TRUSTS – TAX POOLS FOR UK RESIDENT BENEFICIARIES AND TRUST REGISTRATION

UK RELATED SERVICES

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The evolution of the modern trust arrangement was borne out from the parallel systems of common law and equity that developed alongside one another in medieval England. Whilst common law enforced a rigid set of rules, the law of equity evolved to enforce the concept of 'fairness' and enabled the legal ownership of property (which carries the burden of maintenance, liabilities, payment of taxes etc.) to be separated from its equitable interest (i.e. the right to enjoy the property). Thus a body, the trustees, can hold legal title to property whilst a different group, the beneficiaries, enjoy the benefits of said property. This concept was subsequently adopted by many other jurisdictions including Singapore. With Rawlinson & Hunter's history being rooted in providing trustee and tax services in the UK, Rawlinson & Hunter Singapore is exceptionally well placed to provide trustee and tax services to local trusts which have a UK nexus, such as UK resident beneficiaries, UK source income or where property is held in the UK.

UK Beneficiaries – Trust Tax Pools

As mentioned above the concept of trusts evolved in the UK and it should therefore come as no surprise that the UK's regime for taxing distributions from trusts received by beneficiaries who may be resident in the UK is incredibly complicated. The development of various anti-avoidance rules applying to both settlors and beneficiaries over the years to combat perceived tax avoidance has gradually increased this complexity and any trustee who holds assets for the benefit of individuals who either are or are considering becoming UK resident should take professional advice. The UK now operates a penal penalty regime for non-compliance relating to non-UK matters which encompasses distributions from a non-UK trust so the downsides of not obtaining appropriate advice are greater than ever.

Typically distributions received by a beneficiary are 'matched' to one of the trust's tax pools, be it income or capital gains. The trust's tax pools can arise from profits at trust and underlying company level and must be calculated according to the specifics of the UK tax legislation. In order for a UK resident beneficiary to be subject to tax on their distributions at the lower capital gains rates of tax as compared to income tax rates it is generally necessary for tax pools to be completed. It should be noted that pools can be calculated retrospectively.

In addition, careful planning of distributions either before UK residence commences or amongst beneficiaries resident in different jurisdictions is vital to ensure unnecessary UK tax liabilities are not triggered. For example, where no tax pool exists at the time of a distribution it is not always received tax-free but is instead carried forward and may match to any income or capital gains realised by the trustees in the future. For individuals coming to the UK careful planning is therefore required where they have received a distribution during a period when they are not resident in the UK which was 'unmatched' at that point in time. Rawlinson & Hunter has many years of experience in both computing UK tax pools and also advising on the most tax efficient method of distribution.

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Underlying companies

It is not uncommon for a trust holding an investment portfolio to not hold the investments directly but rather through an underlying company. There may be very good reasons for this structure from a local law perspective. From a UK tax perspective this can mean it is difficult for distributions to be made to a UK beneficiary without them being charged to income tax where the structuring has not be carried out with UK taxation in mind. In addition UK anti-avoidance rules may attribute the company's income and capital gains to the trust's tax pools even though these do not arise to the trustees directly. An understanding of structures such as this, and indeed structures with more complex holding vehicles, is vital to being able to provide correct UK tax advice. Rawlinson & Hunter is experienced in dealing with such structures and indeed can advise on establishing tax efficient structures where the opportunity exists or advise on restructuring should it be beneficial.

Collective Investment Funds

The UK operates a complex set of rules applicable to the taxation of collective investment vehicles. In the UK these are divided into two categories being those funds which have been granted 'reporting status' by HM Revenue & Customs and those which have not. Where trustees hold investments of this kind, either directly or through an underlying company, specialist knowledge is required to understand how any gains realised on the sale of these funds interact with the trust's tax pools. This is again an area where Rawlinson & Hunter is well placed to assist.

Gifts To UK Resident Beneficiaries

Whilst trustees may feel comfortable in the knowledge that none of their beneficiaries are UK resident, the UK has recently introduced new anti-avoidance rules which can impose a tax charge on a 'gift recipient' where the donor of the gift received a trust distribution that was not otherwise charged to UK tax (e.g. they were not resident in the UK or UK resident but non-UK domiciled and claimed the remittance basis of taxation). Where trustees are aware beneficiaries have family or friends located in the UK they should obtain professional advice to make sure they are not caught by these new rules.

UK Property

The UK has introduced further tax charges applicable to the sale and holding of UK property to non-residents. These more recent changes commenced in April 2012 with the introduction of the 'annual tax on enveloped dwellings' which applies to the holding and sale of UK residential property held by a company or similar vehicle. From April 2015 tax on the sale of UK residential property held directly by both individuals and trustees was introduced. From April 2019 these tax charges will be extended again to the sale of any type of UK property (i.e. residential or commercial) whether held directly or in some cases indirectly where the company is 'property rich'. In addition trustees who hold UK residential property either directly or indirectly will be within the scope of UK inheritance tax on each decennial anniversary of the trust's settlement. Depending on the terms of the trust the property may also continue to be deemed to be part of the settlor's personal estate. Rawlinson & Hunter can advise on the UK tax charges arising from holding and selling UK property as well as being able to provide any restructuring advice that may be required. This is particularly relevant for trustees who have held UK property for many years but may not have taken professional advice since the more recent rule changes came into force.

UK Trust Register

In 2017 the UK introduced a trust register which is compulsory for all trusts that have a 'UK tax consequence'. The register is not a public record and is only (currently) accessible only to HMRC and certain law enforcement agencies.

Under existing self-assessment rules, the trustees (or their agents) must register details of a trust with HM Revenue & Customs within a specific timeframe (dependent on the relevant tax in point) where they have a liability to UK tax, be it income tax, capital gains tax or inheritance tax. Theoretically a requirement to register can even be triggered where the trustees are liable to pay stamp duty on the execution of a document in the UK purchasing a security. Not complying with the registration deadlines can result in unexpected penalties and Rawlinson & Hunter would be pleased to assist any trustees who consider they may have a registration requirement.

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