

# Capital Gains Tax for Trusts and Estates Supplementary Toolkit

2011-12 Trust and Estate Tax Returns

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## Introduction

Tax agents and advisers play an important role in helping their clients to get their tax returns correct. This toolkit is aimed at helping and supporting tax agents and advisers by providing guidance on the errors we find commonly occur in relation to Capital Gains Tax for trusts and estates and supplements the main toolkit for trusts and estates.

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. Its use is entirely voluntary.

The content of this toolkit is based on our view of how tax law should be applied. Its application to specific cases will depend on the law at the relevant time and on the precise facts.

For further information on using this toolkit and reasonable care under our penalty system see [Toolkits to help reduce errors - essential information](#).

For risks not dealt with in this toolkit you should refer to our full guidance, which you can find in our Capital Gain Tax Manual (CG):

[hmrc.gov.uk/manuals/cgmanual/CG33000+.htm](http://hmrc.gov.uk/manuals/cgmanual/CG33000+.htm)

## Areas of risk within Capital Gains Tax for trusts and estates

Capital Gains Tax for trustees and personal representatives is charged at 28 per cent.

Trustees may be able to reduce the rate of this tax if they qualify to claim Entrepreneurs' Relief.

From 6 April 2011, the lifetime limit of gains qualifying for Entrepreneurs' Relief was raised to £10 million (from the previous figure of £5 million). Gains qualifying for Entrepreneurs' Relief are taxed at a rate of 10 per cent.

Risks within Capital Gains Tax for trusts and estates 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 in appropriate cases.

Issues that are sometimes overlooked when instructions are given to a valuer include the potential for development of land, the existence of tenancies and the inclusion of intangible or other assets. Where we are satisfied that all the relevant information has been fully considered by an independent valuer, the valuation is less likely to be challenged.

It is often necessary to establish a market value for assets held at 31 March or which have been transferred as part of an estate, but there are other occasions - notably when a person becomes absolutely entitled to trusts assets as against trustees - when it may also be required. Such occasions can be overlooked.

## 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.

**[hmrc.gov.uk/contactus/particular-needs.htm](http://hmrc.gov.uk/contactus/particular-needs.htm)**

# Checklist for Capital Gains Tax for trusts and estates

	Yes	No	N/A
<b>Disposal Proceeds</b>			
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"/>
<b>Allowable costs</b>			
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"/>

Yes No N/A

### Allowable costs continued

17 If the asset was affected by any previous claims to Roll-over, Hold-over or Reinvestment Relief have you [reduced the allowable cost](#) accordingly?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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18 Where the asset(s) disposed of were [inherited](#), has the correct acquisition cost been used for their disposal?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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### Reliefs

#### Private Resident Relief

19 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"/>
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20 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"/>
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21 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

22 If the trustees are claiming [Hold-over Relief](#) on the disposal of an asset 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

23 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"/>
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24 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"/>
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#### Enterprise Investment Scheme Deferral Relief

25 If the trustees are making a [claim to Enterprise Investment Scheme](#) deferral relief, have all the conditions been met?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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#### Entrepreneurs' Relief

26 If the trustees are claiming [Entrepreneurs' Relief](#), have all the conditions been met for a claim?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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## Losses

	Yes	No	N/A
27 If a loss has arisen from a disposal to a <a href="#">connected person</a> , has it been relieved only against gains arising on a further disposal to the same connected person? (Settlements only)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28 If the trustees/personal representatives are using <a href="#">losses brought forward</a> , has the correct figure been used?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Explanation and mitigation of risks

## Disposal Proceeds

### 1. Has the correct date of disposal been established?

#### **Risk**

Proceeds for the disposal of an asset may be received in a later year to that in which the disposal arises for capital gains purposes. A gain may be returned in the wrong tax year if the date of disposal for Capital Gains Tax purposes is not properly identified. Where the date of disposal is not correctly identified and the gain arises in an earlier or later year, there may be significant tax consequences. For example, the rate of tax charged could be affected, as could the availability of reliefs or losses.

#### **Mitigation**

Ensure that the correct date of disposal has been identified. This will normally be easily identifiable but there are specific rules which determine the date of disposal in particular circumstances as explained below.

#### **Explanation**

Where an asset is disposed of other than under a contract, the date of disposal will depend on the nature of the transaction. For further guidance on the specific rules see **CG14260**.

