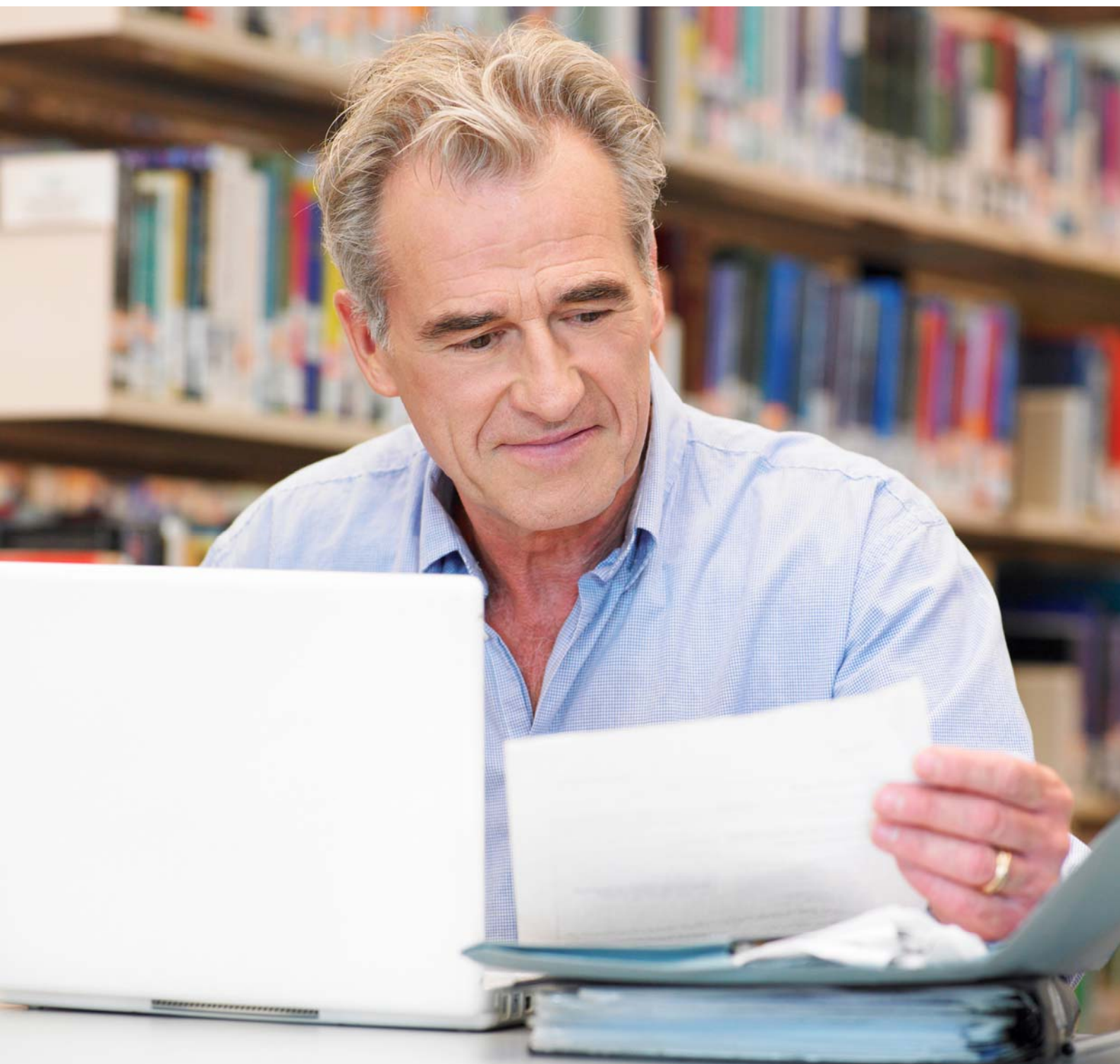




Capital Gains Tax for Trusts & Estates Supplementary Toolkit

2009-10 Trust & Estate Tax Returns



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Introduction

This toolkit addresses the areas of possible error that we identify as key Capital Gains Tax risks for trusts and estates and supplements the main toolkit for trusts and estates. You should use the main toolkit first. Use this toolkit if there has been a capital gain in the period the return covers or you are not sure whether Capital Gains Tax applies and you need to complete the SA905 supplementary return pages.

Find form **SA905 Trust and Estate Capital Gains** supplementary return pages.

Taking reasonable care

For further details on the scope of this toolkit and its relationship to reasonable care, please refer to the main trusts and estates toolkit.

Areas of risk within Capital Gains Tax for trusts and estates

Risks broadly fall into the same categories as those identified in the main trusts and estates toolkit:

- Establishing the nature of the estate or trust.
- Applying the correct legislation, rules and practice.
- Incomplete information.

