

The use of offshore structures in tax and succession planning

THESE NOTES ARE FOR GENERAL GUIDANCE ONLY. IT IS ESSENTIAL TO OBTAIN
ADVICE BEFORE TAKING ANY ACTION

Waterman Trust Company Limited

- Incorporated in Isle of Man in 1997
- US\$3.00 + billion in gross assets under administration
- Directors: Richard Hird and Andrew Howroyd

Agenda

- The definition of an offshore company
- Features of an offshore company
- The main uses of an offshore company
- An offshore trust explained
- The main uses of an offshore trust
- Offshore companies and trusts fitting together
- A typical scenario examined
- Formation requirements for trust and companies

The definition of an offshore company

- A company which is incorporated in a no tax or low tax area
- No tax areas include British Virgin Islands, Cayman Islands, Channel Islands, Guernsey, Isle of Man and Mauritius
- Low tax areas include Cyprus, Hong Kong and UK
- Some areas have both no tax and low tax companies
- Areas which have political stability and a developed legal structure are clearly the most desirable

Features of an offshore company

- Depending on the country of incorporation an offshore company will have:
 - 1 or more directors
 - 1 or more shareholders
 - a company secretary
 - a registered office in the country of incorporation
 - a fixed fee payable to the government for continued registration

The main uses of an offshore company

- To consolidate the holding of assets
- To increase returns to shareholders when investing
- To minimise disclosure of the activities and/or ownership of the company
- To minimise tax

To consolidate the holding of assets

- Offshore companies are often used as holding companies for assets located in one or more country
- Banks are used to providing funding to offshore holding companies but will insist that the jurisdiction chosen is able to offer the regulatory and legal certainty and the transparency necessary to protect their interest

To increase returns to shareholders when investing

- Bank debt raised by an offshore company against a cash deposit to purchase UK property will increase yields to the investor as bank interest will be offset against UK tax but the cash deposit offshore may be paid free of tax

To minimise disclosure of the activities and/or ownership of the company

- In some countries the identity of the shareholders and directors are not public information
- In other countries companies are not required to file audited accounts for public scrutiny

To minimise tax

- Holding UK property in an offshore company rather than a personal name may avoid liability to Inheritance Tax
- For people who are resident but not domiciled in the UK, holding UK property in an offshore company rather than their personal name may avoid Capital Gains Tax
- Where dividend and/or royalty income is being remitted across countries, offshore jurisdictions with appropriate double tax treaties need to be chosen

An offshore trust explained

- An offshore trust is a trust which is resident for tax purposes in an offshore jurisdiction
- A trust is an mechanism whereby persons called trustees undertake certain duties of dealing with property held and controlled by them for the benefit of persons described as beneficiaries
- A trust requires a settlor, trustees and beneficiaries
- A trust may be revocable or irrevocable

Categories of trust

- Generally a trust is discretionary or non discretionary
- A discretionary trust means the trustees have a discretion as to when and to whom they make a distribution
- A non discretionary trust means the identities and extent of the beneficiaries' interests are expressly articulated in the trust deed so conferring little discretion if any on the trustees

Discretionary trust - Isle of Man practice

- The settlor's intentions are spelt out in a letter of wishes to the trustees but this letter is not legally binding
- The settlor's intentions and wishes may be enforced by a Protector who has the legal power to remove the trustees
- Whereas a trustee is subject to regulation and the trustee laws a Protector is not, so the choice of Protector is crucial lest his power is abused

The main uses of an offshore trust

- To plan division of assets on death
- To maintain confidentiality of ownership
- To minimise tax

To plan division of assets on death

- Through a trust deed or letter of wishes a person can stipulate the division of his assets on death
- Such division could therefore operate outside the terms of a will or local law – eg Islamic law

To maintain confidentiality of ownership

- As the trust assets are registered in the name of the trustees the identity of the beneficiaries is confidential
- In most common law jurisdictions the trust deed is confidential and not open to public inspection

