Trustee survival guide: navigating the UK tax maze – deadlines and opportunities

Acting as a trustee has become increasingly complicated over the past few years. Many long-established trusts are now at the point where second- and third-generation beneficiaries are taking a more active role and interest in the trust fund; society has become ever more litigious; there is uncertainty on a geopolitical scale and trusts are besieged with multiple tax and reporting requirements.

Tax is to some extent one of the easier aspects for a trustee to handle. With appropriate advice, they can ensure that the relevant deadlines are met and that they are looking out for opportunities and pitfalls. However, keeping on top of all the different moving parts is time consuming and deadlines or tax points to consider can be easily missed. There is a lot of "noise" at the moment and how do trustees know what they should be listening to? What is a priority and what is something to keep in mind?

Given the large number of changes to the UK tax rules for non-UK trusts over the past few years (particularly the new rules introduced from 6 April 2017 affecting a UK resident settlor's exposure to UK tax) it is worth trustees ensuring that any UK tax advice remains current. The offshore penalties regime now imposes extremely punitive additional charges on undisclosed tax liabilities which means that it is even more important to identify and deal appropriately with UK tax charges. There are of course also many opportunities for tax planning and putting beneficiaries in a better position.

The purpose of this note is to highlight the different tax points and opportunities trustees should be taking into account from a UK tax perspective and to help them consider what should be looked at (i) before 6 April 2019 and (ii) on an on-going annual basis.

Action points before 6 April 2019	
Cleansing of mixed funds Deadline: 5 April 2019	Cleansing is a unique window of opportunity ending on 5 April 2019 for UK resident non-domiciliaries (who are remittance basis users) to separate funds that are a mix of non-UK income, gains and clean capital. Provided the conditions are met, the UK resident can then bring the clean capital to the UK free of tax. Mixed funds held in a trust cannot be cleansed – this can only happen when the funds are owned by an individual. However, beneficiaries can cleanse trust distributions received before 6 April 2019. Historic distributions could therefore be reviewed and trustees can make distributions to beneficiaries who claim the remittance basis and would then cleanse the funds in their own names. Of course, tax is not the only issue to take into account when considering trust distributions. Other key points such as asset protection, confidentiality, reporting and whether or not distributions are in line with the overall strategy are also relevant. This is a good opportunity to engage with these issues and take a pro-active stance. Please see our previous briefing note which provides a more detailed summary of cleansing and the opportunities available.
Planning for shares held in	Big changes are being introduced from 6 April 2019 for property

4146-5680-6935.4

“property-rich companies” and UK commercial property generally Deadline: 5 April 2019	holding companies and owners of UK commercial property in relation to their exposure to UK capital gains tax: • Disposal of shares in companies that are “property rich” will be immediately subject to capital gains tax. A company will meet the “property-rich” test where the shareholder owns at least 25% of the company (at some point in the last two years) and 75% of its value comes from UK land. • Direct disposals of UK commercial property will be immediately subject to capital gains tax. Now is the time to start looking at this asset class and identify if there are any planning opportunities in advance of the deadline.
Points to keep under annual/on-going review	
Income tax and capital gains tax	
Planning for a settlor who is becoming deemed domiciled Deadline: 5 April in the 15th year of UK residence	Non-UK domiciled individuals now become deemed domiciled for **all** UK tax purposes after their 15th tax year of residence. This means that they can no longer claim the remittance basis of taxation and will be subject to UK tax on their worldwide income and gains as they arise, with no possibility of deferral. Trusts however remain valuable tax planning tools. Under the old rules, a settlor would have been immediately subject to UK tax on trust income and gains if the remittance basis was not available. However, new rules were introduced from 6 April 2017 providing very favourable tax protections so that deemed domiciled settlors will only pay tax on trust (non-UK) income and gains (UK or non-UK) to the extent that they receive distributions and benefits from the trust. Trusts can therefore allow for tax-free roll up on income and gains unless and until funds need to be distributed. Action may be needed to take advantage of the protections and ensure they are maximised. Any action will most likely need to be implemented in the tax year before the settlor becomes deemed domiciled. One example of the planning involves working with investment advisers to determine if the investment strategy continues to be fit for the purpose – see below an example in relation to gains on “non-reporting funds”. NB: the inheritance tax rules have not changed under the new rules and any non-UK assets held in trust and settled before the settlor becomes deemed domiciled will remain exempt from inheritance tax.
Tainting where a settlor is deemed domiciled	This is a crucial tax point and needs to be monitored carefully. The trust protections preventing the deemed domiciled settlor from being subject to income tax and capital gains tax on trust

