Wheel of Fortune: UK considerations

Chris Moorcroft

24 October 2017

Harbottle & Lewis

Overview

1. Background
2. US citizens and US trusts with UK connections
3. UK tax residence
4. UK assets
5. The revocable trust problem
6. UK-connected persons creating Delaware trusts

Background

- “British property tax system now the most complex in the world” - PwC
- “HMRC and Britain's over-complicated tax system are a disgrace” – Telegraph
- “The UK tax code is now more than 20,000 pages long. It’s made up of over 1,000 tax reliefs and exemptions. At around 10m words, it is 12 times the length of the Bible” - Anton Colella (Chief executive of the Institute of Chartered Accountants)

US citizens and US trusts with UK connections

- Individuals becoming UK tax resident IS a problem
  - For settlors/grantors
  - For trustees
  - For beneficiaries

- Holding UK assets in a trust COULD be a problem

UK tax residence (1)

- How does an individual become UK tax resident?
  - Depends on a person’s links to the UK and the number of days they spend in the UK
  - UK tax years runs from 6 April to 5 April
  - Technically the threshold is as low as 16 days in the UK in a tax year
  - More realistically, 60-90+ days is more typically the ‘danger zone’ for persons not previously resident
  - Factors that can influence UK residence position
    - Available accommodation in the UK
    - Close family in the UK
    - Working whilst in the UK

UK tax residence (2)

- Consequences of an individual becoming UK tax resident
  - Trustee
    - May make trust UK tax resident and subject trust income to income tax (45%) and capital gains tax (20%)
  - Settlor/grantor
    - Complicated, but has the potential to lead to:
      - All of the income and gains of the trust being taxed on the settlor/grantor; or
      - Just the income being taxed on the settlor/grantor; or
      - None of the above.
    - May also expose the assets to UK inheritance tax (40%).

Harbottle & Lewis

UK tax residence (3)

- Consequences of an individual becoming UK tax resident
  - Beneficiary
    - May be subject to income tax or capital gains tax if distributions made to individual
    - If the beneficiary has a life interest, may be subject to income tax and capital gains tax on arising income/gains in trust; trust assets may also be within scope of UK inheritance tax

Harbottle & Lewis

UK assets

- Key issue is whether UK assets held directly by trustee or through an underlying SPV
- Gives rise to potential tax issues including:
  - Inheritance tax on death of settlor/grantor
  - Income tax on income generated by UK asset
  - Capital gains tax on some disposals of UK assets
  - ‘Anniversary’ charges every ten years of 6% of value of UK assets
  - ‘Entry’ charges when UK asset enters trust (up to 20%) and ‘exit’ charges when UK asset leaves trust (up to 6%)
- Specific issues in relation to UK residential property, including annual tax known as ATED where SPV used

The revocable trust problem

- Revocable trusts not generally used in a UK context
- UK advice is generally to avoid settlors retaining powers
- Possible analyses:
  - Fully constituted trust
  - Bare trust/nominee arrangement
- Creates uncertainty over tax and legal treatment
- Always requires bespoke advice

Harbottle & Lewis

UK persons creating Delaware trusts

- Confidentiality increasingly difficult to obtain
  - UK Trusts Register
  - Beneficial ownership of register of UK property
  - Persons of Significant Control register
  - Common Reporting Standard

- Tax
  - Key point is domicile of person creating trust
    - Broadly, UK domiciled persons subject to 20% tax on sums settled into trust above £325,000
    - Non-UK trusts still very common for UK resident, non-domiciled individuals

Harbottle & Lewis

Chris Moorcroft TEP
Partner

Harbottle & Lewis LLP
Hanover House
14 Hanover Square
London, W1S 1HP

Phone: +44 20 7667 5000
Email: chris.moorcroft@harbottle.com
Website: www.harbottle.com