Where an asset is disposed of under a contract, the date of disposal will depend on whether the contract is unconditional or conditional. Where the contract is unconditional, the date of disposal will be the date of the contract. However where the contract is conditional, the date of disposal will be the date on which the conditions are satisfied.

A contract is only conditional if particular conditions have to be satisfied before the contract becomes legally binding.

For further guidance see **CG14270+**.

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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 Capital Gains Tax 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 **CG14542+**.

For general guidance on when the market value rule applies see **CG14530+**.

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### 3. Where the disposal was to a connected person, has the market value been applied?

#### **Risk**

Where there is a disposal of an asset to a [connected person](#), the disposal is treated as a transaction 'otherwise than by way of a bargain made at arm's length'. In these circumstances the market value rule needs to be applied. For further guidance see [CG14530+](#).

If the disposal is not identified as one made to a connected person, the gain may be mistakenly computed by reference to sale proceeds, if any, rather than to market value and the resulting gain may be incorrect.

#### **Mitigation**

Check the disposal details and identify the person acquiring the asset to determine whether there is any connection. Where the person acquiring the asset is a connected person, a valuation of the asset disposed of will be required in order to establish the correct disposal consideration to be used in calculating the gain.

#### **Explanation**

In many cases it will be obvious that the parties to the transfer of assets are connected 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.

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 [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 Capital Gains Tax 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. Ensure box 5.20 of form SA905 is completed.

#### **Explanation**

For Capital Gains Tax 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 example it is common for beneficiaries to become absolutely entitled to property on reaching a particular age. Regardless of whether the property is actually transferred to the beneficiary(s) at this point, a disposal for Capital Gains Tax purposes will have taken place.

For further guidance see [CG37000+](#).

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## 5. Has any non-monetary consideration been included in the disposal proceeds?

### 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 will be necessary to value that non-monetary element. It may not always be apparent that this is the case. For example, the consideration may be an asset plus a sum of money.

### Mitigation

Check the disposal details to confirm exactly what form the consideration took. Where appropriate ensure the non-monetary element has been properly valued.

### Explanation

Where all or part of the consideration received is something other than cash, a valuation of the non-cash element of the consideration is required.

Consideration can be any form of value received. It can take the form of money's worth as well as money. For further guidance see **CG14500**.

### 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 necessary, has the asset disposed of been valued by a properly instructed, qualified, independent valuer?

### Risk

Valuation is an area of high risk. This is particularly so where the valuation is not referred to a qualified, independent valuer. However, it is not sufficient simply to 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 buildings - 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, the class and denomination of the shares, a history of the holding, particularly if there has been a reorganisation or takeover.
- For other assets - identification of sets and of wasting assets (see **CG15164**).

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

### Mitigation

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

- engage an independent valuer qualified to Royal Institute of Chartered Surveyors or equivalent standards
- explain the reason why the valuation is required and draw attention to the definition in S272 Taxation of Chargeable Gains Act 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 Capital Gains Tax).

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 **CG16600+**.

If you use the CG34 procedure ensure you enclose a Capital Gains Tax 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. You must ensure that the CG34 is submitted at least two months prior to filing the relevant Self Assessment tax return or we may be unable to complete the check in time.

Forms CG34 and any relevant additional information should be sent directly to the Trust Office in Truro.

Find form **CG34 Post-transaction valuation checks for capital gains**.

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## **7. Did 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 person other than the trustees has 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. For example other family members may own a share of the asset. 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 Q14.

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## 8. Where any of the consideration has been deferred, has the correct treatment been identified?

### Risk

There are occasions when the proceeds of disposal are not received immediately and some, or all, of the consideration is deferred. Depending on the nature of the deferred consideration, it may need to be taken into account immediately when computing the gain or loss for the disposal, even if it is not received until sometime after the disposal. Broadly, where the amount of the future consideration is ascertainable, the full amount is included when calculating the gain or loss.

### Mitigation

Check the disposal agreement or contract fully to identify any deferred consideration. Where there appears to be deferred consideration, establish the terms of the future payments eg whether the amount of the deferred consideration is **known** or whether the **amount** will be affected by a future event. See **CG14886** and **CG14887**.

The Capital Gains Tax treatment depends on whether the deferred consideration is ascertainable or not and not on whether the deferred amount is contingent..

