13 February 2018

Dear Jamil,

**Trusts register – indirectly owned UK residential property**

We understand that HMRC take the view that where an offshore trust owns an overseas company which in turn owns UK residential property, the trust must be registered on the trusts register in a tax year when the trustees are subject to inheritance tax under the new schedule A1 Inheritance Tax Act 1985 even though there is no other reason why the trust would have to be registered.

We are extremely concerned that (as with the point in relation to classes of beneficiaries) this is a situation where HMRC are trying to interpret the regulations to say what they would like them to mean rather than what they actually mean.

A non-UK trust is only a "relevant trust" if it has assets in the United Kingdom on which it is liable to pay (in this case) inheritance tax (regulation 42(2)(b)(ii)). In this case, the trust owns shares in a non-UK company. It does not have a UK asset. The company owns the UK asset.

We accept that, on a purposive reading, it might just about be possible to treat a trust in these circumstances as if it "has" a UK asset but frankly we think that is straining the wording of the legislation. The position would, for example, be much less clear if the trust owned 10% of a company which in turn owned a number of assets including a UK residential property. The trustees would still be liable for UK inheritance tax at the ten year charge date but it is much more difficult to say that the trustee "has" a UK asset. Even assuming it could be said that the trust has a UK asset (which we do not think is the correct interpretation), it is quite clear that the trust is not liable to pay inheritance tax on that asset.

As you have identified, the way schedule A1 IHTA 1984 works is that inheritance tax is paid on the shares in the non-UK company to the extent that the value of those shares is attributable to the value of the UK residential property. The inheritance tax is
therefore being paid on a non-UK asset (which is prevented by schedule A1 IHTA 1984 from being "excluded property" for inheritance tax purposes) and not on a UK asset.

We accept that (as stated in the FAQs) where the ownership of the asset is treated as a look-through (i.e. the company is acting as nominee) the trust would be liable to be registered but this is not the position in the situation we have described.

We do understand that the purpose of the inheritance tax changes is to put taxpayers who own UK residential property through an overseas structure in broadly the same position as if they had owned it direct but the fact is that parliament chose to do that by charging tax on the shares in the overseas company and not on the UK residential property itself. Obligations cannot be imposed on trustees based on what the regulations might have said had the draftsman thought about this point. Instead, the regulations should be applied based on what they actually say.

The administration of the UK tax system and indeed the rule of law depends on clear legislation which is applied in accordance with its terms. We feel it is unnecessary for HMRC to seek to extend laws by producing guidance which is not consistent with the relevant legislation.

For what it is worth, we would agree that, given the purpose of the regulations, it would make sense if overseas trusts were liable to register in these circumstances but, in our view, this result can only be achieved by amending the regulations.

Yours sincerely

Robin Vos
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Dear Robin,

TRUST REGISTER – INDIRECTLY OWNED UK RESIDENTIAL PROPERTY

Thank you for your letter of 13 February 2018 about the above.

I apologise for the delay in providing you with a response.

As you point out, the purpose of Schedule A1 of the Inheritance Tax Act 1984 (inserted by Schedule 10 of Finance (No 2) Act 2017) is to put offshore trusts that own, albeit indirectly, UK residential property on the same footing as if that UK residential property was owned outright by the trust. This is in line with the Chancellor’s summer Budget 2015 announcement designed to ensure a fairer tax system. To that effect we took the view that a non-UK residential trust that incurs an Inheritance Tax (IHT) under Schedule A1 would be a trigger for registration on the Trust Registration Service (TRS).

Whilst such a view could be argued to be consistent with the TRS legislation we also accept the view that you and other stakeholders have set out in your various submissions that an IHT charge incurred under Schedule A1 does not trigger a requirement to register on TRS. This is on the basis that the IHT is paid in relation to a foreign asset and not a UK asset. As you may know, non-UK companies that own UK residential property are already obliged to register with the Department for Business, Energy and Industrial Strategy (BEIS), and as part of the transposition into UK law of the EU Fifth Money Laundering Directive we will consider the registration of offshore trusts that own UK real estate. In light of this we accept the legal arguments you have set out in your letter and require non-UK trusts that incur IHT as a result of schedule A1 not to register on TRS on the basis that no other UK tax is due by the trustees in relation to trust assets or income.

I would be content for you to share the contents of my letter with your STEP members and we will reflect this revised position in our forthcoming updated guidance.
I hope you find this reply helpful.

Yours Sincerely

JAMIL MOHAMED