LTS TAX

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Trust Tax Services

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The UK tax treatment of offshore trust structures has undergone a number of changes over the last few years, resulting in a myriad of complex legislation, combined with a more punitive and extended penalty regime for offshore matters.

Our dedicated trust tax team has a wealth of knowledge and experience, having previously worked across the industry in leading accountancy practices and fiduciary companies, both in the UK and Guernsey.

We work extensively with local fiduciary providers as well as with settlors and beneficiaries of offshore structures. We provide a comprehensive range of services from routine tax return compliance to complex advisory and restructuring matters.We can also assist with remedial matters where there have beentax reporting oversights.

We recommend that trustees undertake periodic reviews of their structures to ensure they remain both tax compliant and tax efficient. The implementation of the Requirement to Correct legislation and the punitive Failure to Correct penalties has illustrated the importance of regular tax reviews in relation to trust structures.

Tax compliance services

For offshore trusts, the completion of self-assessment tax returns may be required if UK investment income has been received (e.g. dividends or interest) and the trust has a UK resident beneficiary or a potential beneficiary that is UK resident, even if they have never benefitted from the trust.

Trusts and underlying companies that hold UK property may have UK filing requirements and we can assist with the preparation of the necessary tax returns and computations, including selfassessment returns, Corporation Tax returns (which are applicable to offshore companies receiving UK rental income) and Annual Tax on Enveloped Dwellings (ATED) returns.

Offshore trusts and offshore companies are in the scope of taxation on gains arising on UK immoveable property (i.e. land and buildings) and there will be UK filing obligations in relation to any disposals of such interests. Trustees are required to report disposals within 60 days, companies report any gains through Corporation tax return, and the filing date depends on whether they have pre-existing filing obligation in respect of rental income. We can assist with the preparation of capital gains tax (CGT) returns for offshore trusts and corporation tax returns for offshore companies in this respect.

Trustees may also have liabilities in relation to inheritance tax, primarily in relation to ten -year anniversary charges and exit charges. Furthermore, trusts can be liable for IHT liabilities on the death of the settlor and life tenant in certain circumstances. We can assist with the preparation of any IHT forms and calculations that may be required.

Trusts with certain connections to the UK need to consider whether they are in scope of the Trust Register regulations. We can review the position and assist with the registration and updating of trusts under the Trust Registration Service.

Stockpiled gains and relevant income

Offshore trust structures are subject to various anti-avoidance rules which can attribute gains and income of the structure to UK resident settlors or beneficiaries of the trust. In order to quantify the tax exposure for any UK individuals, trustees will require records of the amount of income and gains that are deemed to be comprised in the trust structure for tax purposes.

It is often the case that the historic pools of gains and income have not been calculated on the assumption that there will be no UK tax exposure. However, in this era of global mobility, it remains a possibility that settlors or beneficiaries will re-locate to the UK.

There have been a number of tax changes in recent years that could also impact the need for calculations of gains and income to be undertaken.

For example, the deemed domicile rules introduced from 6 April 2017 remove access to the remittance basis for non-UK domiciliaries that are long term UK residents. Whereas trust distributions may previously have been kept offshore, they will become taxable by reference to the trust income and gains regardless of whether they are brought into the UK, once the individual is deemed domiciled.

Also, as a result of the introduction of the Onward Gift rules from 6 April 2018, UK resident individuals could be taxed on distributions initially made to non-resident beneficiaries if funds are gifted to the UK resident.

The Protected Trust regime came into operation from 6 April 2017 in conjunction with the deemed domicile changes, and this has changed the manner in which UK resident, but non-UK domiciled settlors of settlor-interested trusts are taxed in relation to the trust structures. Potentially such settlors may now be taxed under the relevant income provisions but only by reference to foreign income that has not previously been taxed in their hands. This may require separate calculations as relevant income must be considered in relation to each individual beneficiary and not in respect of the trust as a whole.