### Explanation

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, the whole amount is ascertainable in the year of disposal and should all be included in the consideration.

Where the deferred amount is contingent it may still be known or ascertainable, for example where a fixed and known amount is payable but only if future profits of the company reach a specified level. In this case the amount is ascertainable and should be included in the consideration in the year of disposal.

Where the deferred amount is not ascertainable, for example, because future amounts payable are dependent on future events (such as being a percentage based on the future profits of a company in which shares disposed of were held, or the profits from developing land), the right to that part of the consideration is itself an asset. The value of this asset ie the right to receive the future payments, is included in the consideration for the disposal and so will have to be valued. See **CG14950**.

When that part of the consideration is eventually received it is treated as consideration for the disposal or part disposal of the right, not the original asset. There is a separate chargeable occasion when each instalment of the future payment is received (in respect of unascertainable deferred consideration) and further Capital Gains Tax calculations will be needed. For further guidance see **CG14970**.

For further guidance on deferred consideration see **CG14850+**.

Where the consideration for an asset is ascertainable and payable by instalments, the vendor may, in certain circumstances, ask to pay the tax due on its disposal by instalments.

This relief is available where the instalments of consideration specified in the contract for sale of the asset meet all of the following conditions:

- the instalments begin no earlier than the date of disposal of the asset
- the instalments extend over a period exceeding 18 months

- the instalments continue beyond the date on which the tax would otherwise be due and payable

Where these requirements are satisfied, the calculation of the instalments of tax which the vendor should pay is to be made in accordance with **CG14912+**.

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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
- a copy of any valuation report

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
- a copy of any valuation report

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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## Allowable costs

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 [CG15164](#)).

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

### Mitigation

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

- engage an, independent valuer qualified to Royal Institute of Chartered Surveyors or equivalent standards
- explain a valuation is required in accordance with S272 Taxation of Chargeable Gains Act 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 - see [Q12](#)).

### 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 [CG16600+](#).

If you use the CG34 procedure ensure you enclose a Capital Gains Tax 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. You must ensure that the CG34 is submitted at least two months prior to filing the relevant Self Assessment tax return or we may be unable to complete the check in time.

Forms CG34 and any relevant additional information should be sent directly to the Trust Office in Truro. Find form [CG34 Post-transaction valuation checks for capital gains](#).

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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 **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 **CG14530+**.

Please also refer to the valuation guidance above in [Q10](#).

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## 13. Is all of the expenditure deducted in working out the chargeable gain allowable?

### Risk

For expenditure to be allowed it must be incurred wholly and exclusively in one of the four categories set out in the explanation below. Expenditure not within these categories or which is allowed elsewhere, for example against property income, will not be allowed against the chargeable gain.

Establishing the cost from the capitalised amount in trust accounts may not give the correct figure for Capital Gains Tax purposes.

### **Mitigation**

Check each item of expenditure to confirm that it falls within one of the four allowable categories and that it is not relievable 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 [Q14](#)
- establishing, preserving or defending title to or rights over the asset
- incidental costs of acquisition and disposal

Allowable incidental costs are limited to:

- fees, commission or remuneration paid for the professional services of any surveyor, valuer or auctioneer, accountant, agent or legal adviser
- costs of transfer or conveyance (including Stamp Duty)
- costs of advertising to find a buyer or seller
- costs reasonably incurred in making any valuation or apportionment required for the purposes of the Capital Gains Tax computation

For further guidance see [CG15160+](#).

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**14. If there has been any enhancement expenditure since the asset was acquired, is the expenditure all allowable?**

### **Risk**

Not all enhancement expenditure is allowable, for example, if the enhancement is not reflected in the state or nature of the asset at the time of disposal.

Establishing the cost from the capitalised amount in trust accounts may not give the correct figure for Capital Gains Tax purposes.

### **Mitigation**

Obtain a full history of the asset and details of the expenditure. Ensure that the expenditure meets the conditions detailed below.

### **Explanation**

In order to qualify as enhancement expenditure, expenditure must satisfy all the following conditions. It must be:

- incurred on the asset
- incurred for the purpose of enhancing the value of the asset
- reflected in the state or nature of the asset at the date of disposal

For further guidance see [CG15180+](#).

### **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 [CG15200](#).

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## 15. Has there been a disposal of part of an asset and if so have the part disposal rules been applied?

