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Inheritance Tax changes in the United Kingdom

Given the close links between East Africa and the United Kingdom many East Africans have invested in property in the United Kingdom through offshore investment structures. There have been a number of legislative changes with respect to the taxation of UK property and consequently the manner in which UK property is held may no longer be viable.

Inheritance Tax (IHT) does not currently exist in East Africa but those of you who are unaware of this tax it is essentially a tax on gifts made during the lifetime of the donor or gifts made on death, for example when property is left in a will.

From 6 April 2017 any entity will be looked through where it holds UK residential property for IHT purposes. What this means is that if a non-resident has shares in say a BVI company, which in turn owns a UK property, then the non-resident will be deemed to be holding that property and it will be in that person's estate for IHT in the UK should that person die owning the shares in the company.

With regards to a trust, if the settlor of the trust is still a beneficiary of the trust then the same scenario would apply; if the settlor were to die the property will be considered to be in the person's estate for IHT purposes.

On both scenarios the value will be taken from the share value, which will be reflected

from the market value of the property.

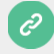
There are further complications with a trust, from 6 April 2017, if the trust is irrevocable and discretionary, then it will be seen to be a relevant property trust and there will be a 6% ten year anniversary charge based on the market value of the property.

A number of people are looking at whether they require the underlying company now, especially where the annual tax on enveloped dwellings (ATED) is being paid. Caution does need to be taken though. A number of these trust structures will be what is known as “dry structures”, all they hold is a company and the property and there are no income and gains within the trust. This means that historically where beneficiaries have lived in the property there has been no income or gain to match to the benefit of living rent free in the property. If the underlying company is now wound up, there is likely to be a large underlying gain that can be matched to the benefit of the person living in the property and it could immediately create a large tax charge on the beneficiary.

To help prevent non-disclosure of any tax due as a result of the changes introduced, as part of the consultation document HM Revenue and Customs has said that in the future any residential properties owned by companies will not be allowed to be transferred or sold without a history of the ownership and confirmation taxes have been paid.

Whilst there may be a delay in imposing the tax, it will be charged at some point and if there has been a failure to declare tax, interest will be charged and it is highly likely a penalty will be levied too.

Therefore, people owning UK residential properties through companies or any structure need to review them urgently to find out what options are available to them.



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