

> -----Original Message-----

> From: Malcolm Campbell
> Sent: 14 September 2006 10:36
> To: Paul De Gruchy; John Harris; Terry Le Sueur
> Cc: Julian Morris; Ian Black
> Subject: RE: 0 / 10 law drafting
> Sensitivity: Confidential

> Paul,

> Thanks.....you have confirmed my fears! and I am concerned about your view in para. 4 re 0 / 10 implementation.....as it need not necessarily be wealthy people who might do this but also the middle classes.....because if this does happen there could be significant tax leakage.

> Terry / John - I think we need to talk about this in case it is brought up by others, perhaps some States Members, so that we ensure we have a proper response....and which 'tick the box' option, or whatever, we need to try and counteract.

> Regards,

> Malcolm

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> -----Original Message-----

> From: Paul De Gruchy
> Sent: 14 September 2006 10:20
> To: Malcolm Campbell; John Harris; Terry Le Sueur
> Cc: Julian Morris; Ian Black
> Subject: RE: 0 / 10 law drafting
> Sensitivity: Confidential

> Malcolm,

> The changes to the Trusts Law are intended to give statutory certainty to a practice that is already widely carried out.

Currently, it is common for assets such as shares in a family company to be placed in trust, but for the settlor to wish to retain control over how the company is operated. Or an investment portfolio may be placed in trust, but the settlor may wish to manage the investments. In such circumstances, the settlor has two choices.

> The first is to use a Jersey trust and through very careful drafting, define precisely the limitations of the trustees' responsibilities. The power of the trustees to replace a director or investment advisor could be limited, for example. The problem with this is that it requires careful drafting and it is uncertain whether the trustee has an overriding duty to protect trust assets. In other

words, if the company or assets start performing badly, is the trustee bound to apply to court for an Order to preserve trust assets? Also, if the discretion of the trustee is fettered, there is a risk that the trust could subsequently be attacked as a sham. For an international client, these are reasons to not use a Jersey trust.

>

> The second alternative is to simply establish a trust in one of the many jurisdictions that allow a settlor to retain stated powers. To use your example, if a Jersey person wishes to retain significant control of his assets, he could simply place them in a Cayman or BVI law governed trust. This need not have Cayman or BVI trustees - a Guernsey trustee could easily do the job.

>

> I imagine that a large number of wealthy people all over the world (including Jersey) do just the thing you fear in your e-mail - place assets in trusts in another jurisdiction, define themselves as excluded persons for the time they are resident in a specific jurisdiction, have assets returned to them when they cease to be resident in that jurisdiction, and then receive all the gains/rolled-up income tax free. If 0/10 is implemented with look-through provisions, for example, I would expect many wealthy people who might own a private Jersey investment company to simply move the assets to a company in another jurisdiction, place the shares of that company in a trust, and let the assets roll up.

>

> So practically, the changes will not make it any easier to avoid tax. What they will do is allow Jersey to compete more effectively for international work, where wealthy families will often wish to place assets in a trust structure and yet retain certain control over the management of the trust assets. The driving reason for doing this will not usually be tax planning: a settlor may live in a jurisdiction that is politically unstable, or where there are forced heirship restrictions, or may simply wish to place his or her assets in a vehicle that would benefit his or her family in the event of any subsequent personal bankruptcy. Most often, it will be because the settlor is self-made and thinks he can manage his assets better than any professional.

>

> The key issue remains, as always, that while it is easy to tax people when they spend, and fairly straightforward to tax people on what they earn, any attempt to tax people on unearned income or capital gains is likely to lead to those who can afford it seeking expert advice on how to structure their wealth in order to minimise their tax liability. The tax burden, as with inheritance tax in the UK, will be borne by those who are moderately wealthy but not so wealthy as to be able to afford to place significant assets out of reach for a reasonable period of time: if you have £10million you can afford to lock £9m away for a rainy day, whereas if you have £1m you can't.

>

> As Jersey is squarely pitching itself at the expert/sophisticated/ultra-high net worth end of the market, we need settlor reserved powers in order to offer an attractive product to international clients. However, other jurisdictions have been offering this product for years and I imagine that any wealthy Jersey resident minded to do so has been taking advantage of these products for years.

>

> Hope that assists.

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> Paul

> Thanks for trying to phone me in London yesterday. Sorry you missed me twice - I did the same in return.