### Risk

It is not always obvious that a disposal is of only part of the asset originally acquired. If this is the case but the part disposal rules are not applied, or are applied incorrectly, then the incorrect amount of allowable expenditure may be deducted in computing the gain.

### Mitigation

Check the history of the asset and disposal contract to identify the part of the asset disposed of. Where there has been a part disposal ensure the part disposal rules have been applied.

### Explanation

- The allowable acquisition cost (or March 1982 market value where appropriate) and any enhancement expenditure or incidental costs should normally be apportioned using a statutory formula - see [CG12731](#). The part retained must be correctly determined and valued - see [Q10](#) regarding valuations.
- The strict part disposal formula may not apply in the case of certain disposals of land - see [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 'S104 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 see [Helpsheet 284 Shares and Capital Gains Tax](#) and the [Capital Gains Tax for Shares Toolkit](#).

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## 16. If there has been a previous part disposal have you checked how much of the remaining allowable cost is available?

### Risk

If a previous part disposal is not identified, the calculation of the allowable cost on the current disposal may not be correct. For instance, a piece of land is split into two parts and one part is disposed of. On the disposal of the remaining land, only the balance of the base cost is available to be deducted in the Capital Gains Tax computation.

### Mitigation

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

### Explanation

Where there has been a previous part disposal, only the balance of the original cost less the adjusted cost from the previous part disposal, see [Q15](#), is available as allowable expenditure. The same costs cannot be used twice and any allowable costs used in the previous part disposal are not available on this occasion.

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.

For further information see [Helpsheet 284 Shares and Capital Gains Tax](#) and the [Capital Gains Tax for Shares Toolkit](#).

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## 17. 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-over or Hold-over Relief, the allowable cost for the purposes of this disposal must be reduced.

It is necessary to retain records of the reduction of the acquisition cost of an asset following a Hold-over Relief claim or a Roll-over Relief claim on an earlier disposal together with the other records relating to the asset to ensure that the capital gain can be calculated correctly on a later disposal of the asset.

For further guidance follow the links below:

- Business Asset Roll-over Relief - see [CG60250+](#).
- Relief for gifts and similar transactions (Hold-over Relief) - see [CG66450+](#).
- Enterprise Investment Scheme - see [CG62800+](#).
- Reinvestment Relief - see [CG62335](#).

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## 18. Where the asset(s) disposed of were inherited, has the correct acquisition cost been used for their disposal?

### Risk

It is sometimes assumed that a value provided to us for Inheritance Tax purposes has been 'ascertained' and that the same value is acceptable for Capital Gains Tax purposes. This is not always the case and so the market value of the asset at the date of death may still have to be established.

For the meaning of 'ascertained' in this context - see [CG32224](#).

### Mitigation

Check whether the value has been 'ascertained' for Inheritance Tax purposes. For further guidance - see [CG16251](#).

If it has not been 'ascertained', ensure that an appropriate market value of the asset(s) at the date of death is established - see [CG32230](#).

For further information about valuations - see [Q6](#).

## Explanation

When a person dies, the value of his or her estate may need to be considered by HMRC's Inheritance Tax office to determine any liability to Inheritance Tax. Where the values of the assets making up that estate have been 'ascertained' for the purpose of Inheritance Tax the same values must be used for Capital Gains Tax.

However, there are occasions when a value has been returned to HMRC's Inheritance Tax office, for Inheritance Tax purposes but has not been considered by them and so has not been 'ascertained'. For example where the whole estate may be clearly below the Inheritance Tax threshold.

Where the value has been not been 'ascertained' for the purposes of Inheritance Tax, the value must be determined for Capital Gains Tax purposes. For further guidance - see **CG32240+**.

For further guidance see **CG32222**.

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## Reliefs

### Private Residence Relief

19. 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 customers.

#### 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 area of garden or grounds which qualifies for relief is referred to as the permitted area. The permitted area is up to a maximum of 0.5 hectares. For further guidance see **CG64800**.

If the garden or grounds inclusive of the site of the dwelling house do not exceed an area of more than 0.5 hectares, then relief for the whole area is automatically due. For further guidance see **CG64815**.

Relief may be available for a larger area of garden and grounds if, having regard to the size and character of the dwelling house, it is required for the reasonable enjoyment of the dwelling house - see **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 **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 **CG64670+**.

