  - How do you ensure the accuracy of the data being extracted (analytical reviews, exception testing)?
- **Submission of reports**
  - There should be a documented approval process with set checks performed. Is there a segregation of duties between the preparers and reviewers?
  - What internal checks are performed and approvals obtained prior to submission?
- **Managing amendments and error notifications**
  - What procedures are in place to address the root cause of issues to prevent similar occurrences?

External Service Providers

At all times the compliance obligations remain with the FI.

External service providers

Does the FI document their use of external service providers and the context of such services?

Does the FI inform or obtain assurance from external providers that legislative updates which impacts their functions have been taken into consideration?

Where in the Statement of Work ("SOW") are the external service providers roles, duties and responsibilities laid out?

What are the due diligence procedures to ensure the external service provider is performing its role in the capacity agreed upon

Wrap up/ Key points for consideration

Be prepared for a FATCA/CRS inspection!

Documentation should include:

Policy, procedures and processes, Risk Management Framework, Service agreements.

Can you demonstrate the following:

- Onboarding process, proof of validation of self cert, reasonableness test performed.
- Process for identifying changes to legislation, incorporating changes to the processes, training to staff etc.
- The review of services performed by external service providers.
- Procedure for reviewing reports prior to submission.
- Lessons learnt processes.
- Have you performed an internal compliance review/health check?

Document Document Document!!

04

Dealing with HMRC enquiries and disclosures

Derek Scott

Hot topics

- Nudge letters and CRS related enquiries
- Voluntary disclosures
- Domicile and residence
- Crypto
- International issues
- CJRS
- Cross tax enquiries
- R&D tax credits
- Cases linked to ongoing transactions
- Code of Practice 9 Investigations
- Behavioural challenges- impact on assessments and penalties
- New settlement opportunity

Key stages in enquiry work

Opening

Managing-e.g. information requests, meetings, evidential position, dealing with HMRC

Tax Technical analysis

Behavioural analysis- drives what HMRC can tax

Computational analysis

Settlement

Assessing time limits

Added complication of offshore extended time limits

12 months enquiry window – but what happens after that?

Inaccurate returns: 4/6/20 depending on behaviour

Assessment windows can only be opened via a discovery

Standard 20 years for FTN unless there is a reasonable excuse

Time limits for Failure to Notify and inaccurate returns are not the same

Changes to assessing time limits – Offshore matters

— RTC legislation provides HMRC with additional time to raise assessments

— Offshore tax subject to RTC (IT, CGT, IHT assessable as at 5 April 2017) could be assessed until 5 April 2021 – essentially extended the time limits by four years

— Finance Bill (No.3) 2018 introduced 12 year assessing time limit for all non-deliberate offshore non-compliance

— Careless – from 2013/14

— Reasonable care – from 2015/16

— Excluding “overseas information” provided where normal time limits apply

Extended offshore assessing time limits

The 12 year time limit will not apply if HMRC received relevant overseas information:

- which reasonably enables HMRC to become aware of and assess the lost tax before the normal time limits expire, and
- it is reasonable to expect HMRC to assess the lost tax before the normal time limits expire
- Tables below show this (exclude deliberate behaviour and FTN cases)

Offshore information provided – post 5 April 2021 time limits

Behaviour	Reasonable care		Careless errors	
Tax year	**Previous deadline**	**New deadline**	**Previous deadline**	**New deadline**
2011/12	Expired	Expired	05/04/2021	Expired
2012/13	Expired	Expired	05/04/2021	Expired
2013/14	05/04/2021	Expired	05/04/2021	Expired
2014/15	05/04/2021	Expired	05/04/2021	Expired
2015/16	05/04/2021	Expired	05/04/2022	Expired
2016/17	05/04/2021	Expired	05/04/2023	05/04/2023
2017/18	05/04/2022	Expired	05/04/2024	05/04/2024
2018/19	05/04/2023	05/04/2023	05/04/2025	05/04/2025