In addition there is a particular risk within Capital Gains Tax:

Valuations

Valuations are the biggest single area of risk, accounting for a large part of our compliance checks. It is important to instruct a qualified, independent valuer, to make sure the valuation is made for the purposes of relevant legislation and meets Royal Institution of Chartered Surveyors (RICS) or equivalent standards. Some issues are frequently overlooked when instructions are given including the potential for development of land, the existence of tenancies, the inclusion of intangible or other assets. Where we are satisfied that all the relevant information has been considered by the valuer, we are less likely to challenge the valuation.

31 March 1982 and a valuation at the date of death are familiar reasons for establishing a market value, but there are other occasions when it should apply. It is not necessarily easy to recognise that this is so.

Using links within this document

[Blue underlined text](#) are links within this document.

Green bold text are hyperlinks to external documents on the internet (access to the internet is necessary to view these).

We have a range of services for people with disabilities, including guidance in Braille, audio and large print. Most of our forms are also available in large print. Please contact any of our helplines if you need these services.

<http://www.hmrc.gov.uk/contactus/particular-needs.htm>

Checklist

	Yes	No	N/A
Disposal Proceeds			
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Expenditure			
10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	No	N/A
Reliefs				
Private Residence Relief				
20	If the trustees/personal representatives have disposed of a residential property have you checked if Private Residence Relief is due?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	In the case of a settlement, did the person occupying the property have an entitlement to do so and did the person actually live in the property as their only or main residence? (Settlements only)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	In the case of an estate, was the property lived in by one or more individual(s) as their main residence both before and after the deceased's death and were the individuals entitled to 75 per cent or more of the disposal proceeds? (Estates only)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gift Relief				
23	If the trustees are claiming hold-over relief on the disposal of something that has been gifted to somebody else, have you checked if it is due?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roll-over Relief				
24	If the trustees/personal representatives are claiming roll-over relief in respect of the disposal of any business assets, have you checked it is due?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25	If the trustees/personal representatives are claiming roll-over relief in respect of the disposal of assets under compulsory purchase , have you checked it is due?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enterprise Investment Scheme (EIS) Deferral Relief				
26	If the trustees are making a claim to EIS deferral relief, have you checked it is due?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entrepreneurs' Relief				
27	If the trustees are claiming Entrepreneurs' Relief , have you checked it is due?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Losses				
28	If a loss has arisen from a disposal to a connected person , has it been relieved only against gains arising on a disposal to the same connected person? (Settlements only)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29	If the trustees/personal representatives are using losses brought forward , have you checked that the figure is correct?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation and mitigation of risks

Disposal Proceeds

1. Have you established the correct date of disposal for CGT purposes?

Risk

The gain may be returned in the wrong tax year if the date of disposal for CGT purposes is not properly identified. For example, a contract is dated 1 April 2009 although the asset itself is not transferred until 1 May 2009. Depending on the nature of the contract the gain could accrue in 2008-09 or 2009-10. Apart from the timing issue, there could be further tax consequences if there has been a change in the rate of tax or if losses are available.

Mitigation

Consider whether there have been transactions shortly after the year end, check the type of contract and then the date of disposal for CGT purposes.

Explanation

- For unconditional contracts the date of disposal is the date the contract is made. It is not the later date when the asset is conveyed or transferred to the purchaser.
- For conditional contracts the date of disposal is the date all of the conditions are satisfied.

For further guidance see our Capital Gains Manual - [CG14260](#).

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2. Have you checked whether the asset was gifted or partly gifted?

Risk

Gifts may be overlooked. It is important to confirm whether any assets have been given away so that the correct CGT treatment is applied. Also, where some consideration has been received it may still be less than the market value.

Mitigation

Check that you have accounted for any assets which have been given away (relief may be available). Also, where there has been some consideration, check whether the transaction was at undervalue. In either case a valuation of the asset disposed of is required.

Explanation

Where an asset is given away or where it is disposed of at undervalue, with the intention of conferring a gratuitous benefit to the other party, the market value rule applies.

For further guidance see our Capital Gains Manual - [CG14542+](#).

For general guidance on when the market value rule applies see our Capital Gains Manual - [CG14530+](#).

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3. Have you checked whether the disposal was to a connected person?

Risk

The market value rule applies where there is a disposal to a connected person. In many cases this will be obvious but there can be occasions when it is not immediately apparent. For example, the disposal may be to a company in which a trustee is a participator or to an individual who is connected to the settlor.

Mitigation

Check the disposal details and identify the person acquiring the asset to confirm whether there is any connection. If the person acquiring the asset is a connected person, a valuation of the asset disposed of is required.

Explanation

A trustee is connected with:

- any individual who is a settlor of the settlement
- any person who is connected with a settlor of the settlement
- any body corporate which is deemed to be connected with that settlement

For further guidance see our Capital Gains Manual - **CG14590**.

