

# RESIDENCE OF TRUSTS FOR UK TAX PURPOSES

## • Change in legislation effective from 6 April 2007

The rules governing the residence status of a trust for UK tax purposes will be changing with effect from 6 April 2007. This is clearly important as the Trustees will be liable for UK tax on all of the trust's income and gains if the trust is resident in the UK. The way in which the residence of a trust is to be determined will be the same for both Income Tax and Capital Gains Tax purposes. The new rules may be summarised as follows:

- a) A trust will be UK resident if all the Trustees are resident in the UK;
- b) A trust will be non-UK resident if all the Trustees are resident outside the UK;
- c) If one or more of the Trustees is resident in the UK and the other or others are not, the residence of the trust will depend on the status of the settlor at the "relevant time". If, at the "relevant time", the settlor was resident, ordinarily resident and domiciled outside the UK then the trust will be a non-UK resident trust. Otherwise it will be a UK resident trust. The rule which currently deems a UK resident professional trustee to be non-resident (and deems his administration services to be performed outside the UK) where the settlor had no connection with the UK at the relevant time is NOT being maintained under the new provisions.

The "relevant time" in (c) above is when the trust was initially created and, significantly, when any further funds have been added to it. This includes the scenario in which funds are transferred from one trust to another.

## • Action Required

It is necessary to review the position of trusts with a combination of UK and foreign trustees, with particular attention to the following:

- i) individuals who have an interest in a *non-UK resident trust* having mixed trustees. Although the circumstances will be rare, it is imperative in situations where there is a mixture of UK resident and non-UK resident Trustees that the effects of the change be properly considered. Where necessary UK professional trustees may have to consider the appointment of foreign co-trustees or resign by 5 April 2007.
- ii) individuals who have an interest in a *UK resident trust* which includes both a UK and a foreign trustee. The issue is likely to be where the settlor himself or one of the beneficiaries is acting as one of two trustees, so that the rule deeming a UK professional trustee to be non-resident does not apply. If the settlor was neither resident, ordinarily resident nor domiciled to the UK, such a trust would become non-resident for Capital Gains Tax purposes from April 2007, which would trigger a deemed disposal of assets. In such circumstances, which will be rare, the foreign trustee should resign in favour of UK resident trustees

There is not much time to act with cases where Deeds of Retirement and Appointment of Trustees need to be drafted and executed before 6 April 2007. Great care will be needed in future so that the residence status of a trust is not accidentally changed by a trustee either establishing residence in or ceasing to reside in the UK, or indeed through the death of a trustee.

Briefing

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