

# What lies ahead...

---

## February 2017

2017 looks set to be another busy year for the trust industry. Some will be thanking (or cursing!) HMRC for that.

### De-enveloping – it has already started!

From 6 April 2017 the scope of inheritance tax will be extended to apply to UK residential property owned by foreign domiciliaries (or trusts settled by foreign domiciliaries) through a foreign company or partnership, irrespective of whether those foreign domiciliaries are UK resident or not. Therefore, the first task for 2017, if not already done, will be for trustees to review their trust book and identify those structures which (i) were settled by non-UK domiciliaries and (ii) hold UK residential property. Tax advice should then be obtained to assess the potential tax liability and an assessment should be carried out as to what would be in the best interests of the beneficiaries as a whole - to dismantle, restructure or maintain the status quo?

Arguably a trustee will not have discharged its duty to act in the best interests of the beneficiaries as a whole if it does not address its mind to and document that it has considered the interests of the wider class of beneficiaries (i.e. it is not, for example, enough to simply seek and act on the views of the principal beneficiary (who may or may not be the settlor of the structure)) in its decision making.

Another particularly pertinent point to note is that if the UK residential property in question is subject to a leasehold interest landlord consents are likely to be required before any transfer of the property can be completed. When considering requests for consent, landlords will generally request information regarding a transfer and need time to consider such information. A trustee should therefore not delay commencing the transfer process. We have a [UK Real Estate Team](#) at Collas Crill and can therefore assist not only with the restructuring or dismantling of Jersey trust structures, but also the property transfer itself. Please contact us should you require any assistance or [click here to read more on this subject](#).

And, finally, following the publication of legislation which will affect UK non-domiciliaries generally, and the taxation of offshore trusts, the above points apply equally to any potential restructuring which might be necessitated arising from the CGT changes.

### Amendments to the Jersey trust law – how will they impact on trustees

Following the close of the consultation period in which 21 responses were filed (including suggestions from Collas Crill), the Chief Minister's Department has released its response setting out the proposed amendments to the Trusts (Jersey) Law 1984. It is hoped that the amendments will provide greater clarity whilst preserving the integrity and flexibility of the Jersey trust regime. In summary, we will see amendments made to the provisions relating to:

- The rights of beneficiaries to information
- Reservation of settlor powers
- Trustee indemnities

## WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London

- The retention and accumulation of income
- The presumption of lifetime effect
- The power of the court to vary a trust

and a new statutory lien will be introduced.

These amendments are currently being drafted and are expected to be put before the States of Jersey before the Easter recess. We shall be presenting to trustees on the key changes in due course. Please contact us if you would like us to come and present to your organisation.

### **Financial penalties for enablers of tax evasion**

Finally, with effect from 1 January 2017, HMRC now has the power to charge civil penalties on those who deliberately enable offshore tax evasion. Fines of up to 100% of the tax the individual or corporate helped evade or £3,000, whichever is greater, may be applied. In addition, HMRC has the power to name publicly the enabler. The UK government is also planning to introduce a new criminal offence for failing to prevent the facilitation of tax evasion, whereby companies will be held liable if an individual acting on its behalf as an employee or contractor facilitates tax evasion. Don't say you haven't been warned!

If you would like to discuss the above please feel free to call us.

For more information please contact:



**Bonnie McPartland**

Of Counsel // Jersey

**t:**+44 (0) 1534 601747 // **e:**[bonnie.mcpartland@collascrill.com](mailto:bonnie.mcpartland@collascrill.com)

**WE ARE OFFSHORE LAW**

BVI | Cayman | Guernsey | Jersey | London

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.