Reserved activity

Professional standards



01 November 2017

Margaret Curran discusses the new guidance recently produced by CIOT and ATT for members to use when HMRC are suggesting using a deed to settle a tax enquiry

Key Points

What is the issue?

The guidance explains that the drafting, preparation and execution of deeds is a ‘reserved activity’ under the Legal Services Act 2007 which can only be carried out

by an authorised or an exempt person.

What does it mean to me?

In general, members of the CIOT and ATT are not authorised to carry on a reserved legal activity unless they are also members of the Law Society or the Bar.

What can I take away?

Members should refer to CIOT and ATT's guidance if HMRC propose using a deed to settle a client's tax enquiry to ensure they understand the legal implications where a deed is being used and whether they need to seek the help of a lawyer.

A short while ago the CIOT started to receive reports from members that HMRC were sometimes using a deed to settle tax enquiries, rather than a more usual contractual agreement.

This led us to decide to produce some guidance for members to help them recognise a deed and be aware of the implications of advising clients when a deed is being used to settle a tax enquiry. We have recently published the guidance on both the CIOT and ATT websites.

In producing our guidance we established contact with staff at HMRC and their Solicitors Office, and as a result of our discussions HMRC are also updating their guidance on contract settlements in their Enquiry Manual (EM 6001) and adding new material on issues involving deeds.

We have shown our guidance to HMRC and have agreed with them the description of the circumstances in which HMRC may suggest the need to use a deed rather than a standard contract, and why.

Our guidance explains that HMRC will typically use a deed as a practical solution in cases where there may not be sufficient consideration to support a contract. The guidance describes the sort of case where a deed might be used.

Summary of advice

Members should be aware that the drafting, preparation, amending, inserting of any additional terms, execution and signing of a deed which relates to the settling of an individual's liabilities to tax and interest fall within the statutory definition of a 'reserved legal activity' and should not be carried on by any member unless they are specifically authorised to do so or are exempt under the terms of the Legal Services Act 2007 ('the Act').

The guidance explains when a member will be authorised to carry out a reserved legal activity, or when they might be exempted under the terms of the Act.

In general, members of the CIOT and ATT are not authorised to carry on a reserved legal activity unless they are also members of the Law Society or the Bar.

Members who are 'public officers', which would include working for HMRC, are exempt persons under the Act. An exemption is also provided if a member carries on the reserved activity at the direction and under the supervision of an authorised person who is either an employer, manager or fellow employee. An example would be a tax adviser working in-house at a law firm. In this example, the tax adviser could lawfully prepare a deed if they are instructed and supervised by one of the authorised lawyers in the firm.

It is likely that simply providing advice to a client as to the taxation consequences or implications of entering into a settlement by way of a deed which has been prepared by HMRC would be outside of the definition of a reserved legal activity and can be done by a non-legally qualified tax adviser.

Members should note that HMRC will not necessarily alert taxpayers and agents to the fact that the preparation of a deed is a reserved activity under the Act, although HMRC will often indicate if a deed is being used. In some cases it may not always be clear whether the documentation provided by HMRC is in the form of a legal deed, or whether it is simply a contractual agreement. The guidance explains what a deed is and how to recognise one, and accompanying the guidance is an example of a document that HMRC have actually used as a deed. Examples of standard letters of offer used in contract settlements for individuals, partnerships and companies are included in HMRC's Enquiry Manual at Appendix 1 (EMAPP1).

It is a criminal offence to carry on a reserved activity when not authorised to do so. Conviction for such an offence could lead to a fine or a prison sentence or both. Carrying on a reserved legal activity without entitlement would also be a breach of

the CIOT and ATT’s Professional Rules and Practice Guidelines and a member is likely to face disciplinary action by the Taxation Disciplinary Board. Sanctions run from an admonishment through to expulsion.

If there is any doubt about whether a member is entitled to carry out certain work, it is recommended that the member should consider taking specialist legal advice on the matter.

The CIOT and ATT are grateful to Ximena Montes Manzano of Temple Tax Chambers and Rupert Shiers of Hogan Lovells for their technical input and assistance in drafting our guidance.