

## Unexplained Wealth Orders

Tessa Lorimer, Special Tax Planning, Withers LLP



### Highlights

Criminal Finances Act 2017 Part 1

- Inserts sections 362A – 362I into the Proceeds of Crime Act 2002.
- Received Royal Assent on 27 April 2017
- Intended to address corruption in the UK.
- ***The regime is predicated on the assumption that where there is a disparity between a person's assets and income, he is presumed to have obtained those assets unlawfully and it is for him to prove that this is not the case.***

What is an Unexplained Wealth Order ('UWO')?

New procedure which allows an 'enforcement authority' to apply to the High Court for an UWO.

An UWO is an order requiring an individual (the respondent) to set out the nature and extent of his interest in the property which is the subject of the Order and to explain how he obtained that property in circumstances where the person's known income does not explain ownership of the property.

The High Court may make an Order when it satisfied that: –

- There is reasonable cause to believe that the respondent holds the property (the value of which is greater than £50,000) and
- there are reasonable grounds for suspecting that the named sources of the respondents lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property; and
- The respondent is a politically exposed person **or**

There are reasonable grounds for suspecting that:

- the respondent is or has been involved in serious crime (whether in the UK or elsewhere) or
- a person connected to the respondent has been involved with serious crime.

What is 'Serious Crime'?

'Serious crime' is defined by reference to those offences listed in the Serious Crime Act 2007 Schedule 1 which include:-

- Money Laundering offences
- False Accounting
- Offences under the Fraud Act 2006
- Conspiracy to Defraud
- Cheating the Public Revenue
- Offences under the Customs and Excise Management Act 2009 – fraudulent evasion of duty
- Offences under the Bribery Act

Who can apply for an UWO?

An 'enforcement authority' includes the National Crime Agency ('NCA'), HM Revenue & Customs ('HMRC'), the Financial Conduct Authority ('FCA'), the Director of the Serious Fraud Office ('SFO') and the Director of Public Prosecutions ('DPP') as head of the Crown Prosecution Service (section 362A (7)) ('CPS')

## What must the application contain?

The UWO must detail:

- the subject of the Order and the property in question.
- the form and manner in which the respondent is to provide the explanation.
- It must specify the person to whom the notice is given.
- give details of the place that the Order is to be given or the address to which it should be sent.

A UWO is a free standing Order; it doesn't require that there are any parallel civil or criminal proceedings underway before the Order is made.

## What is the standard of proof?

The court may make an UWO according to the civil standard of proof i.e. on the balance of probabilities that the respondent or connected persons are or were involved in serious crime related offences.

## What property can the order apply to?

UWO can potentially apply to a wide range of property. A person, for the purposes of the UWO regime is taken to hold property where: –

- he has effective control over the property.
- he is the trustee of a settlement in which the property is comprised.
- he is a beneficiary (actual or potential) in relation to such a settlement.

The threshold of property value is £50,000.

## What happens once an UWO is made?

Once the Order is made, the respondent is required to explain the source of the specified assets within the time period set by the court.

If the respondent replies within the specified response period, the enforcement agency has 60 days to consider the information supplied. The enforcement agency must then decide either: –

- no further action; or

- begin the civil recovery investigation; or
- apply for a recovery order under the Proceeds of Crime Act 2002.

If the agency decides to take no further action, then it must notify the court as soon as reasonably practicable and certainly before the end of the 60 day period.

If the respondent fails without reasonable excuse to provide information documents or other material specified in the UWO then the property in question is to be treated as 'recoverable property' for the purposes of the Proceeds of Crime Act 2002 Part 5.

The relevant enforcement authority would then be entitled to recover the property using civil recovery powers under the Proceeds of Crime Act 2002.

**What happens if the respondent fails without reasonable excuse to comply with the UWO?**

Under those circumstances, it would be open to the enforcement agency to bring contempt of court proceedings.

**What happens if the respondent makes false or misleading statements?**

A person commits an offence if he makes a statement that he knows to be false or misleading or recklessly makes a statement which is false or misleading.

On conviction, the person is liable on indictment to 2 years imprisonment or fine or on summary conviction to imprisonment not exceeding six months or to a fine.

**Can the advisors be liable?**

Offence of supplying misleading information is drafted sufficiently widely so as to potentially include those acting on behalf of the respondent i.e. an accountant or a lawyer in respect of the respondent's reported compliance with the UWO.

**Can the UWO be enforced overseas?**

Provision exists for the enforcement of UWO's overseas; the relevant enforcement authority can request assistance from the Secretary of State in relation to the property in question with a view to the request being forwarded to the appropriate overseas authority.

**How is an application for an UWO made?**

An application for a UWO may be made to a judge in chambers without notice. At the same time, the enforcement authority may also apply for an 'interim freezing order.' Once obtained, the property in question cannot be dissipated whilst it is the subject of the order.

Under the new regime, an application for an interim freezing order may be made to the High Court as part of the UWO proceedings, but it must be made at the same time as the application for the UWO. Interim freezing orders may only last for 48 hours.

#### Is compensation available under the UWO regime?

Compensation is available when an interim freezing order is discharged however compensation is not available for a UWO.

Application for compensation can be made to the court within three months of the discharge of the interim order. The court may order that compensation is to be paid to the applicant if it is satisfied: –

- The applicant has suffered loss as a result of making the Order
- There has been a serious default on the part of the enforcement agency who applied for the Order and
- The Order would not of been made but for the default.

When compensation is ordered, it is payable by the enforcement authority that applied for the order.

#### When the regime come into force?

The regime will come into force when the Secretary of State implements necessary commencement regulations it is thought that this will happen in the autumn.

Tessa is special counsel in the private client and tax team, focusing in tax investigations

Email: [tessa.lorimer@withersworldwide.com](mailto:tessa.lorimer@withersworldwide.com)

Tel: +44 20 7597 6129