

Advising a Swiss “trust”

Advising on the tax treatment of an inherited portfolio



We advised two brothers who had inherited a portfolio at a Swiss bank.

The account had never been disclosed to HMRC since the family member who had left it to the brothers was UK resident, non-domiciled and taxed on the remittance basis and the brothers, although taxed on the arising basis, had never thought to declare their interests. The trustees had resigned pending the introduction of FATCA and CRS because they understood that the portfolio was not UK tax compliant and they could not get new trustees to take it on as it stood.

The background to the situation included that fact that in 2005 the Swiss bank which held the portfolio had suggested to the brothers that the funds should be placed into a "trust" on the basis that this would mean that the bank was not obliged to operate the EU Savings Directive in respect of the funds. The brothers understood that they would still be able to deposit and withdraw funds from the portfolio by contacting their customer relationship manager at the bank and that, in effect, nothing would change regarding the way in which the portfolio operated. Indeed both brothers retained bank cash cards which they could use to withdraw cash direct from the bank. They certainly did not request permission from the trustees to operate the account and as far as they were concerned the brothers continued to control the portfolio.

How did Blick Rothenberg help?

We advised the brothers that they needed to make a full voluntary disclosure of the portfolio to HMRC. HMRC initially wanted to charge tax on the basis that there was a valid discretionary trust based on the paperwork produced by the Swiss bank, meaning that there would be punitive IHT charges. We persuaded them that the brothers had not intended to set up a trust and had always considered the money to be theirs despite the existence of that paperwork.

The outcome

There was no inheritance tax on the initial inheritance in 2000 since we were able to demonstrate to HMRC that the funds came from the Estate of a non UK domiciliary. There was also no inheritance



We are so grateful. When HMRC insisted that the trust must be valid because of the paperwork we had signed, we never thought you could possibly succeed in persuading them of the true facts and were almost ready to give up. Thank you for suggesting that one final effort which achieved the optimal outcome.



tax on the transfer of funds into the "trust" and nor was there any inheritance tax on the 10 year anniversary of the date on which the trust purported to have been established as would be the case with a valid discretionary trust since the "trust" was accepted by HMRC as a nominee arrangement.



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