Dear Robin,

Thank you for your letter of 24 January 2018 about the application of stamp duty reserve tax (SDRT) in relation to the Trusts Registration Service (TRS).

As you know we carried out a policy consultation in autumn 2016, and a consultation on the draft legislation in spring 2017. Respondents generally supported our approach to the new registration system and no concerns were raised at the time about linking registration with an SDRT liability, nor with other asset related taxes such as stamp duty land tax.

The EU Directive requires Member States to register trusts that “generate tax consequences”. It is left for Member States to define this within their own domestic legislative framework. For the UK, this is when the trustees of offshore trusts are liable for UK tax on either UK assets or UK source income – this includes taxes generated when UK assets are bought or sold. We appreciate that trustees will in some circumstances pay taxes on trust assets or income through a third party, such as a broker, but we see that tax liability being ultimately that of the trustees.

In relation to SDRT, the trustees, as purchaser, are “person B” as defined at s.87 (1) FA1986 “The principal charge” and thus the “liable person” under s.91 FA1986. We accept that under the SDRT Regulations (SI1986/1711) a member of an exchange or qualified dealer purchasing chargeable securities as an agent on behalf of the trustees may be the “accountable person” who is thus responsible for giving notice of and accounting for SDRT (although in turn the SDRT may be accounted for by the operator of a relevant system under Regulation 4A). However it is the purchaser who is the liable person.

We interpret the TRS legislation to require us to look through these agents or accountable persons to the ultimate liability for the tax which rests with the trustee. That liability then triggers the requirement to register, and after all, the trustees do in practice financially reimburse their agent for the SDRT liability.
This is different from the example where a trust invests in a collective investment scheme, where the underlying owner of the shares is the scheme itself.

I hope you find this reply helpful.

Yours Sincerely

JAMIL MOHAMED