	income and gains will only be available if the trust is not “tainted”. Tainting will arise if for example a deemed domiciled settlor adds funds to the trust or certain loans are outstanding that are not on commercial terms. Trustees should keep this under review to ensure there is no inadvertent tainting – in some cases the position can be rectified provided it is done before the end of the tax year. Please see for our briefing note dealing with inter-trust loans in particular, a common area where tainting may occur inadvertently.
Gains on non-reporting funds	Gains made on “non-reporting” funds are subject to a special tax regime. The gains will be exposed to income tax at higher rates rather than capital gains tax. This is not new and is a general point to note as it may inform the investment strategy. However, since the rule changes which took effect from 6 April 2017, the position has become complicated. As matters currently stand, profits from non-reporting funds will not benefit from the trust protections. This anomaly has been highlighted to HMRC but we do not know if the position will be rectified. However, in the meantime, a deemed domiciled settlor will be immediately subject to income tax on these gains and settlors who are not yet deemed domiciled will need to claim the remittance basis in order to avoid immediate taxation. Advice should be taken on how to manage the position until it is known if the trust protections will be available – this will be a combination of planning and avoiding realising gains as far as possible.
Maintain income and capital gains logs	A trust with UK resident beneficiaries needs to keep track of income and gains arising at both trust and underlying company level so that the relevant information can be provided to UK resident beneficiaries who receive benefits or distributions. The logs should work on a UK tax year basis, ie from 6 April in one year to 5 April in the next. Where the trust assets comprise investment portfolios, it may be enough to check with the trust’s accountant (or the beneficiaries’ accountants as applicable) that the annual statements are sufficient to pull the necessary income and gains information together in the event of distributions, rather than maintaining detailed logs on an annual basis.
Income/gains stripping out Deadline: 5 April	It can be advantageous for income and/or gains to be paid out from trusts and underlying companies before the end of the UK tax year. This is sometimes known as stripping out. Trustees who have not yet taken advice on this point should do so now to ensure that they are up to date as regards the new law and whether stripping out is efficient from a UK tax perspective. For example, up to 6 April 2017 it was possible to strip out gains to non-UK residents so that these gains were not taxed when UK

	residents received distributions. This is no longer possible under the new rules and there are other new anti-avoidance provisions that may also need to be considered.
Allocation of trust expenses	It is important to consider the allocation of trust expenses to income or capital for UK tax purposes. The decision will be informed partly by the terms of the trust (eg does the trustee have discretion to allocate expenses as it wishes) and the circumstances of the beneficiaries. For example, if the beneficiaries are UK resident, it can be useful to use trust income to pay expenses so that the income is not available to be taxed on the beneficiaries by reference to distributions. Again, the rule changes that took effect from 6 April 2017 may have changed the position from a UK tax perspective and trustees should consider updating any advice they have received previously on this point.
Trustee residence and management and control	Professional trustees will be very familiar with the UK rules for trust residence. Individual trustees must be non-UK resident under the UK's statutory residence test. Corporate trustees must ensure that the trust company is not centrally managed and controlled in the UK. Particular issues can arise with private trust companies where, for example, the settlor or other UK resident is a director or otherwise influences decisions. Central management and control of non-UK companies is an area increasingly under scrutiny by HMRC and it is a good idea to review arrangements and ensure a protocol is in place for decision making. Similar care should be taken with underlying entities.
Tax residence of beneficiaries and settlor	The tax residence of beneficiaries and settlors should be checked every year as it can change. For example, UK tax residence is determined on a year-by-year basis and the year is from 6 April in one year to 5 April in the next (see our summary of the UK's statutory residence test). Many other jurisdictions work on a calendar year. This feeds into the reporting for FATCA and CRS discussed below. Beneficiaries in jurisdictions such as the US, France and Israel should be reviewed particularly carefully given the potentially punitive taxes and reporting requirements possible in these jurisdictions.
Inheritance tax	