Quantifying income and gains from many years ago can be a difficult exercise, with gains potentially having to be calculated from March 1998 (or March 1991 for trust with UK domiciled sectors) and relevant income from March 1981. However, the difficulty only increases with time so it may be prudent for trustees to address this sooner rather than later.

We have extensive experience of dealing with historic stockpiled gains and relevant income calculations and the difficulties faced by trustees in this respect. A pragmatic stance may be required where full information cannot be obtained for earlier years, based on a "just and reasonable" approach.

Tax advisory services

We can provide advice on the impact of any new legislation in relation to offshore trust structures, together with UK and Guernsey advice regarding re-structuring, distributions and other planning opportunities. Typically, we advise on income tax, capital gains tax, inheritance tax and Stamp Duty Land Tax aspects.

We recognise that such advice can often be needed within a tight time frame due to various factors and we aim to adopt a flexible approach in order to meet the requirements of our clients.

Remediation and HMRC settlements

The Requirement to Correct legislation enabled taxpayers to make voluntary disclosures to HM Revenue and Customs (HMRC) by 30 September 2018 in relation to any offshore matters in order to avoid the application of the Failure to Correct legislation, under which penalties of up to 200% of the tax liability, together with assetbased penalties can potentially be levied.

Whilst this window of opportunity has now passed, it is still open to taxpayers (whether trustees, individuals or companies) to make voluntary disclosures using HMRC's online system, the Worldwide Disclosure Facility.

We are now in an era of extensive information exchange between jurisdictions under the Common Reporting Standard ("CRS") and HMRC have considerably toughened their approach to noncompliance in relation to offshore matters. Furthermore, the time limits for assessing liabilities in relation to offshore matters have been extended.

Therefore trustees, together with individual tax payers (e.g. settlors and beneficiaries) should consider carefully whether they have any undisclosed liabilities and seek advice in relation to any areas of uncertainty as soon as possible.

We can assist in reviewing trust structures in relation to historic liabilities as well as dealing with the disclosure process and agreement of the position with HMRC, for the trustees, settlors and beneficiaries as required.

Trust "health-checks"

Often trust structures have been in existence for many years and the tax analysis may have changed considerably over that time, as may have the circumstances of the parties involved.

Undertaking periodic tax reviews can provide peace of mind to the trustees and beneficiaries that the structure remains fit for purpose and can also highlight potential restructuring opportunities that could result in a more beneficial tax outcome.

Tax advice for individual Settlors and Beneficiaries

Due to the complexity of the legislation relating to offshore trust structures, settlors and beneficiaries may not always be fully aware of the extent of their tax exposure. This is a specialist area of taxation and it is advisable to seek advice from a suitably experienced professional firm.

We can assist individuals in determining their personal tax position and making the necessary disclosures to HMRC on their tax returns.

We can also advise on matters such as UK residence and domicile, inheritance tax planning and remittance matters for UK resident but non-UK domiciled individuals. We can also assist those moving to or from the UK with pre-departure and pre-arrival matters.

Pension Trusts and Employee Benefit Trusts

The position for Employee Benefit Trusts ("EBTs") and Employer Financed Retirement Benefit Trusts ("EFRBS") changed considerably in 2011 with the introduction of the Disguised Remuneration legislation which was aimed at countering employment income that was channelled through third parties. The legislation is extremely wide-reaching and potentially impacts many arrangements and transactions.

The trustees of entities which have been funded by reference to employment should seek clarification of the position before undertaking any transactions.

Furthermore, following the introduction of the April 2019 loan charge, the beneficiaries of many structures will now be faced with UK reporting obligations and potentially tax charges, if the employer company is no longer in existence.

We can advise an all aspects of the Disguised Remuneration legislation and other related UK employment and pension legislation.

We also advise on the tax treatment of other offshore pension scheme such as Qualifying Recognised Overseas Pension Schemes (QROPS) and Qualifying Non-UK Pension Scheme ("QNUPS"), in relation to transfers, lump sums and other matters.

For further information on any of the matters covered in this document and other services provided by LTS Tax Limited, please contact:



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