

Trust Taxation in the Isle of Man



Isle of Man Tax Issues

Manx tax legislation does not specifically refer to Trusts and instead taxes according to a mixture of both residence and source basing factors in each case.

For Manx income tax purposes a Manx trust is one where either:

- At least one trustee is resident in the Isle of Man; or
- The trust administration is conducted in the Isle of Man.

The trustees of a Manx trust are not liable to pay tax on the capital gains arising. The taxation of income depends upon the type of Trust and whether or not income is distributed as follows (see also Treasury Practice Note 141/07):

Interest in Possession Trusts

In such trusts an individual has an immediate entitlement to the income of that trust as and when it arises.

In these circumstances it is the beneficiary who is taxed upon that income as if that income had accrued directly to him. The trustees are not liable to pay tax.

Discretionary Trusts

(a) Income is distributed

The beneficiaries receiving income are taxed according to the tax laws of their place of residence.

(b) Income is not distributed

In this case the trustees will be taxed on undistributed income:

- (i) If all of the beneficiaries are non-Isle of Man resident the trust will be taxed as if its income had been received by a non-resident individual.

If all income (except approved bank interest) arises or accrues from sources outside the Isle of Man and there are no Isle of Man beneficiaries then there will be no Manx income tax to pay.

- (ii) If there are any Isle of Man resident beneficiaries there will be a charge to Manx income tax.

Note also that there is no Manx tax to pay on either capital gains or dividends received by a non-Isle of Man resident beneficiary from an Isle of Man resident company but that beneficiary may be taxed in the place of their residence.

Other Manx Trust Issues

- **Reporting requirements**
UK legislation provides that any person who in the course of their trade or profession is

concerned in the making of a settlement (otherwise than by Will) by a UK domiciled Settlor having non-UK resident trustees must make a return to HMRC within three months of that trust's creation. Confirmation should be obtained that this has been done where applicable.

- **Manx Trust Deed Drafting**

Any instrument relating to real or personal estate must not be drafted by a person not qualified as an Advocate.

- **Financial Supervision Commission**

Depending on the circumstances the trustee of a Manx trust may require to be licensed.

UK Taxation of Manx Trusts

The residence of a trust is decided by HMRC using the following test:

1. If all of the trustees are UK resident the trust is UK resident.

If all the trustees are not UK resident then the trust is non-UK resident for UK tax purposes.

2. Mixed residence.
If there are both UK and non-UK resident trustees then the trust will be deemed a UK trust if any Settlor of funds to that trust was resident, ordinarily resident or domiciled in the UK at any time that property was introduced to that trust.

Further, anti avoidance legislation in the UK treats trustees as UK resident if they act as a trustee in the course of a business which is carried on through a branch, agency or permanent establishment in the UK.

UK Resident Beneficiaries of Manx Trusts

There are certain anti-avoidance provisions in UK tax legislation whereby a UK resident Settlor or beneficiary may become liable to UK income tax, capital gains tax or inheritance tax.

- **Income Tax**

UK resident beneficiaries receiving benefits out of a Manx trust will be liable to income tax on those funds at their own marginal rate. HMRC notionally accumulates income within a Manx trust and attributes that income to any UK resident beneficiary receiving benefits from the trust.

- **Capital Gains tax**

As noted above that there is no capital gains tax payable by the trustees of Manx trust however:

- (i) If a UK resident and domiciled Settlor or their spouse/civil partner retain an interest in a Manx trust themselves or through their children or grandchildren HMRC automatically attribute capital gains to that Settlor even if those monies are not paid out by the trustees.

- (ii) The beneficiary charge.

Any UK resident beneficiary receiving a capital payment out of a Manx trust will have any prior capital gains attributed to them and will therefore be liable to pay capital gains tax at 18% on those monies.

There is a further 10% interest charge payable for each year (up to a maximum 6 years) during which any capital gains are held within a Manx trust but have not been received by the UK resident beneficiary. UK resident beneficiaries are therefore potentially liable to 28.8% UK tax on gains received from a Manx trust.

The Finance Act 2008 in the UK extended the beneficiary charge so that non-UK domiciled persons utilising the remittance basis of taxation may also be liable to capital gains tax if they remit trust monies to the UK.

- **Inheritance Tax**

An inheritance tax charge can arise upon the creation of a Manx trust by a UK individual and there may also be a 10 yearly anniversary charges and exit charges when monies leave that trust.

It is possible to create an excluded property trust having no inheritance tax consequences if a trust was created by a non-UK domiciled Settlor and it holds no UK assets.

The exact circumstances of each case need to be analysed carefully and trustees should consider the tax implications of making distributions out of a Manx trust or otherwise exercising their powers in all cases but particularly with regard to UK resident beneficiaries.

Should you have any questions or request for further information please contact:

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