

Are tax efficiencies a benefit to beneficiaries of a Jersey trust?

An important hallmark of Jersey trusts is ensuring the greatest possible tax efficiencies for their beneficiaries.

A recent decision of the Royal Court of *In The Representation of Accuro Trust (Switzerland) SA* confirmed the flexibility of Jersey trusts in allowing a trustee to administer and vary trusts to maximise tax efficiencies available to it, for the benefit of the beneficiaries.

Background

Two dynastic trusts, the “Palmyra Trust” and the “Colling Trust”, were settled to ensure the significant wealth within those trusts was secured for the benefit of future generations. The settlor was excluded as a beneficiary of the Palmyra Trust from the outset, and initially included as a beneficiary of the Colling Trust.

In April 2017, Her Majesty’s Revenue and Customs’ proposed taxation of non-UK domiciled persons and offshore trusts became effective under the Finance (No2) Act 2017. The Act introduced the concept of a “*formerly domiciled resident*”, relating to a person whose domicile of origin was in the UK and despite being non-UK domiciled resident at the time would be considered resident in the UK for that tax year.

In the present case, the Act applied to the settlor as they were born in the UK and was considered formerly domiciled UK resident. As a result, any distributions of the trusts’ assets to the beneficiaries would have been subject to UK capital gains tax. The value of the trusts’ assets had grown significantly over the years, with concurrent tax implications. After receiving tax advice prior to April 2017, the settlor was excluded from being a beneficiary of the Colling Trust, first by means of a revocable exclusion and then an irrevocable exclusion.

On 6 April 2017, the settlor ceased to be resident in the UK and from 6 April 2023 ceased to be considered a “*temporary non-UK resident*”. This move presented an opportunity for the trustee to capitalise on further tax opportunities if the settlor became a beneficiary of both trusts. These opportunities included distributing the trust assets to the settlor, with the settlor then having the ability to resettle the trusts with the same beneficiaries, thereby washing out gains which might otherwise be taxable.

The application

To enable the trustee to explore these options, the settlor needed to be returned to the class of beneficiaries. This required the trustee to obtain the permission of the Royal Court to revoke the irrevocable exclusion of the settlor as a beneficiary of the Colling Trust. In addition, the trustee sought the variation of the Palmyra Trust to remove the settlor from the class of excluded persons.

The test in such matters arises from Article 47 of the Trust (Jersey) Law, which requires that the Court may approve any arrangement varying or revoking all or any of the terms of the trust where it appears to be for the benefit of the beneficiaries.

The decision

In this case, the Royal Court referred to its earlier decision in *Re DDD Settlement*, in which it dealt with a similar arrangement to mitigate liability for Singaporean estate tax liabilities (which were then subsequently abolished) and where the trustee sought to reinstate the settlor as a beneficiary. In that case, the trustee sought the Court's approval under Article 47 of the arrangements to revoke the deeds whereby the settlor had been excluded from benefit. The Court observed that it had "no difficulty" with the submission that it had jurisdiction to approve the removal of the settlor as an excluded person under the trusts.

In the present case, the Royal Court was provided with extensive tax advice against which to consider the question of benefit to the beneficiaries. The Court was satisfied that the application was for the benefit of the beneficiaries of the trusts and accordingly granted the relief sought.

The Court was also asked to consider blessing the trustee's consequential decision to exercise its broad power of appointment to restate the terms of the Palmyra Trust in order to add the settlor to the class of beneficiaries. In reaching its conclusion, the Court had regard to the Court of Appeal decision of *Kan v HSBC International Limited* which defined a "momentous decision" (which a Court might properly be asked to bless) as being a "decision of real importance for the trust". In the present case the Royal Court considered that the exercise of the trustee's power was well within the trustee's remit and was not sufficiently important to be momentous and require the Court's blessing.

Your next step

Should you need assistance with the affairs of any trusts you administer, wish to explore opportunities that may improve their efficiency or feel that the interests of their various parties may be diverging, do not hesitate to contact us to consider potential challenges and remedies with the benefit of an objective pair of eyes by your side.

To arrange a confidential discussion about any such matters, please feel free to email me at emma.broster@dgadvocates.com or give me a call on 01534 737757.



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