Questions 14-16 in the **Capital Gains Tax for Land and Buildings Toolkit** outline the risks around permitted area and non-residential use in more detail.

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 **CG64206**.

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20. 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 not be due 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 **CG65400**.

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21. 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 **CG65460**.

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## Gift Relief

22. If the trustees are claiming Hold-over Relief on the disposal of an asset 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 295 Relief for gifts and similar transactions** 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 by way of a bargain 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 295 and submit it with the return. Where the transferee is an individual, make sure the claim is signed by both parties to the transfer.

For further information see **Helpsheet 295**.

### 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 **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 **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

23. If the trustees/personal representatives are claiming Roll-over Relief in respect of the disposal of any business assets, have you checked if 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 **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 or not all the disposal proceeds have been applied on the new asset.

### Mitigation

- Use **Helpsheet 290 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 **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 **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 **CG60620**.

For further guidance on Roll-over Relief see **CG60250+**.

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## **24. 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 Capital Gains Tax on account of Private Residence Relief

For further guidance on compulsory acquisition of land see **CG61900+**.

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## Enterprise Investment Scheme Deferral Relief

25. If the trustees are making a claim to Enterprise Investment Scheme deferral relief, have all the conditions been met?

### Risk

Enterprise Investment Scheme (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 the **Venture Capital Schemes Manual (VCM) 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 **VCM41500+**.

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

For further guidance on the claims procedure see **VCM38500**.

For further guidance on time limits for a claim see **VCM38110**.

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## Entrepreneurs' Relief

26. If the trustees are claiming Entrepreneurs Relief, have all the conditions been met for a claim?

### 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. Entrepreneurs Relief reduces the amount of Capital Gains Tax on a disposal of certain trust property.

The amount trustees can claim is limited. For disposals on or after 6 April 2011, relief is subject to a lifetime limit of £10 million qualifying gains for each qualifying beneficiary. The limit in respect of each beneficiary is reduced by the amount of any relief that the beneficiary has claimed personally and relief given to trustees of a settlement will reduce the beneficiary's entitlement to relief up to the lifetime limit. 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.

### **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

Check that the trust property disposed of consists of either:

- shares in, or securities of, a qualifying beneficiary's personal trading company
- assets used in a qualifying beneficiary's business

Check that all the qualifying conditions have been met. The qualifying conditions depend on the type of disposal.

For disposals of shares in and securities of a company the conditions that must be satisfied are that:

- the company must have been the qualifying beneficiary's personal company, and a trading company (or holding company of a trading group) for at least one year ending either on the date of the trustees disposal of the shares and securities or no earlier than three years before the date of the disposal
- throughout the same one year period, the qualifying beneficiary must have been an officer or employee of that company or of one or more members of the trading group

For disposals of assets (or interests in assets) used for the qualifying beneficiary's business, the conditions that must be satisfied are that:

- the asset must have been used for the qualifying beneficiary's business for at least one year ending within the three years up to the date of the trustees' disposal of the asset
- the qualifying beneficiary must have ceased to carry on that business on the date of disposal or within the period of three years before the date of disposal

Qualifying chargeable gains are charged to Capital Gains Tax at the Entrepreneurs' Relief rate of 10 per cent.

Ensure that adequate records are kept to accurately determine the level of lifetime limit used and remaining for each year.

For further details on Entrepreneurs' Relief see [Helpsheet 275](#).

### **Explanation**

Relief will be due as long as there is a qualifying beneficiary and the qualifying conditions have been met throughout the qualifying period.

For further guidance see [CG63985+](#).

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# Losses

27. If a loss has arisen from a disposal to a connected person, has it been relieved only against gains arising on a further disposal to 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. Losses arising from a disposal to a connected person can only be relieved against gains arising on disposals to the same connected person. These are known as 'clogged losses' and cannot be relieved against general chargeable gains. 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 unused balance of a clogged loss is to be carried forward, keep 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 **CG14590**.

For further guidance on 'clogged losses' see **CG14561**.

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28. If the trustees/personal representatives are using losses brought forward, has the correct figure been used?

## Risk

Without a full history of all the relevant assets or details of all the disposals where losses have been claimed and relieved (for example, you did not act for the trustees when some of the losses arose), it is possible to make an incorrect claim for the amount of losses to be set against chargeable gains or carried forward. 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 the amounts cannot be confirmed 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 [Q27](#)).

## 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 **CG15813**.

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