Inheritance tax 10 yearly and exit charges Deadline: 6 months after the end of the month in which the event occurs	These will apply to UK assets directly held by trustees and all assets settled on trust by a UK domiciled or deemed domiciled settlor. (Of course, non-UK assets settled on trust before a non-domiciled settlor becomes deemed domiciled will continue to be excluded from these inheritance tax charges.) Since 6 April 2017, shares in non-UK companies which own UK residential property and the benefit of loans used to acquire UK residential property are now deemed to be UK assets for inheritance tax purposes. Care is also needed to ensure that directly held trust assets are not brought into the UK and here accidentally on a 10-year anniversary. This can sometimes happen with artwork for example where it is placed in UK homes and overlooked in the run up to the relevant tax date. Another point to watch is loans to UK residents (even if made to a non-resident beneficiary initially who then moves to the UK) which unless structured properly, will also be UK assets for inheritance tax purposes.
Settlor death – gift with reservation of benefit Deadline: 12 months from the end of the month in which the death occurs	If the settlor dies, the trustee will need to consider whether this affects the trust. If the settlor was a beneficiary and the trust held UK assets at his or her death (or the settlor was UK domiciled or deemed domiciled when the assets were settled), there will be an inheritance tax charge under the gift with reservation of benefit rules which may be payable by the trustee. This can give rise to significant inheritance tax charges and should be reviewed immediately if this point is identified. If a reservation of benefit arises and steps are taken to exclude the settlor from benefitting, there will be a seven-year run off period until the assets in question cease to form part of the settlor's estate.
Reporting and accounting	
UK trust register: requirement to register Deadline: • 5 October after the end of the tax year for new trusts • 31 January after the end of the tax year for existing trusts	A non-UK trust must provide information to HMRC about "beneficial owners" and potential beneficiaries which will be included on the UK's trust register. The trigger point for registration is if the trustee for the first time in a tax year has a direct liability to any of UK income tax, capital gains tax, inheritance tax, stamp duty land tax or stamp duty reserve tax.
UK trust register: updating HMRC Deadline: 31 January after the end of the tax year	If the trustee becomes aware that any of the information provided to HMRC has changed, it needs to notify HMRC of these changes.
CRS and FATCA	Trustees may be required (directly or indirectly) to report the identity of "beneficial owners" and other details about the trust to

Deadline: Generally 31 May	HMRC under the common reporting standard regime and FATCA. A key question for trustees is where settlors and beneficiaries are resident for these purposes. The test is generally tax residence. Difficult questions can arise when dual residence is in question or if a reportable person has the right to live in a country but may not meet its tax residence test (for example, a Maltese residence permit). These questions arise in relation to UK reporting and of course reporting to other jurisdictions. Given the worldwide exchange of information between tax authorities, it is essential to give these questions careful thought.
Filing UK tax returns Deadlines: Income tax: 31 January following the end of the tax year CGT returns for property: ATED CGT: 31 January following the end of the tax year in which the disposal is made NRCGT: generally 30 days after the disposal of the property	A trust needs to file a UK tax return if it receives UK source income. There are exceptions if the trust has no UK resident beneficiaries. UK property Returns also need to be filed for disposals of UK residential property. The annual tax on enveloped dwellings (known as ATED) CGT is payable on gains realised by a company holding residential property unless it benefits from an ATED exemption (for example if the property is let on commercial terms to third party tenants). Otherwise non-UK residents, including trustees, pay non-resident CGT, (known as NRCGT). From 6 April 2019, returns will also be required for disposals of UK commercial property or shares in property-rich companies.

If you require further information on anything covered in this briefing please contact Claire Randall (+44 (0)20 3375 7465), Deborah Pennington (+44 (0)20 3375 7186) or your usual contact at the firm.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.

© Farrer & Co, October 2018