HMRC - TSEM1705 - Trust Deeds: HMRC Policy On Trust Deeds

By ‘trust deeds’ we mean any deed or supplementary deed (as described in By ‘trust deeds’ we mean any deed or supplementary deed (as described in onwards) that relates to a trust. This guidance also covers documents such as court orders, Wills and codicils.

Requesting and retaining deeds

There are a few specific circumstances where we ask to see trust deeds. Typically we may want them during an enquiry (TSEM2160), or when the status of the trust is in question. Deeds should be retained in Caseflow or the Digital Mail Service.

Occasionally you may receive a deed that you have not requested, it will be retained in the Digital Mail Service, and can be used in any future enquiry. Taxpayers and agents should be aware that the submission of documents may not provide protection against a discovery assessment beyond that arising from the submission of the return alone. The information contained in additional material may have been fully covered within the return, or, alternatively there may be so much material that the HMRC officer ‘could not have been reasonably expected, on the basis of the information made available to them before that time, to be aware’ (TMA70/S29(5)) of the particular point of liability, unless the taxpayer or agent had explained its relevance (see EM3261).

Copies or originals

FA2008 Schedule 36, section 8(1) allows us to accept copies of documents. You should normally accept copy trust deeds.

You should not routinely ask to see the original trust deed if you have been supplied with a copy. However, it may be appropriate to request the original document, for example, where detail on the copy is unclear, incomplete, or there is doubt about its authenticity.

If you do need to access the original document, you can make a written request to see it. There is guidance on requesting original documents at CH229900.

Commenting on a trust deed

It is not HMRC policy to advise on the interpretation of trust deeds. It is the trustee’s responsibility to interpret the terms of the trust, complete the tax return and self-assess accordinlgy. If they are in doubt then their accountant or solicitor should be able to help.

Decline any request to comment on a trust deed. Explain that it is not HMRC policy.

HMRC’s ‘Clearance and approvals guidance’ states that :

“HMRC will not give clearances or advice for the application of the ‘settlements legislation’ in Chaper 5 Part 5 Income Tax (Trading and Other Income) Act 2005 or the tax consequences of executing non-charitable trust deeds or settlements.”

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