

Barbados

Tax News

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UK Tax decisions on the ownership of real property

The recent decision by the House of Lords in the case of *R v Allen* has potentially serious income tax consequences for United Kingdom residents who live in property that is owned by a company. The effect of the decision is that individuals in such a position may be liable to UK Income Tax at 40% on the market rental value of the property.

The problem is of particular relevance to UK residents who own residential property in Barbados and other islands within the Caribbean. There are local tax reasons why it is preferable to own property through a company, and prior to the recent court decision most leading UK tax advisors were of the opinion that there were no significant UK tax disadvantages where a residential property was held in this manner.

However, it now appears that benefits in kind (i.e. remuneration in a form other than cash) received by employees or directors from a company, will be subject to income tax in the UK.

Such benefits include the provision of living accommodation free of charge or at a rent below the market rent.

The legislation also applies to “shadow directors” of companies. A person will be a

“shadow director” if, although he or she is not in fact a director of the company, he or she is a person “in accordance with whose directions or instructions the directors of the company...are accustomed to act”.

Where residential property is acquired or held through a company, and is made available for occupation by the ultimate owner (as it frequently is in the Caribbean), in most cases it would be unusual for directors of the company to perform anything other than a basic administrative function. In the absence of any other considerations, the ultimate owner would wish to deal with the property as if he or she owned it directly and to make all of the day-to-day decisions affecting the property and its maintenance. Management of the property in this manner would clearly be sufficient to constitute the ultimate owner a “shadow director” of the company.

It might be argued that UK residents owning residential property through a company could avoid this risk by ensuring that all decisions affecting the property are taken by the directors themselves and not in accordance with any instructions given to them by the owner. But however hard one strives to ensure that decisions are made independently by the directors it will be very difficult – if not impossible – to show that those decisions are *never* made on advice given by the ultimate owner. After all, whenever maintenance, improvements or other administrative work is required the impetus is likely to derive from him or her.

In summary, where a UK individual owns residential property through a company, and is caught by the “benefits in kind provisions”, that individual will be liable to Income Tax on the annual market rent that would be payable in respect of the property (calculated on the basis of certain assumptions). This could give rise to a substantial ongoing tax liability.

If you are a UK resident and own residential property for your occupation in the Caribbean through a company, you should take advice on how the decision in *R v Allen* affects you as soon as possible; otherwise you may find yourself with an unexpected tax liability. In appropriate cases, it may be possible to re-organise the structure through which the property is held so as to avoid the charge.

Similarly, if you are considering purchasing property, or are otherwise involved in the acquisition of property in the Caribbean, you should take advice on how purchases may be structured in order either to minimise the impact of the decision or, where appropriate, to avoid it completely.

PricewaterhouseCoopers in the Caribbean is ideally placed to provide such advice. Working with our colleagues in London, we are able to deliver specialised United Kingdom tax advice on this complex and worrying problem.

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