

## Guidance on IHT and DOTAS

### (Lecture P1085 - 29.04 minutes)

The Inheritance Tax Avoidance Schemes (Prescribed Disclosure Of Arrangements) Regulations 2017 (SI 2017/1172) have replaced the previous rules with effect from 1 April 2018. The DOTAS regime relies on 'hallmarks' to describe the avoidance arrangements which have to be disclosed. In addition to the latest change, it should be remembered that the confidentiality and premium fee hallmarks were extended to cover IHT with effect from 23 February 2016.

The new IHT hallmark provides that an arrangement is notifiable if it would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) would conclude that conditions 1 and 2 are met.

#### *Condition 1*

This states that the main purpose, or one of the main purposes, of the arrangements is to enable a person to obtain one or more of the following advantages in relation to IHT:

- the avoidance or reduction of a relevant property entry charge;
- the avoidance or reduction of a charge to IHT under Ss64, 65, 72 or 94 IHTA 1984;
- the avoidance or reduction of a charge to IHT arising from the application of Ss102, 102ZA, 102A or 102B FA 1986 in circumstances where there is no charge to income tax under Sch 15 FA 2004;
- a reduction in the value of a person's estate without giving rise to a chargeable transfer or a potentially exempt transfer (PET).

#### *Condition 2*

This states that the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.

Some time ago, HMRC confirmed that they would be publishing guidance 'in good time' prior to the commencement date of 1 April 2018 to explain:

- how the revised DOTAS hallmark works;
- the condition to be met in order for the arrangements to be notifiable; and
- the circumstances for certain arrangements to be exempted from disclosure.

In the event, this guidance finally materialised on 29 March 2018 which hardly fulfils HMRC's 'in good time' promise!

Let us therefore examine some of the examples provided by HMRC in their guidance note.

The first one involves regular gifts out of income (see S21 IHTA 1984). In the context of condition 1, HMRC say:

‘If these are gifts to an individual, they may be caught by condition 1(iv) as a main purpose of the gifts is to reduce the value of the person’s estate without giving rise to a chargeable transfer or a PET – they give rise to a series of exempt transfers.

If these are gifts into trust, they may also be caught by condition 1(i) in that they avoid or reduce a relevant property entry charge.

Although condition 1 may be met, to be notifiable condition 2 must also be met.’

In the context of condition 2, HMRC continue:

‘It is not reasonable to expect an informed observer would conclude it is either contrived or abnormal for a person to make regular gifts to those the person wants to benefit from their generosity where they are straightforward gifts to an individual or gifts into trust. This would just be the use of an exemption provided for by the legislation.

In some cases, the person intending to make such gifts may be advised to record their intention or commitment in writing before making the gifts. Such a step might seem contrived or abnormal in the sense that unilateral gifts are commonly made without being preordained so that the preordination appears abnormal. But, in the context of the exemption for regular gifts out of income, which have to be part of the transferor’s normal expenditure, recording this commitment in advance is simply a step in demonstrating that the exemption is due. Recording the commitment does not secure the exemption, but it may help to establish that the exemption is due based on the subsequent transfers.’

HMRC’s conclusion is that, even though condition 1 is met, condition 2 is not and so such arrangements are not notifiable under the latest hallmark.

The second example involves an individual making a lifetime transfer to a bare trust for a minor beneficiary. HMRC’s exposition in this situation is succinct:

‘The transfer is a gift into a bare trust from which the donor cannot benefit. Although the transfer reduces the value of the transferor’s estate, it gives rise to a PET. Condition 1(iv) is therefore not met and the arrangement does not give rise to any of the other tax advantages set out in condition 1. This analysis would apply whether or not the trustees were able to defer actual payments to the beneficiary beyond the age of 18.

As condition 1 is not met, there is no need to consider condition 2.’

Finally, let us look at a more controversial tax planning arrangement, which the speaker has seen on more than one occasion, where a settlor gifts shares which qualify as relevant business property into a trust and where the trustees subsequently sell those shares back to the settlor.

In this context, HMRC state:

‘In isolation, the transfer of shares qualifying for business relief into a trust or the sale of trust assets by the trustees would not meet condition 1. Where arrangements are entered into with the intention that all of these steps take place, the arrangements have the effect of placing cash into a relevant property trust, but without incurring a relevant property entry charge. As one of the main purposes of these arrangements is to reduce or avoid a relevant property entry charge, it would be reasonable to expect an informed observer to conclude that condition 1(i) is met.

This can be contrasted to the situation where, for example, family company shares are transferred into trust for succession planning purposes, at which time there is no intention of the trustees selling those shares.

If the trustees later took an independent decision to sell the shares, it is unlikely that an informed observer would conclude that these separate steps form part of a single overall arrangement or that condition 1(i) was met.

It would not normally be possible to transfer cash into a relevant property trust without incurring a relevant property entry charge, which is what has been achieved. To achieve this outcome and to gain this tax advantage, contrived steps are necessary, that is the transfer of shares qualifying for relief followed by their sale back to the transferor rather than the simple transfer of cash which would be the non-contrived way of achieving the same result. Without these contrived steps, the tax advantage would not arise. It would therefore be reasonable to expect an informed observer to conclude, considering the arrangements as a whole, that condition 2 was met.’

Planning of this sort will therefore fall into the notifiable category.

*Contributed by Robert Jamieson*