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4. Have you checked whether a beneficiary has become absolutely entitled to any asset?

Risk

There is a disposal for CGT purposes where a beneficiary becomes absolutely entitled to an asset. Such disposals may be overlooked, particularly if the asset is not transferred until some time after the entitlement has arisen.

Mitigation

Check whether any beneficiary has become absolutely entitled to an asset. If so a valuation of that asset is required.

Explanation

For CGT purposes, the disposal occurs when the beneficiary becomes absolutely entitled to the asset. This may be different to the time it is actually transferred.

For further guidance see our Capital Gains Manual - **CG37000+**.

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5. Have you checked whether the consideration included a non-monetary element?

Risk

Consider this question only if questions 2 and 3 above do not apply. If there is a non-monetary element to the consideration for the asset disposed of, it may be necessary to value that element. It may not always be apparent that this is the case. For example, the consideration may be an asset plus some money.

Mitigation

Check the disposal details to confirm exactly what form the consideration took.

Explanation

Where all or part of the consideration is something other than cash, a valuation of the asset received as (part) consideration is required.

Example

The trustees exchange a painting for another painting plus £5,000. The consideration equals £5,000 plus the market value of the painting received.

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6. Where a valuation is required, has the asset been valued by a properly instructed, qualified, independent valuer?

Risk

Valuation is an area of high risk for HMRC. This is particularly so where the valuation is not referred to a qualified, independent valuer. However, it is not sufficient to simply refer a valuation to a valuer. In the absence of proper instructions the valuer will not understand the context nor have all the necessary details on which to make a proper valuation. Areas that are frequently overlooked include:

- For land and property – tenancies, development potential (even where this has not been pursued), the inclusion of other assets in the transaction, such as goodwill, farm machinery.
- For unquoted shares – the size of the holding, a full description of the rights attaching to the shares, for example, any rights to future payments.
- For other assets – identification of sets and of wasting assets (see our Capital Gains manual - **CG15164**).

The valuation of quoted shares is generally not a high risk area.

Mitigation

Valuations are not a precise science – lengthy correspondence may be avoided if we are satisfied that all the relevant factors have been taken into consideration. It is important to:

- engage a qualified, independent valuer
- explain the reason why the valuation is required and draw attention to the definition in section 272 TCGA 1992 (market value)
- provide all relevant details concerning the asset, in particular any points mentioned in the bullets under 'Risk' above
- tick column B of the appropriate entry for the asset on page TC1 of form SA905 to show that an estimate or valuation has been used

In the case of disposals of land or property, check:

- whether there were any tenancies or leases
- the nature of the land or property and whether development might be or might have been possible
- the disposal contract to establish whether any other assets were included in the transaction, such as goodwill or plant and machinery

It is vital for the valuer to be aware of this information. For tenancies or leases it should include the duration of the lease(s), the rent payable, the frequency and dates of rent reviews and details of internal or external maintenance obligations.

In the case of a disposal that included goodwill or other types of asset, the valuer should be instructed to identify the goodwill or other types of asset separately so that you can prepare separate CG calculations (if the assets are chargeable assets and subject to CGT).

For further valuation guidance on land, property, shares and other assets see **Valuation of Assets**.

Point to consider

You may also consider using the CG34 procedure (post transaction valuation check) to agree the valuation prior to submitting the return.

For further guidance see our Capital Gains manual - **CG16600+**.

If you use the CG34 procedure ensure you enclose a CG computation for the Self Assessment year, clearly state which reliefs are being claimed or are due, and provide an explanation of how

the value was arrived at. Also ensure you submit the CG34 at least two months prior to filing your client's return or we may be unable to complete the check.

CG34s and any relevant additional information should be sent directly to the Trust Office that deals with your client's tax affairs.

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7. Does anyone else have an interest in the asset(s) disposed of?

Risk

If all persons with an interest in the asset are not identified, then the chargeable gain may be calculated incorrectly.

Mitigation

Identify whether any other person had an interest in the asset at the time of disposal and apportion the chargeable gain between the interested parties where necessary. As appropriate, engage a qualified, independent valuer to ensure the apportioned interest is correctly valued. Also ensure that only the relevant part of the acquisition cost and expenditure is used in calculating the chargeable gain.

Explanation

It is not always obvious that another person had an interest in the asset at the time of disposal. Where the asset is jointly owned and the whole asset is disposed of, you may need to apportion the chargeable gain between the interested parties, obtaining a valuation to do so.

Where the trustees or personal representatives dispose of their interest in the asset, only that part of the acquisition cost and other allowable expenditure which relates to their share should be used in calculating the chargeable gain. Part disposals are dealt with in [question 16](#) below.

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8. Is there any deferred consideration?

Risk

Proceeds are not always received immediately. Depending on the nature of the deferred consideration, it may be chargeable in the year of disposal even if it is not received until later years. Broadly speaking, if the amount is ascertainable at the time of disposal, it is chargeable in the year of disposal.