>

> I am "anxious" (perhaps unnecessarily) on 2 points - one absolutely fundamental to how 0/10 is intended to work, the other a matter of commercial value which we would be foolish in my view to ignore if we have no good reason to do so. Both go to the matter of the detail of drafting.>

>

> On the first point, how we describe qualification with the 10% rate is critical. If we simply lump all regulated businesses in a general definition we will sweep up vital zero tax vehicles such as SPVs, Funds etc into the 10% rate and the resulting reaction from industry and external advisers will not be pretty. I am therefore keen to see the draft now that there is one and to see for myself how the interface with the various regulatory laws is expressed. There needs to be a schedular approach - which in turn is mirrored by the FSC laws. I will explain what I mean by this when I see you.

>

> The second point is to ensure as far as we can that we accommodate the drafting point made by Richard Thomas and forwarded to you in my e-mail dated 8th August and which I mentioned at our meeting last week. This would allow to Island to make an easy transition from JPUT business - a mainstay of fund activity in the past 2 years - to allow Jersey vehicles to be used as vehicles for the increasingly popular UK REITS which look set to replace JPUTS in the coming months on condition that the dual residence company definition can be changed as Ogiers have suggested - or at least in a way which achieves the same effect.

>

> These are the points concerning me on the forthcoming draft. On the other two points you raise I am generally neutral on which tick the box scenario works best because fundamentally this should be accepted by "honest" taxpayers whatever it says. However, people are sensitive to disclosure requirements which go beyond the existing admittedly minimal obligation and some compromise is probably the most practical. For the record, I have said to industry representatives in a number of different forums that they need to consider that a reasonable quid pro quo for a less forceful look through regime must be an increase in anti-avoidance provisions and we should continue to press this notion on them.

>

> Finally I am very concerned by the apparent retrospective attack - inspired it seems by the AG - on a major feature of the recent trust law change on the ground that it ostensibly facilitates greater tax avoidance. I would take a lot of convincing on that one as the Reserved Powers clause has no such intention but actually aims to 'limit' in a prescribed fashion intervention by settlors to deter rather than augment the risk of trustees being used to front a sham arrangement, to permit active involvement in investment management activities which is an essential feature to limit trustees potential long term liability in an increasingly litigious world and improve trust management in a number of other ways. I can produce a more detailed version of that argument if you wish and ask Paul de Gruchy who project managed the changes to explain the legal intention of the change and the market circumstances which lie behind it as to why we have made these changes and modernised legislation which was increasingly out of line with the market. In turn, I would be grateful if you could explain to me how the recent changes facilitate tax avoidance.

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> Many thanks

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> John

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> -----Original Message-----

> From: Malcolm Campbell

> Sent: 13 September 2006 12:26

> To: Terry Le Sueur

> Cc: Julian Morris; Ian Black; John Harris

> Subject: 0 / 10 law drafting

> Sensitivity: Confidential

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> Terry,

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> I have just come back from a 2 hour meeting on the above with the Law Draftsman and am meeting her again on Monday afternoon. Our provisional 0 / 10 timetable is as follows, which I hope is agreeable:

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> States debate - 30th January, 2007

> Latest lodging debate - 19th December, 2006

> Law drafting complete - mid-October, 2006

> Law draft to you - mid-October, 2006

> Law draft to Scrutiny and selected professionals once you give approval - 3rd / 4th week October, 2006

> 'Fallout' from consultation on law draft and subsequent iteration with Law Draftsman - 2nd / 3rd week of November, 2006>

> Finalise law draft - end November, 2006

>

> Julian - I'm not sure if Scrutiny know when they are going to receive the draft 0 / 10 law draft so if Terry agrees it might be as well to give them some indication as above.

>

> We are on track with 0 / 10 and I anticipate only two real areas of potential difficulty. The first is the 'tick the box' regime on which please see the attached alternative scenarios for you consideration. The second is the Trusts (Amendment No. 4) (Jersey) Law 200- and in particular para 9A. on powers reserved by settlor. This could be problematic for tax purposes and needs to be considered carefully as it seems to me that there could be tax avoidance through this mechanism.

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> Perhaps we could discuss both these issues in due course.

>

> << File: TICK THE BOX.doc >>

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> Regards,

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> Malcolm

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