Low-income trusts and estates

Management of taxes Personal tax

22 August 2022

The CIOT and ATT both responded to the recent consultation by HMRC on reducing the reporting requirements for low-income trusts and estates.

HMRC's consultation 'Income Tax: Low-income trusts and estates' proposed to formalise and extend a concession that removes trusts and estates from reporting and paying income tax where the only source of income is savings interest and the tax liability is below £100. Under the proposals, trusts and estates with income from any source (including, therefore, dividends and rental for things such as wayleaves) up to a *de minimis* amount (to be decided following the consultation) will not be subject to income tax.

Both the CIOT and the ATT supported these proposals to ease compliance burdens. HMRC took a collaborative approach and held an exploratory meeting with representatives of the professional bodies.

The proposals will be particularly helpful for personal representatives of estates with a small amount of income, who will be spared the burden of having to make an informal report of estate income, and the subsequent income tax payment. HMRC will also be saved the cost of dealing with such small sums.

The mechanism proposed is that if the net income of personal representatives and trustees is equal or less than the *de minimis* amount, then for the purposes of Step 2 in the Income Tax Act (ITA) 2007 s 23 calculation it is to be taken as being £0. ATT and CIOT both agreed with this approach as it will afford consistency of treatment to all low-income cases, even where personal representatives or trustees otherwise within the terms of the dispensation may have filed a self-assessment return (for example, to report capital gains).

The proposals inevitably create a cliff edge so that income tax will have to be paid on the entire estate or trust income where the *de minimis* amount is exceeded.

However, the benefit to those cases which fall within the proposal (28,000 in the impact assessment) is considered to outweigh that disadvantage.

The CIOT suggested that the *de minimis* amount of income be indexed. If it is not, then (noting that the current limited concession has been unchanged since 2016) both the CIOT and ATT consider it is essential that it is reviewed regularly to maintain its efficacy.

There is no particular difficulty in how the proposals interact with the current tax regime whereby an annual assessment is made on personal representatives and trustees, but the liability of most types of beneficiary (other than trust beneficiaries with an entitlement to income) depends on income being received by them in a given tax year. That distinction is not affected by these proposals. However Guidance on GOV.UK and the Notes to the various forms R185 should be clear as to how those forms are to be completed when gross income is paid to a beneficiary with no tax deducted.

The CIOT and ATT both agreed that the mechanism to apply to payments made from trusts taxable at the trust rate is appropriate. Where the income has not been taxed in the trustees' hands, a discretionary payment to a beneficiary will be taxed on the trustees at 45% under ITA 2007 s 496, subject to any set-off from the tax pool. It was considered unlikely that, given the limited scope of the proposals, this deferment of tax would provide sufficient incentive to alter behaviour.

Similarly, it seemed sensible to align the anti-disaggregation rule for *de minimis* income with that which reduces the £1,000 band of trust income subject to the lower rates of tax where more than one trust created by a settlor exists in a given tax year.

The ATT was concerned that where a return has been issued but the trust's income is below the *de minimis*, it will be sufficient for the trustees or their agent to call HMRC to confirm that the low-income concession applies, and for the tax return to be cancelled on that basis.

Since October 2020, all trusts (unless excluded) have been required to register on the Trust Registration Service (TRS). However, less information is required of non-taxable trusts (which currently include those that fall within the concession of paying less than £100 tax on interest). If the proposals are enacted, the CIOT and ATT urged that trusts within the new income level be treated similarly for TRS purposes and that guidance on GOV.UK and in HMRC's TRS Manual be updated accordingly.

The full CIOT response can be found here: www.tax.org.uk/ref953

The full ATT response can be found here: www.att.org.uk/ref399

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