



WHAT'S IN A NAME? PUTTING PROPERTY "IN THE NAME OF" ANOTHER PERSON.

I always wince when clients say "Oh, I put that in the name of my brother", or "I bought that one in the name of my wife". I worry because I'm never sure that they fully appreciate the complexities of the beneficial ownership being different from the legal ownership.

English law recognises the possibility that the legal owner (whose name is on the documents and is registered at the Land Registry) may not be the same as the beneficial owner (who is entitled to the rent from the property or to the proceeds if it is sold). The problem is that in many cases people do not go through the appropriate formalities to establish this split of ownership and as a result they can be exposed to unwanted

tax consequences.

For example, one client did not want his name to appear as the owner of some property he wanted to develop and sell. He therefore bought it "in the name of" his girlfriend. He provided the money for the deposit, paid the mortgage, and paid for the refurbishment of the property. Before the property could be sold, however, his girlfriend died. As a result HM Revenue and Customs took the view that the property was part of her estate and inheritance tax was due (at 40%) on its value. Apart from the fact that we could prove the client had provided the money for the purchase and the refurbishment, there was nothing in writing to say that the deceased girlfriend was not the beneficial owner, and it took literally years of arguing with HMRC finally to persuade them that the property should not be included in her estate.

In another case, a client's mother, who was resident outside the UK, "put her son's name on" an offshore bank account she had. The purpose of this was twofold – she wanted him to be able to use the account to help members of the family out on her behalf, and she also wanted him to have ready access to the money in the event of her death so that he could arrange her funeral and so on. There was never any intent for him to benefit personally from the account, but again it took ages to persuade HMRC that he had not been failing to declare his share of the interest on the account.

Putting property "in the name of" someone else is perfectly legitimate provided the appropriate formalities are dealt with. Technically, the person "in whose name" the property is owned is a "bare trustee" for the beneficial owner, and as such it is the beneficial owner who is liable for tax on income from the property or for CGT if it is sold. All that is need to establish this is a simple document called a "Declaration of Trust", which records the fact that the person whose name appears as the owner is holding the property for the benefit of someone else. In the absence of such a document, the presumption is that the person who is the owner on paper is in fact the owner for all purposes.

The law also says that the ownership of land cannot be transferred except by an instrument in writing. If you want to buy my wristwatch, you can give me the cash and I will give you the watch, and that is the end of the matter. The ownership of the watch has changed "by delivery", which is to say, by the simple action of my unstrapping it from my wrist and handing it to you. Things are not so simple where land is concerned, and if instead of a wristwatch

we were dealing with a piece of land, we would need a written “conveyance” to confirm the change of ownership.

Be very careful before you take part in any transactions that involve property “in the name of” another person, and take legal advice to ensure you do not find yourself with an unexpected tax liability.

This article by James Bailey first appeared in Tax Insider magazine (www.taxinsider.co.uk)