



Professional Standards



Briefing

May 2016

Mortgage lenders

Our guidance has been updated to reflect the recent HMRC agreement with the Council of Mortgage lenders re SA302s and includes details of the latest lenders signed up to this agreement. HMRC have also indicated they are no longer faxing forms SA302. For the updated guidance see <http://www.att.org.uk/file/mortgage-lenders-financial-references> and <http://www.tax.org.uk/mortgage-lenders>

Central registers of People with Significant Control (PSC) under the Small Business Enterprise and Employment Act 2015 (SBEEA)

While not strictly a tax matter, the requirement to maintain a central register of PSC may apply to your practice or your clients may mention it to you. This note is intended only to draw your attention to the issue - further guidance can be found in the links suggested by the Department of Business, Innovation and Skills (BIS).

While we initially raised a query with BIS regarding the maintenance of registers as will be required under the 4th Anti-Money Laundering Directive BIS's response also covered the SBEEA (the provisions of this Act relating to company registers has now come into force). It was as follows

“Before turning to your questions, I should explain that our team here in BIS has led the cross-Whitehall work on implementing the register of People with Significant Control (PSC register) of UK companies which will go live in 2016. This register is being established following the Prime Minister’s commitment at the 2013 G8 summit to establish a central register of company beneficial ownership, which the government has now confirmed will be publicly accessible. The UK’s implementation of the PSC register goes a long way to meeting the requirements of Article 30 of the EU 4th money laundering directive (4MLD), but will need to develop to be fully compliant by mid 2017. Colleagues in HMRC are leading on the requirement in article 31 of the 4MLD in relation to the beneficial ownership of trusts.

To answer your questions in relation to the UK PSC register -

- *How will they be implemented?
The framework for the PSC register was established in the Small Business Enterprise and Employment Act 2015. Secondary legislation is required for the*

operation of the register, and this is being developed now, following public consultation. This is in preparation for implementation in 2016; from April 2016 UK companies (which are not DTR5 issuers, ie essentially are not listed) will be required to keep their own PSC register, and from June 2016 they will be required to provide PSC information to the central public register at Companies House.

- *Who will maintain the registers?
The central public PSC register will be held at Companies House. (Companies House already registers, and makes public, information from companies about their members, directors etc.) Companies will be responsible for maintaining their own registers of PSC information and for filing that information with the central public register at Companies House.*
- *What will happen if there are errors in the entries?
Many errors will be relatively trivial, and can be easily corrected. Companies will be responsible for the process of collecting accurate PSC information for the register. Where the information refers to an individual, they must confirm it with them (or with a professional advisor with their knowledge) before entering it into the register. (Most) PSC information on the central register will be publicly available from Companies House and will be handled in the same way as other similar information about companies; the law operates in this way to ensure that information can be widely scrutinised to deter and then deal with errors. Where errors are raised, they can be investigated. Based on previous experience, in most cases the company will amend an erroneous filing straight away. In more serious situations, if errors result from failure to comply with the legal requirements around PSC information, then criminal offences can apply. Errors resulting from failure to comply with the requirements around PSC information could be punishable by fine or imprisonment or both.*

There is further information available in these links, which you may find helpful.

You can find the primary legislation here (Small Business, Enterprise and Employment Act 2015): <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

Finally, BIS recently consulted on the detail of the secondary legislation (which will contain provisions required to make the primary legislation operational). This consultation has now closed, but the document can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437974/bis-15-315-register-of-people-with-significant-control-consultation.pdf

BIS have now produced guidance on the PSC which can be found here:

<https://www.gov.uk/government/news/people-with-significant-control-register-comes-into-force>

Cyber-security and email scams

Email scams have regularly appeared in the press in recent weeks, particularly as warnings from High Street banks. For tax practitioners acting as tax agents, you also need to consider fraud in respect of communications from HMRC, especially as scammers are becoming more sophisticated in their approach. HMRC recently put a helpful post on their Blog about 'Keeping You Safe' which highlights things to look out for. You can access it here -

<https://taxagents.blog.gov.uk/2016/01/14/keeping-you-safe/>

Don't forget, you can also still access this free course, developed by the UK Government as part of its National Cyber Security Strategy with the support of both accountants and lawyers, on our websites -

<http://www.att.org.uk/sites/default/files/files/150806%20Cyber-security%20course.pdf> or <http://www.tax.org.uk/professional-standards/general-guidance/cyber-security>. The Home Office initiative www.cyberstreetwise.com is also a useful source.

High Net Worth certificates

Members are occasionally asked to sign a High Net Worth certificate. Problems may arise because neither the CTA nor the ATT qualifications are recognised for this purpose by the legislation. The Department of Business, Innovation and Skills has historically indicated that it has no plans to amend the legislation. Having considered whether to pursue this matter the CIOT and ATT have concluded that such work was not part of mainstream tax work and that it fell more within the audit role. In reaching this conclusion we noted that neither CTAs nor ATTs are statutory auditors (although some members may hold another qualification giving them this status) nor are they property valuers. CTAs and ATTs prepare returns on income and expenditure based on the information provided by the client and in doing so are not required to verify or confirm income and expenditure nor the valuation of assets and liabilities.

Arguably neither the CTA nor the ATT syllabus cover all the skills and technical knowledge required in connection with High Net Worth certificates. That is not to say that members are not capable of carrying out this work but rather that the qualifications on their own would not equip a member with the requisite skills and knowledge. While we appreciate it is frustrating for members who wish to provide this service for clients it would be difficult to put a persuasive case to an already reluctant BIS to recognise the CTA and ATT qualifications. For this reason we will not be taking the matter forward.

Probate

Members are sometimes asked to assist with the tax affairs of a deceased client. Some of this work can stray over in to "reserved services" related to the applying for and receiving probate. Reserved services may only be carried out by a qualified legal adviser or by someone licensed by an approved regulator or licensing authority.

Providing these services when not eligible to do so is an offence under the Administration of Justice Act 1985 so members should approach this area of work with caution.

There is no definition of probate work other than that set out in the Legal Services Act 2007:

‘the preparation of any probate papers on which to found or oppose a grant of probate or a grant of letters of administration.’

It is therefore not always clear which elements of the probate process are reserved and which are not. The CIOT and ATT have not sought authority to license probate services because of the very low demand from members in the past. However the ICAEW became a licensing authority and approved regulator in 2014 and has recently issued some guidance on where the boundaries lie which you may find helpful

<http://www.icaew.com/~media/corporate/files/technical/legal%20and%20regulatory/probate%20and%20abs/regulatory%20advisory%20on%20when%20to%20seek%20a%20licence%20for%20probate.ashx>

As with all services provided a member should ensure that the work to be undertaken is fully and accurately covered by both the engagement letter and Professional Indemnity Insurance.

Please note that if you are providing the service on an unpaid private basis then there is no restriction on the probate services you may offer (subject of course to your knowledge and competence to do so).

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