Mitigation

Check the contract to see if there is any deferred consideration and establish the terms of the future payments.

Explanation

The CGT treatment depends on whether the deferred consideration is ascertainable or not.

Where the deferred amount is known or ascertainable by calculation, for example if the consideration consists of an immediate payment followed by a number of annual instalments, that amount is chargeable in the year of disposal and should be included in the proceeds.

Where the deferred amount is not ascertainable because, for example, it is dependent on future events (such as being based on future profits of a company or the profits from developing land), the right to that part of the consideration is itself an asset. When that further consideration is received, it represents consideration for the disposal of the right, not the original asset.

For more detailed guidance see our Capital Gains manual - [CG14850+](#).

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9. Have you provided full details of the disposal in the further information section on page TC4 onwards of form SA905?

Risk

Insufficient information in the return often increases its risk status as we are unable to review the transaction in the light of all the relevant facts. This can lead to unnecessary compliance checks – when we eventually obtain the information it often turns out that there is little or no risk.

Mitigation

Provide as full details as possible. If you have prepared a computation you may wish to submit a copy with the return though this is not mandatory.

Essential information required

For unquoted shares and securities:

- the name of the company
- the company registration number, if known
- the number of shares disposed of
- the class (for example, ordinary, preference, A, B etc.) and denomination of the shares – disposals of different classes of share in the same company must be shown as separate transactions
- a history of the holding, particularly if there has been a reorganisation or takeover – in which case provide all the above details of the original shares held

For land and property:

- the full postal address (including number and post code)
- the extent and a description of the land or property
- a copy of any plans or maps (where these are readily available)
- a description of the interest held (for example, freehold, leasehold and any tenancies affecting the ownership)
- a description of the interest disposed of (for example, the whole freehold, the granting of a lease)
- where there are leases, the duration

For other assets:

- the type of asset (for example, a work of art, goodwill, musical instrument)
- a full description so that the asset can be easily identified within that type of asset (for example in the case of a painting, its name if it has one, the artist, its condition)
- details of the valuation reports and insurance valuations

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Expenditure

10. If the asset was held on 31 March 1982, has it been valued by a properly instructed, qualified, independent valuer?

Risk

The valuation of assets held at 31 March 1982 poses a similar high risk for HMRC as valuations generally. This is particularly so where the valuation is not referred to a qualified, independent valuer. However, it is not sufficient to simply refer a valuation to a valuer. In the absence of proper instructions the valuer will not understand the context nor have all the necessary details on which to make a proper valuation. Areas that are frequently overlooked include:

- For land and property – tenancies, development potential (even where this has not been pursued), the inclusion of other assets in the transaction, such as goodwill, farm machinery.
- For unquoted shares – the size of the holding, a full description of the rights attaching to the shares, for example, any rights to future payments.
- For other assets – identification of sets and of wasting assets (see our Capital Gains manual - **CG15164**).

The valuation of quoted shares is generally not a high risk area.

Mitigation

Valuations are not a precise science – lengthy correspondence may be avoided if we are satisfied that all the relevant circumstances have been taken into consideration. It is important to:

- engage a qualified, independent valuer
- explain a valuation is required in accordance with section 272 TCGA 1992 (the market value rule)
- provide all relevant details concerning the asset

For further valuation guidance on land, property, shares and other assets see **Valuation of Assets**.

Explanation

Where the asset was held on 31 March 1982, the market value on that date is substituted for the actual acquisition cost. It is no longer necessary to compare the 31 March 1982 market value with the original cost.

Where the asset was acquired after 31 March 1982 use the acquisition cost (unless the market value rule applies for another reason – [question 12](#) below).

Point to consider

You may also consider using the CG34 procedure (post transaction valuation check) to agree the valuation prior to submitting the return.

For further guidance see our Capital Gains manual - **CG16600+**.

If you use the CG34 procedure ensure you enclose a CG computation for the Self Assessment year, clearly state which reliefs are being claimed or are due, and provide an explanation of how the value was arrived at. Also ensure you submit the CG34 at least two months prior to filing your client's return or we may be unable to complete the check.

CG34s and any relevant additional information should be sent directly to the Trust Office that deals with your client's tax affairs.

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11. If the asset consisted of land or property, was any part of it tenanted or leased at 31 March 1982?

Risk

The existence of tenancies or leases will affect the market value. If the valuer does not take them into consideration, the valuation may be overstated.

Mitigation

Check the valuer has been instructed to take this into consideration. The details needed by the valuer include:

- duration of the lease(s)
- rent payable

- frequency and dates of rent reviews
- internal or external maintenance obligations

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12. If there is any other reason why market value should be used for the acquisition cost, has the asset(s) been valued by a properly instructed qualified, independent valuer to take account of this?

