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Dear Emma

We acknowledge your letter which seeks further clarification on DOTAS and IHT and raises some new issues in response to the answers previously provided on this subject.

In addition to providing detail on the background to DOTAS and the IHT hallmarks, our published guidance gives a flavour through various examples of the different arrangements which may or may not be caught by the DOTAS legislation. The guidance is not intended to provide comfort to promoters or customers of how contrived or abnormal arrangements need to be before they cross over line to be notifiable. HMRC does not provide clearance in respect of specific proposals, and will not comment on whether specific proposals are, or are not, notifiable. With this in mind, we do not think it is appropriate to continue to correspond on various hypothetical arrangements. There is a risk that we begin to go beyond the intended scope of the guidance and provide additional guidance which is not available to all customers. However, we have provided our thoughts below on your further queries and trust this will allow us to bring this correspondence to a conclusion.

Deeds of variation

The purpose of DOTAS is to ensure that HMRC are notified of arrangements that fall within the hallmark and, in particular, to alert HMRC to planning of which we were previously unaware. Whilst we agree that it is difficult to identify a scenario where the inclusion of a deed of variation would form part of notifiable arrangements, it would be unwise to say that it could never occur. Each set of arrangements must be tested against the hallmark, so if a set of arrangements were to be devised which did include a deed of variation then it is possible that those arrangements would be notifiable.

Undivided shares

The first part of condition 1 requires it to be reasonable to expect an informed observer to conclude that obtaining the specified tax advantage was the main purpose, or one of the

main purposes, of entering into the arrangements. In circumstances where the child previously had occupation of half of the property but a 0% interest, the parent giving the child an interest commensurate to the child's use would appear benign and it would be difficult to conclude that obtaining the tax advantage was the main purpose, or one of the main purposes, of the arrangements. This would be quite different from a situation where, for example, the parent as 100% owner gifts 99% to a child who then merely has one room in which effects are stored and which the child uses for perhaps one or two nights a month. In the latter case it might be reasonable for an informed observer to conclude that obtaining the tax advantage was indeed the main purpose, or one of the main purposes, of entering into the arrangements. As the individuals entering into the arrangements will be well aware of their motivation for entering into the arrangements, identifying whether the arrangements are notifiable should not be particularly difficult.

BPR and sales

In your previous question you asked whether a transfer of shares into a trust shortly before a sale to a third party would be established practice. In our answer we confirmed that the nature of the established practice exception was unlikely to apply. That remains our view. We did not say that the arrangements would be notifiable, which your latest question seems to suggest.

Example 16 in the DOTAS guidance[1] is entitled "**arrangement to gift shares which qualify for business property relief into trust and subsequently sell the shares back to the transferor**", so it is already limited in its scope.

Reversionary leases

HMRC remain of the view that an informed observer would consider it contrived or abnormal to grant a reversionary lease of the property which the individual occupies, creating the prospect that they may cease to be able to occupy their existing home if they survive to the date the reversionary lease begins.

Multiple trusts

The first part of condition 1 requires it to be reasonable to expect an informed observer to conclude that obtaining the specified tax advantage was the main purpose, or one of the main purposes, of entering into the arrangements. If the main purpose was unrelated to the obtaining of the tax advantage then condition 1 may well not be met.

Gilts

We have further considered some of the different arrangements that could be used in the acquisition of gilts. It would seem possible that either condition 1 or 2 would not be met in the arrangements you outline. However, it would depend on the particular circumstances of the arrangements and it is not possible to categorically say that condition 1 and 2 would never be met.

Grandfathering arrangements

As was made clear in the 2014 DOTAS consultation document[2], the removal of grandfathering was an intended consequence of the revised IHT DOTAS hallmark. Whereas

[1] Disclosure of tax avoidance schemes: guidance - GOV.UK (www.gov.uk)
[2] 141126_2014_DOTAS_Consultation_Response_Document_-_Final.pdf (publishing.service.gov.uk)

the 2011 hallmark[3] excepted arrangements *"if they are of the same, or substantially the same, description as arrangements [made available before 6th April 2011]"*, the 2017 hallmark[4] necessarily takes a very different and significantly narrower approach.

Although there is no definition of 'proposal' in SI2017/1172, those regulations are made under powers in section 306 FA 2004[5]. The practical definition of a proposal is found by reference to sections 306 and 307 FA 2004. A notifiable proposal is:

- a proposal for arrangements which, if entered into, would be notifiable arrangements – section 306(2)
- capable of being the subject of a firm approach – section 307(i)(a)(ii), and
- capable of being made available for implementation by other persons – section 307(1)(a)(iii)

A proposal is accordingly a specific plan or scheme that is capable of being implemented by multiple different arrangements of different taxpayers, all of which are almost certain to be substantially the same as each other by virtue of their all implementing the same proposal.

Your 'wider view' of 'proposal' would have the effect of largely replicating the exception in the 2011 hallmark so that any idea that had been implemented before 1st April 2018 would be excepted from being notifiable, provided it accorded with established practice of which HMRC had indicated their acceptance.

In HMRC's view the DOTAS guidance is clear that the proposal is the specific plan or scheme, not the generic idea, and that two unconnected promoters offering to implement the same essential idea would each be making a separate proposal. To quote directly from the DOTAS guidance, at 8.3.4:

"The proposal is the specific combination of elements or steps which are designed to achieve the intended tax advantage and which is being made available to a potential user. While there may be a number of very similar proposals in existence which are designed to achieve the same tax advantage, for example different companies offering their own versions of a tax saving scheme, each would be a separate proposal."

Kind regards

Adam Martinez

[3] The Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2011 (legislation.gov.uk)

[4] The Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2017 (legislation.gov.uk)

[5] Finance Act 2004 (legislation.gov.uk)