CHARTER TAX

Helpsheet

Offshore Trusts & UK Property

Trustees of offshore trusts need to be aware that, if they hold UK property (real estate), there are certain UK tax issues that must be considered.

This is the case whether the UK property is owned directly by the trust or by an offshore company that is wholly owned by the trust.

The following provides a brief overview of the various UK tax issues that can arise for such structures where the settlor(s) of the trust were non-UK domiciled at the point of adding funds or assets to the trust, though naturally specific advice should be taken before acting on any of our comments below.

Income Tax

If the trust (or its underlying company) receives rental income on a UK property (whether residential or commercial), it must pay income tax on the net profits received, after deducting allowable revenue expenses (such as repairs and maintenance, insurance etc) and file an annual UK tax return.

The tax return must be filed by 31 January following the end of the relevant UK tax year (5 April) and any tax due on the rental income is usually payable in instalments with the due dates being 31 January in the tax year of assessment and 31 July and 31 January thereafter.

Where an underlying offshore company owns the property, the tax position is changing from April 2020 and this is detailed in the "corporation tax" section of this helpsheet.

Annual Tax on Enveloped Dwellings ("ATED")

ATED is an annual charge introduced in April 2013 and applied to UK residential properties worth more than £500,000 and owned by a company.

A return must be filed each year within 30 days of the start of the relevant year (so, for 2019/20, the return must be filed by 30 April 2019) and, if tax is due, this must also be paid by that date.

The rate of ATED applied to the property is increased each year by CPI.

For the year ending 31 March 2020, the rates are:

Property Value	**ATED charge**
More than £500,000 up to £1m	£3,650
More than £1m up to £2m	£7,400
More than £2m up to £5m	£24,800
More than £5 up to £10m	£57,900
More than £10m up to £20m	£116,100
More than £20m	£232,350

Relief from the ATED charge applies where the property is:

- let to a third party on a commercial basis and is not, at any time, occupied (or available for occupation) by anyone connected with the owner; or
- open to the public for at least 28 days a year; or
- being developed for resale by a property developer; or
- owned by a property trader as the stock of the business for the sole purpose of resale; or
- repossessed by a financial institution as a result of its business of lending money; or
- acquired under a regulated Home Reversion Plan; or
- being used by a trading business to provide living accommodation to certain qualifying employees; or
- a farmhouse occupied by a farm worker or a former long-serving farm worker; or
- owned by a registered provider of social housing.

If the property is covered by one of the ATED reliefs, an annual Relief Declaration Return must be filed by 30 April each year.

Corporation Tax

Currently, rental income received on UK property where that property is owned by an offshore company is subject to income tax; however, from April 2020 such income will, instead, be subject to corporation tax. Further details can be provided on this, if required.

Capital Gains Tax ("CGT")

There are various situations in which UK CGT is payable by the trustees or the underlying company on the disposal of a UK residential property:

ATED-related CGT

This was introduced from April 2013 and applies where the trust structure owns a company that owns UK residential property worth more than £500,000.

Where ATED CGT is applicable, the return must be filed by 31 January following the disposal and any tax due paid by that date.

Note that ATED CGT does not apply where the UK residential property is directly owned by the trust.

Non-Resident CGT ("NRCGT")

From April 2015, where either the property is not owned via a company or the value of the property is £500,000 or less, NRCGT is payable where a gain arises. An NRCGT return must be filed within 30 days of the sale completion date and any NRCGT due also paid by that date.

Where the property was owned prior to April 2015, it is possible to rebase the acquisition cost to the April 2015 property value if this is more beneficial.

UK Commercial Property from April 2019

Currently, a non-resident trust directly owning UK commercial property is not subject to any UK CGT charges on disposal; however, from

April 2019, such properties will fall within the scope of UK CGT in the same way as UK residential property is already, although the property's acquisition cost can be re-based to April 2019 if this is beneficial. As with UK residential property disposals, an NRCGT return will need to be filed within 30 days of the sale completion date and any tax due must also be paid by that date.

Where the UK commercial property within the trust is owned by an underlying offshore company, from April 2019 that company will be subject to corporation tax on the gain. The tax will normally be payable 9 months after end of the company's accounting period in which the gain arises, with the corporation tax return being due 3 months after that.

There is currently no requirement to file a corporation tax return within 30 days of the sale completion date (as with CGT), although HMRC may, of course, introduce this at a later date.

Inheritance Tax ("IHT")

Where a trust directly owns any UK-situs assets (so not just UK property) on each tenth anniversary of its creation, a "10 year anniversary charge" will apply, based on the UK asset(s) value on the anniversary date and charged at a maximum of 6% of that value.

Where the trustees own an underlying offshore company that itself owns UK-situs assets, there is generally no "look-through" to those UK assets, unless the company holds UK residential property, or debt in relation to such property, in which case the 10 year anniversary charge will apply to the value of the shares attributable to that property, again charged at a maximum of 6% of that value. Note that UK commercial properties are not, currently, caught by these look-through rules.

In addition, if the trust were to appoint out any UK-situs assets to beneficiaries, an exit charge will also arise, based on the loss in value in the trust following the appointment and with the tax rate being determined by any previous 10 year anniversary IHT rate and the number of quarters that have passed since that anniversary.

An exit charge will also arise should shares in an offshore company owned by the trust be appointed out to beneficiaries where that offshore company owns a UK residential property (or debt in relation thereto). As with the 10 year anniversary charge, the exit charge is based on the value of the shares that is attributable to that property.

An IHT return must be filed within 6 months of the anniversary date and any IHT due also paid by that date.

Failure to Correct

From 1 October 2018, new penalties were introduced where there is a failure to notify HMRC of any tax due where an offshore aspect is involved, giving them powers to charge penalties of up to 200% of the tax due, depending on the jurisdiction involved.

However, these can be reduced in certain circumstances, depending on how helpful and open the taxpayer is to resolving the issue.

What do I need to do to bring my UK tax position up to date?

If you consider that you may need to take action on any of the above areas of UK tax, we would recommend that you discuss this with us further so that we can advise on the best way to proceed.

For more information, please contact **Janet Pierce** on **janet.pierce@charter-tax.com** or **Emma Cheeseman at emma.cheeseman@charter-tax.com** or call us on **+44 (0)20 7084 5771**.

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