Risk

There are reasons other than the asset being held on 31 March 1982 why market value must be used. An obvious example is where the acquisition is for no consideration, such as an asset that is gifted or settled into trust. However, in other situations it may not always be so clear that the market value rule applies, for example a transaction with a connected person where that transaction is with a company in which a trustee is a participator or with an individual who is connected with the settlor.

Mitigation

Check the acquisition details and the identity of the transferor to confirm whether there was any connection.

Explanation

Market value must be used where:

- the acquisition was not at arm's length (for example, if the asset was gifted or transferred into settlement)
- the acquisition was from a connected party (see our Capital Gains manual - **CG14580**)
- there was a non-monetary element, for example the asset was acquired in exchange or part exchange for another asset

For further guidance see our Capital Gains manual - **CG14530+**.

Please also refer to the valuation guidance above in [question 10](#).

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13. Is every item of expenditure allowable?

Risk

Not all expenditure is allowable. For example, establishing the cost from the capitalised amount in trust accounts may not give the correct figure for CGT purposes.

Mitigation

Check each item of expenditure to confirm that it falls within one of the four allowable categories and that it has not already been relieved against income.

Explanation

Expenditure is allowable only if it was incurred wholly and exclusively in one of the following four categories:

- acquiring or creating the asset
- enhancing its value, subject to [question 15](#) below
- establishing, preserving or defending title to or rights over the asset
- incidental costs of acquisition and disposal

For further guidance see our Capital Gains manual - **CG15160+**.

In addition, sums that have been or would have been allowable in computing income are not allowable for CGT purposes.

14. Have you checked that no indexation allowance has been claimed?

Risk

Indexation allowance is no longer due but we see a significant number of cases, in particular involving the disposal of quoted shares, where it is still being claimed. Claiming the allowance will understate the charge.

Mitigation

Check that no indexation allowance is claimed. If you are dealing with a share pool or holding, make sure that you use the balance of the acquisition cost (or, where appropriate, the 31 March 1982 market value) and not the indexed pool of expenditure.

Explanation

Indexation allowance does not apply after 5 April 2008.

Further guidance on share pooling can be found in our Capital Gains Manual **Appendix 10**.

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15. If there has been any enhancement expenditure since the asset was acquired, is the enhancement itself still reflected in the character of the asset at the time of disposal?

Risk

Not all enhancement expenditure is allowable. For example, establishing the cost from the capitalised amount in trust accounts may not give the correct figure for CGT purposes.

Mitigation

Obtain a full history of the asset and details of the expenditure.

Explanation

Where expenditure has been incurred for the purpose of enhancing the value of an asset, that enhancement must still exist at the time of disposal for the expenditure incurred to be allowed.

For further guidance see our Capital Gains manual - **CG15180+**.

For this purpose only, the enhancement must be reflected at the date of completion and not just at the date of contract.

For further guidance see our Capital Gains manual - **CG15185**.

Example

Trustees incur expenditure on building an extension to a property they own. A few years later it is demolished and replaced by a larger extension. The part that has been demolished no longer exists at the time of the disposal so expenditure incurred on its construction is not allowable. The cost of the demolition is allowable where it has been incurred for the purpose of enhancing the value of the asset.

For further guidance on demolition costs see our Capital Gains manual - **CG15200**.

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16. If there has been a disposal of part of an asset, have the part disposal rules been applied?

Risk

It is not always obvious that the disposal is only part of the asset that was originally acquired. If this is overlooked then the allowable expenditure may be overstated.

Mitigation

Check the history of the asset to confirm if what has been disposed of is the entire asset that was originally acquired. Where there has been a part disposal, obtain a valuation of the part retained – please see [question 10](#) above regarding valuations.

Explanation

- The allowable acquisition cost (or March 1982 market value where appropriate) and any enhancement expenditure or incidental costs are usually apportioned using a statutory formula – see our Capital Gains manual **CG12731**.
- The strict part disposal formula may not apply in the case of certain disposals of land – see our Capital Gains manual - **CG71850**. Where the non-statutory method is used then the cost of the part remaining should be calculated and recorded.
- The rules are slightly different for shareholdings. From 6 April 2008 shares of the same class in the same company are pooled together in what is called a ‘section 104 holding’ (apart from shares acquired and disposed of on the same day or disposed of within 30 days of acquisition). The apportionment is made by reference to the number of shares held, not their value.

For further information on Shares and Capital Gains Tax see Helpsheet **HS284**.

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17. If there has been a previous part disposal have you confirmed the amount of remaining allowable cost available?

Risk

It may not always be obvious that there has been a previous part disposal of the asset. As a result calculation of the allowable cost may not be correct.

Mitigation

Check the history of the asset and confirm the details of any previous part disposal.

Explanation

The allowable cost must equal the balance of the cost allocated to the part of the asset retained at the previous part disposal.

