HMRC - CTM48864 - The Reasonable Belief Test With Respect To Gross Payments

The ‘reasonable belief’ test enables the Property AIF to pay Property Income Distributions (PIDs) and PAIF distributions (interest) gross, even when it is not in a position to know beyond doubt the status of the recipient. The payer can therefore act on the basis of assurances given by the recipient or by an intermediary if it considers these assurances to be sufficient grounds for reasonable belief. For example, where a shareholder or intermediary completes a declaration that they are either the beneficial owner of a shareholding or that they are holding the shareholding on behalf of the beneficial owner in a Property AIF and they confirm that they (or the beneficial owner) are eligible for gross payments under regulation 69Z4 SI 2006/964, HMRC would consider that to be evidence of ‘reasonable belief’.

HMRC staff have a duty of confidentiality to taxpayers and is unlikely to be able to respond to requests for confirmation that the recipient is eligible for gross payments. Where for example, it is a question of whether the relevant distribution will be taken into account when computing the profits of the UK permanent establishment of a non-resident company, the payer is encouraged to seek any assurance they feel they need from the recipient directly.

Where it is ultimately found that the recipient was not entitled to receive the payment gross, the Property AIF should put the position right without delay (regulation 69Z24(4)SI 2006/964). As soon as the mistake is discovered, the Property AIF should send in an amended return, and pay over the additional tax due (regulation 69Z35 SI 2006/964). If the Property AIF does not do so, HMRC can make an assessment on the Property AIF to recover the tax.

In a case where the Property AIF does not believe that the conditions specified are satisfied, but proceeds to make the payment gross, or where the belief is clearly unreasonable, then a penalty under section 98 TMA may be appropriate.

The default option, where the Property AIF has no information about whether the beneficial owner of a share is entitled to gross payment, is to pay PIDs and Property AIF distributions (interest) under deduction of tax.

For example, where shares are held by a nominee on behalf of a registered charity, the Property AIF can pay gross only if it has evidence that the beneficial owner of so many of the shares held by the nominee are so held. There are no plans currently for HMRC to produce any form of official certification, but Property AIFs will be subject to audit by HMRC of their payment procedures, which will include sample checks of how they have exercised reasonable belief.