Time to confess

Personal tax



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Unexplained wealth orders can now require non-UK and non-EEA individuals to prove the source of funds used to acquire an asset, explains *Mala Kapacee*

Key Points

What is the issue?

Legislation introduced in the Criminal Finances Act 2017 enables any relevant UK authority to apply for an order requiring an individual to prove that the purchase of an asset could be funded from known sources of income.

What does it mean to me?

The provisions apply to non-UK and non-EEA individuals who are, or are connected to, politically exposed persons. Advisers with such clients should alert them to the need to be prepared to provide the necessary evidence.

What can I take away?

No evidence of criminality is required for the order to be issued. UK assets that have been acquired illegally, or using proceeds of crime from activity anywhere in the world, can now be repossessed.

The UK is sometimes perceived as a country where criminals are able to launder money very easily, particularly through the purchase of real estate and particularly in London. In order to combat this perception, legislation was enacted in 2017 requiring individuals to demonstrate the source of funds used to acquire assets, if there ‘are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property’. This requirement is known as an unexplained wealth order (UWO). The legislation is contained in the Criminal Finances Act 2017 Part 1 and came into force in January 2018.

A UWO is the power to require an individual to prove the source of funds used to acquire an asset. In practice, the asset will be UK based as this is the practical extent of UK authority, though the legislation does state that the UWO can be in respect of ‘any property’.

Reasonable suspicions are sufficient

Any relevant UK authority (HMRC, Serious Fraud Office, Financial Conduct Authority, National Crime Agency or Public Prosecution service) can apply to the court for a UWO. On making the application, the relevant authority must demonstrate reasonable suspicion that the asset could not be funded from known sources of income, on the assumption that it was purchased at market value.

The recipient of the order must then provide relevant evidence to demonstrate the source of funds. This is effectively a ‘guilty until proven innocent’ situation. Although it flies against the traditional basis of our legal system, many would argue that it is an essential approach if the government wishes to effectively counter concerns that the UK is a place where illicit funds can be laundered.

The legislation specifies that UWOs can only be applied to non-UK and non-EEA individuals who are, or are connected to, politically exposed persons (PEPs). UK politicians, for example, are therefore exempt from the legislation. It is noted that the UK authorities are already expected to have sufficient powers to investigate UK individuals who hold property funded from beyond their means, though UWOs may make the process easier. The exception to this rule is if the person has been, or is suspected to have been, involved in a serious crime (presumably serious enough for the National Crime Agency or the Serious Fraud Office to become involved); in this case, whether or not they are a PEP is irrelevant.

If a person is a foreign PEP, then no evidence of criminality is required for the order to be issued. Politically, however, it is likely that the government may be wary of requesting a UWO in relation to a PEP without any suspicion of criminality.

Before a UWO is made, there must be evidence to suggest that the person on whom the order is being served has an interest in the property and that the value of the individual’s share in the property is at least £50,000. This is a low threshold to cross for high net worth individuals, particularly in relation to London real estate.

Applications of the order

The UWO legislation has been effective since 31 January 2018. The first person to be issued with an order was Zamira Hajiyeva, wife of the Azerbaijani state banker Jahangir Hajiyev (the former chairman of the International Bank of Azerbaijan who was jailed for 15 years in 2016 for fraud). The only reason the UWO is in the public domain is because Mrs Hajiyeva chose to fight the order rather than comply.

The terms of the legislation state that: ‘The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property … unless the contrary is shown.’ On 30 April 2018, the *Financial Times* reported that the National Crime Agency has ‘a number of other cases which [it’s] currently developing, involving both PEPs and people with links to serious crime’ .

To date, none of these orders have come into the public domain, either because they have not been issued or because they have not been contested.

Where UK assets have been acquired illegally or by using proceeds of crime from activity anywhere in the world, these assets can now be repossessed, even if there is insufficient evidence to arrest and jail the perpetrators for the initial crime. The hope is that criminals will no longer see the UK as a safe environment to invest their ill-gotten gains and this should go some way towards repairing the UK’s reputation as a country where money can be hidden and easily laundered.