In the case of shareholdings, all shares of the same class in the same company (apart from shares acquired and disposed of on the same day or disposed of within 30 days of acquisition) are now pooled together as a single asset. Prior to the introduction of the new share pooling rules from 6 April 2008 the shares may have been part of separate pools.

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18. If the asset was affected by any previous claims to roll-over, hold-over or reinvestment relief have you reduced the allowable cost accordingly?

Risk

It is not always obvious that the asset is affected by a previous claim (on the disposal of another asset) and this is something that is frequently overlooked. As a result the allowable cost may not be properly adjusted leading to an understated gain.

Mitigation

Check the acquisition details to see whether a gain was:

- rolled over on a previous disposal by the trustees
- held over by the settlor when the asset was settled in the trust

Explanation

If the acquisition related to a claim for roll or hold-over relief, the allowable cost for the purposes of this disposal must be reduced.

For further guidance follow the links below:

Business asset roll-over relief – see our Capital Gains manual - [CG60250+](#).

Relief for gifts and similar transactions (hold-over relief) – see our Capital Gains manual - [CG66450+](#).

Enterprise investment scheme – see our Capital Gains manual - [CG62800+](#).

Reinvestment relief – see our Capital Gains manual - [CG62335](#).

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19. If the asset was acquired following the death of a person, have you checked whether the value was 'ascertained' for the purposes of IHT?

Risk

It is sometimes assumed that a value provided to the IHT office has been 'ascertained' and that the same value can be used for CGT purposes. This is not always the case and so the market value may still have to be established.

Mitigation

Check to see if the value has been ascertained for IHT purposes.

Explanation

Simply because a value has been provided to the IHT office and has not been revised by that office does not mean that it has been 'ascertained' for the purposes of section 274 TCGA1992.

For further guidance see our Capital Gains manual - [CG32222](#).

Where the value has not been ascertained, you will need to establish the market value of the asset at the date of death.

For further guidance see our Capital Gains manual - [CG32230](#).

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Reliefs

Private Residence Relief

20. If the trustees/personal representatives have disposed of a residential property, have you checked if Private Residence Relief is due?

Risk

Private Residence Relief is not available in every case. Where it is, claims are not always properly restricted to take account of the 'permitted area' and non-residential usage. The extent of the permitted area is a very common cause of disagreement between HMRC and taxpayers.

Mitigation

- Check whether all of the property falls within the 'permitted area'.
- Check whether the only use of the property has been as an only or main residence.
- Show both the gain in column A on page TC1 of form SA905 and the relief in column G.

Explanation

The extent of the garden or grounds which qualify for relief is referred to as the permitted area – see our Capital Gains manual - **CG64800**. If the garden or grounds and the dwelling house do not exceed an area of more than 0.5 hectares relief for the whole of the garden or grounds is automatically due – see our Capital Gains manual - **CG64815**. Relief may be available for a larger area only if it is required for the reasonable enjoyment of the dwelling house – see our Capital Gains manual - **CG64818**.

The property must be a dwelling house which has been used as the occupier's only or main residence at some time since 31 March 1982. So if part or all of the property has been used for other purposes at any time, for example, for letting, the carrying on of a trade or where it has been unused, then the relief may have to be restricted – see our Capital Gains manual - **CG64660**. Where there is mixed use or there was non-residential use for part of the period of ownership, an apportionment may be needed – see our Capital Gains manual - **CG64760**.

Trustees and personal representatives must claim private residence relief and so must show both the gain and the relief in their return, even if the gain is fully relieved – see our Capital Gains manual - **CG64206**.

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21. In the case of a settlement, did the person occupying the property have an entitlement to do so and did the person actually live in the property as their only or main residence? (Settlements only)

Risk

Private residence relief may be incorrectly claimed if, in the case of a settlement, the person occupying the property does not have an entitlement to do so or has not actually lived in it as their only or main residence.

Mitigation

- Check whether the person occupying the property has an entitlement to do so. This may be specified under the terms of the trust or arise from general law.
- Check for evidence that the person entitled has actually occupied the property as his or her only or main residence.

Explanation

If there is no actual entitlement, then even if the person is living in the property the trustees may not claim relief. However, an entitlement to live in the property is not sufficient on its own. The individual must have actually occupied it as his or her only or main residence at some time since 31 March 1982.

For further guidance on Private Residence Relief and settled property see our Capital Gains manual **CG65400**.

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22. In the case of an estate, was the property lived in by one or more individual(s) as their main residence both before and after the deceased's death and were the individuals entitled to 75 per cent or more of the disposal proceeds? (Estates only)

Risk

Private Residence Relief is available on disposals made by personal representatives only if certain conditions are satisfied. If these conditions are not satisfied, Private Residence Relief may be incorrectly claimed. Conversely, if the conditions are satisfied, personal representatives may not be aware of the availability of the relief.

