Dividend Waivers: a ‘Reserved Activity’?

Professional standards

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Members should be aware of the ‘reserved activity’ rules before getting involved in drafting a deed, such as a dividend waiver.

In November’s *Tax Adviser* I discussed new guidance recently produced by the CIOT for members to use when HMRC suggest using a deed to settle a tax enquiry. The guidance, which can be found on our website, explains that the drafting, preparation and execution of deeds is a ‘reserved activity’ under the Legal Services Act 2007 (‘the Act’) which can only be carried out by an authorised or exempt person. In general, members of the CIOT are not authorised to carry on a reserved activity unless they are also members of the Law Society or the Bar.

This prompted one member to get in touch to ask whether the same rule applies to the position where members assist clients with drafting deeds of dividend waiver and whether this work is still permissible following the issue of our recent guidance.

Dividend waivers are only effective if executed by deed because there is no consideration to support a contract.

Our guidance does not specifically address deeds used in any other circumstances, but does have some relevant references to the statutory conditions applicable to deeds in general.

Section 4 of the guidance explains when the preparation of a deed is a reserved legal activity. In the CIOT’s view, it is likely that the drafting, preparation and execution of a deed of dividend waiver would be a reserved activity under the Act, assuming it is intended to be executed as a deed. The waiver of a dividend is more likely than not to relate to a person’s ‘personal estate’.

CIOT members would therefore only be authorised to draft, prepare and execute a deed of dividend waiver if they are authorised to do so under the Act, or exempt. Paragraph 5 of the guidance explains when members are authorised or exempt, and when they are not. As mentioned above, CIOT members are not authorised simply by virtue of being CIOT members.

It would be advisable for members who are not authorised or exempt under the Act to check the rules relating to ‘reserved activity’ before undertaking any work involving a deed.