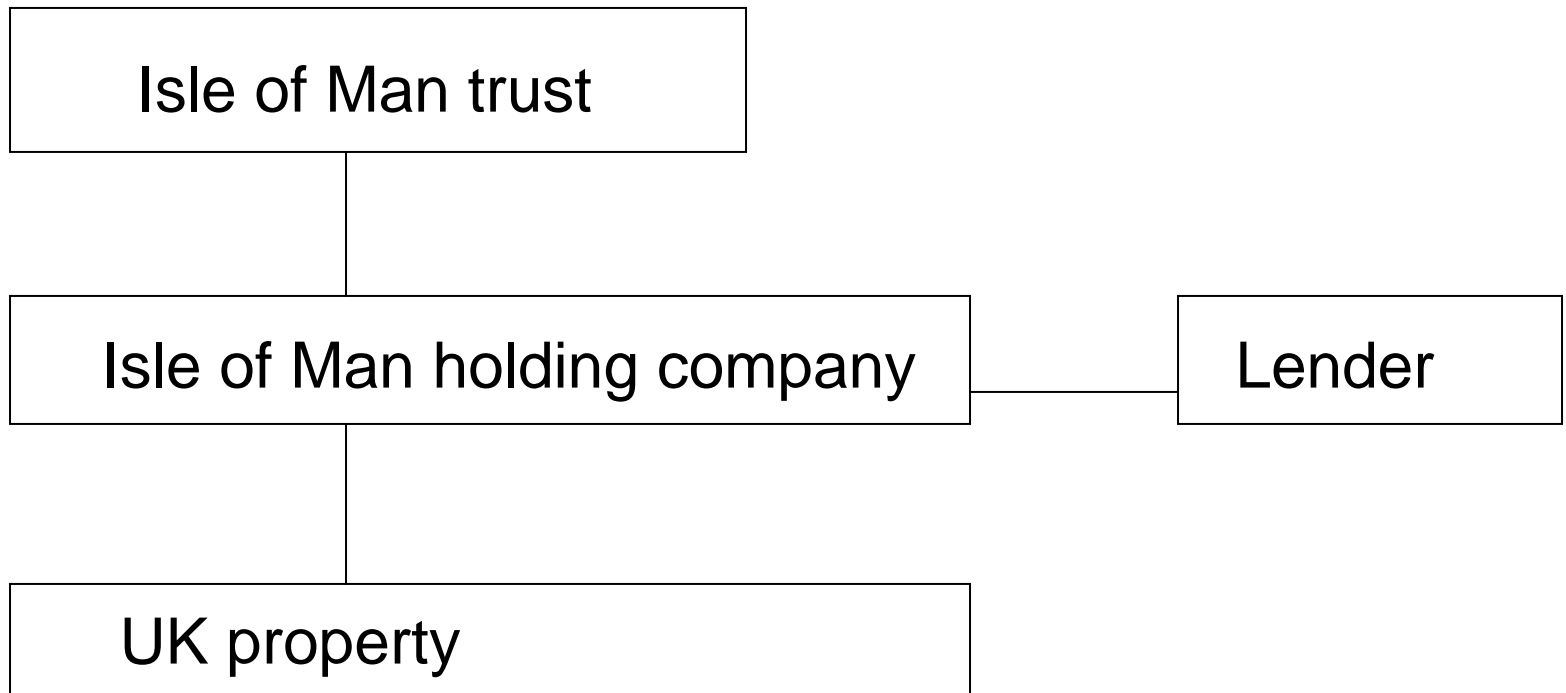
To minimise tax

- In a discretionary trust the intended beneficiaries have no legal right to the trust assets
- Accordingly they may not be required to disclose their interest in the trust assets or income on their tax return until they have received the benefit of such asset or income
- In the UK inheritance tax is charged at the rate of 40% on the aggregate value of all assets located in the UK. (The first £312,000 of assets are free of tax)

Offshore companies and trusts fitting together

- A trust is the “ultimate holding vehicle”
- So shares in offshore holding companies will often be held by trustees of a trust
- Such trustees will often act as directors of the offshore company to maintain control and ensure compliance with the terms of the trust deed

A typical scenario examined



Formation requirements for companies and trusts

- Formation of a trust will require a trust deed and perhaps a letter of wishes to be prepared
- Formation of a company will require an incorporation request to be completed
- In all cases a copy of the passport, a reference and confirmation of residential address of the settlor, beneficiaries, shareholders and directors will be required
- Assuming formalities are completed the company and/or trust can be available in 1 week

Waterman Trust Company Limited

- Vast majority of clients are non UK based
- Full range of offshore services including
 - Provision of tax and structuring advice for new and existing vehicles
 - Incorporation of offshore companies and trusts
 - Provision of professional directors, company secretary, shareholders and trustees
 - Maintenance of statutory books and records
- Licensed and regulated by the Financial Supervision Commission to conduct trust and company business

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