Mitigation

- Check to ensure that one or more individuals have actually occupied the property as their only or main residence both immediately before and immediately after the deceased person died.
- Then establish whether the occupying individual or individuals between them are entitled to at least 75 per cent of the net proceeds of the disposal (that is, the proceeds of the disposal realised by the personal representatives less any incidental costs of disposal) or to an interest in possession in 75 per cent or more of these proceeds.

Explanation

Both of the conditions must be met and the personal representative must make a claim for Private Residence Relief to be allowable.

For further guidance see our Capital Gains manual - [CG65460](#).

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Gift Relief

23. If the trustees are claiming hold-over relief on the disposal of something that has been gifted to somebody else, have you checked if it is due?

Risk

Relief is available to trustees where certain conditions are satisfied. It is not available to personal representatives. Claims should be made on Helpsheet HS295 but this is not always done. If claims are not made in the correct format we cannot review the details properly.

Mitigation

Check that the disposal and the asset qualify. The disposal must be:

- other than at arm's length, for example wholly or partly a gift, and
- made to an individual or the trustees of another settlement.

Make the claim on the form at the end of Helpsheet HS295 and submit it with the return. Where the transferee is an individual, make sure the claim is signed by both parties to the transfer.

Find Helpsheet HS295 - Relief for gifts and similar transactions [HS295](#).

Explanation

Relief is available where:

- The disposal is a chargeable transfer for the purposes of Inheritance Tax and is not a Potentially Exempt Transfer (PET) – see our Capital Gains manual - [CG67030+](#).
- The disposal is of business assets (used in a trade carried on by the trustees or by a beneficiary with an interest in possession) or agricultural property. See our Capital Gains manual - [CG66910+](#). A claim under this bullet may only be made if it is not possible to make it under the preceding bullet.

A claim affects not only the liability of the trustees, who have gifted the asset. The gain is deferred until the person receiving the asset disposes of it.

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Roll-over Relief

24. If the trustees/personal representatives are claiming roll-over relief in respect of the disposal of any business assets, have you checked it is due?

Risk

Relief is due only where all the various conditions are satisfied. The asset disposed of must have been used in a trade (or for some activities other than trades see our Capital Gains Manual - **CG60260**), the new asset has to be acquired within a certain time limit, both the old and new assets have to be of a certain type and special rules apply where the new asset is a depreciating asset and not all the disposal proceeds have been applied on the new asset.

Mitigation

- Use **HS290 - Business asset roll-over relief** which provides an overview of the relief.
- Check that the trustees/personal representatives have been carrying on a trade.
- Check that the disposal qualifies for relief.
- Check that the replacement qualifying asset was acquired and taken into use in the trade within the time limits.
- Where possible use the claim form in Helpsheet 290 – it is not compulsory but it is a convenient way of providing the necessary details.

Explanation

Relief is available where:

- the asset(s) disposed are of the type listed in our Capital Gains manual at **CG60410** and have been used solely for the purposes of the trade throughout the period of ownership
- the whole of the consideration obtained for the disposal is applied in acquiring new asset(s) of the type listed in our Capital Gains manual at **CG60410** which are then used wholly for the purposes of the trade

If the old assets were not used for the purposes of the trade throughout their period of ownership an apportionment is required on a just and reasonable basis.

Land and buildings are treated as separate assets for the purposes of roll-over relief. Therefore separate claims can be made for each asset, ie a claim for the land and a claim for the building on that land.

Land and buildings must be occupied as well as used solely for the purposes of the trade in order to be eligible for relief.

Where land and buildings are let by the owner upon terms that give the tenant the right to occupy to the exclusion of all others, they are not normally qualifying assets of the owner for the purposes of the owner's trade.

The replacement asset must qualify and be taken into use in the trade, or an unconditional contract to acquire the new asset entered into, within the period beginning 12 months before and ending three years after the date of disposal of the old asset. For further guidance on the time limit for reinvestment see our Capital Gains manual - **CG60620**.

For further guidance on roll-over relief see our Capital Gains manual - **CG60250+**.

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25. If the trustees/personal representatives are claiming roll-over relief in respect of the disposal of assets under compulsory purchase, have you checked it is due?

Risk

Relief is due only where all the various conditions are satisfied. It applies only to land, the new asset has to be acquired within a certain time limit and there are restrictions if the new land comprises a dwelling house.

Mitigation

Check:

- the assets (land) disposed of and acquired both qualify
- how the consideration was applied
- the date of acquisition of the new land
- whether it comprised any dwelling house

Explanation

Relief is available where:

- the asset disposed of was land to an authority exercising or having compulsory powers
- no steps must have been taken to make known any willingness to dispose of the old land by advertising or otherwise
- all or part of the consideration must be applied in acquiring new land
- the new land has been acquired within the period beginning 12 months before and ending three years after the date of disposal of the old land
- the new land must not comprise a dwelling house if a disposal within six years would not be chargeable to CGT on account of Private Residence Relief

For further guidance on compulsory acquisition of land see our Capital Gains manual - **CG61900+**.