Not provided – post 5 April 2021 time limits

Behaviour	Reasonable care		Careless errors	
Tax year	**Previous deadline**	**New deadline**	**Previous deadline**	**New deadline**
2011/12	Expired	Expired	05/04/2021	Expired
2012/13	Expired	Expired	05/04/2021	Expired
2013/14	Expired	Expired	05/04/2021	05/04/2026
2014/15	Expired	Expired	05/04/2021	05/04/2027
2015/16	05/04/2021	05/04/2028	05/04/2022	05/04/2028
2016/17	05/04/2021	05/04/2029	05/04/2023	05/04/2029
2017/18	05/04/2022	05/04/2030	05/04/2024	05/04/2030
2018/19	05/04/2023	05/04/2031	05/04/2025	05/04/2031

Penalties

- Increasing complexity – particularly around offshore
- RTC penalties still in play for 2015/16 and earlier
- 10% restriction where disclosure more than 3 years old
- Don’t forget suspended penalties

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Reasonable care

01

Will take individual circumstances into account

02

Expectation that taxpayers will seek advice in relation to complex matters

03

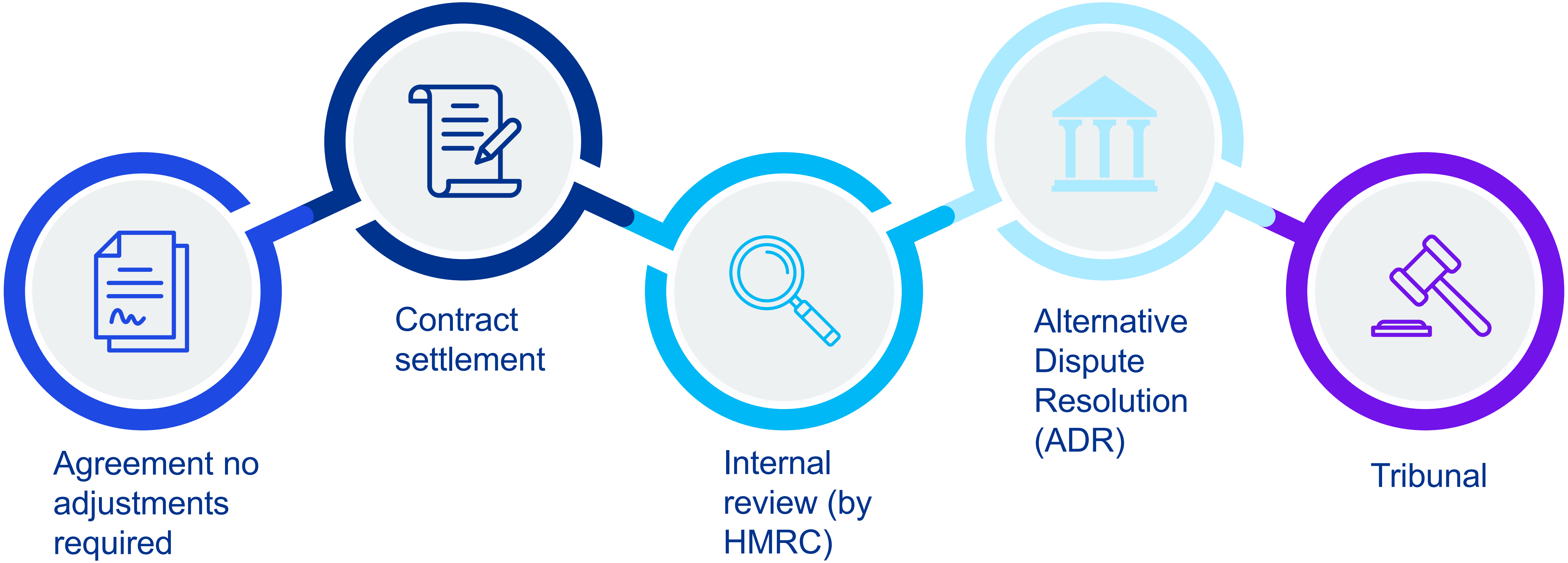
Tax return should draw attention to uncertainty

04

Three steps to reasonable care:

- Engage a competent professional advisor
- Provide all information relevant to the return
- Check the return to the extent you are able

Settlement


Agreement no adjustments required
Contract settlement
Internal review (by HMRC)
Alternative Dispute Resolution (ADR)
Tribunal

05

Q&A

Paul Eastwood & Derek Scott

Thank you for attending

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