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Enterprise Investment Scheme (EIS) Deferral Relief

26. If the trustees are making a claim to EIS deferral relief, have you checked it is due?

Risk

EIS deferral relief is available to trustees only where certain conditions are satisfied and on receipt of the EIS3 certificate. EIS deferral relief is not available to personal representatives. Certain time limits apply to claims.

Mitigation

Check:

- when the qualifying shares were acquired
- that an EIS3 certificate has been received from the qualifying company
- whether all the beneficiaries of the trust are individuals and if not restrict the claim

Then:

- complete and submit part 2 of the EIS3 certificate
- show the gain in column A on page TC1 of form SA905 and the relief in column G

Explanation

The qualifying shares to which the trustees are subscribing must have been issued within the period starting 12 months before and ending three years after the date on which the gain arose.

The trustees must have received form EIS3 from the qualifying company before making a claim. If the trustees have not received form EIS3 no claim can yet be made. However they can make a claim later, subject to time limits.

If the circumstances are more complicated refer to the detailed guidance in our Venture Capital Schemes manual - **VCM38010+**.

Check if any beneficiary of the trust is not an individual as in these circumstances deferral relief has to be restricted. For further guidance see our Venture Capital Schemes manual - **VCM41500+**.

This is a claim and therefore you must show both the gain and the amount of the relief set against it in the return, even if the gain is fully relieved.

For further guidance on the claims procedure see our Venture Capital Schemes manual - **VCM38500**.

For further guidance on time limits for a claim see our Venture Capital Schemes manual - **VCM38110**.

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Entrepreneurs' Relief

27. If the trustees are claiming Entrepreneurs' Relief, have you checked it is due?

Risk

Entrepreneurs' Relief can be claimed only by trustees and not by personal representatives. It is available only if there is an interest in possession. The amount of relief may be reduced if the beneficiary has made any personal claims.

Mitigation

Check:

- whether a beneficiary has an interest in possession and satisfies the conditions
- with the beneficiary as to the amount of relief available to the trustees
- that the amount of relief is reduced where appropriate
- that a joint claim has been signed by both the trustees and the beneficiary

Explanation

Entrepreneurs' Relief is available to trustees only where a beneficiary:

- has an interest in possession in that part of the settlement which contained the business assets disposed of
- was involved in carrying on the business in question
- in the case of a disposal of shares, qualified as an officer or employee of the company in question

The amount the trustees can claim is limited to £1 million for each qualifying beneficiary. The £1 million limit in respect of each beneficiary is reduced by the amount of any relief that the beneficiary has claimed personally. In addition relief will be further restricted where a qualifying beneficiary is not entitled to all the income of the relevant settled property, for example where there is another beneficiary with an entitlement.

For further guidance where there is more than one beneficiary see our Capital Gains manual - **CG64140**.

For further guidance on qualifying disposals by trustees see our Capital Gains manual - **CG63985**.

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Losses

28. If a loss has arisen from a disposal to a connected person, has it been relieved only against gains arising on a disposal with the same connected person? (Settlements only)

Risk

There is a restriction on the way trustees can use losses, arising from a disposal to a connected person. These are known as 'clogged losses'. Relief is sometimes claimed where it is not due.

Mitigation

Check how the loss arose (both a loss arising in this year and any loss brought forward). If any part of a clogged loss is to be carried forward, make a separate note of it for future reference.

Explanation

A clogged loss can only be set against gains:

- arising from a disposal to the same connected person
- at a time when that person is still connected to the trustees

For further guidance on connected persons see our Capital Gains manual - **CG14590**.

For further guidance on 'clogged losses' see our Capital Gains manual - **CG14561**.

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29. If the trustees/personal representatives are using losses brought forward, have you checked that the figure is correct?

Risk

If you do not have a full history or details of all the relevant assets and the losses claimed and relieved (for example, you did not act for the trustees when some of the losses arose), can you be certain that the amounts brought forward are correct? Also pre-Self Assessment losses brought forward are not always applied in the correct order.

Mitigation

- Obtain full details of when the losses arose and how they have been applied, including any adjustments following amendments or enquiries.
- If you cannot confirm the amounts from records, tick column B on page TC1 of form SA905 and provide details in the 'Additional information' box.
- Check for clogged losses (this applies to trustees only – see [question 28](#) above).

Explanation

Losses arising in 1996-97 and later years (the years where Self Assessment applies) must be used before losses arising in earlier (pre-Self Assessment) years. This is unlikely to apply to personal representatives unless the estate has been in administration since before 1996-97.

For further guidance see our Capital Gains manual - **CG15813**.

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