

Capital Gains Tax - Non-UK Resident Trusts - Finance Act 2008

This factsheet tells you about some of the changes to Capital Gains Tax introduced by the Finance Act 2008 which affect settlors and beneficiaries of non-resident trusts.

Capital Gains Tax rate for 2008-09

For the tax year 2008-09 the United Kingdom (UK) rate of Capital Gains Tax is 18%. This reduces the increase in tax charge under section 91 TCGA 1992 (also known as the 'supplementary charge') to a maximum of 10.8% (6 x 1.8%). The maximum total tax charge is now 28.8%.

Taper relief and indexation allowance

For any disposals made by trustees on or after 6 April 2008:

- taper relief and indexation allowance are not available
- where assets disposed of were held on 31 March 1982, use the market value at 31 March 1982 as the acquisition cost to work out any gain or loss.
- any unmatched trust gains at 5 April 2008 will retain any taper relief and indexation allowance, as calculated at the time those trust gains were made.

The stopping of indexation allowance and the mandatory use of market value at 31 March 1982 do not apply to the gains of an underlying non resident company that section 13 TCGA 1992 treats as accruing to trustees.

Matching rules for trust gains and capital payments from 2008-09

From 2008-09 the matching rules for trust gains and capital payments (which can include benefits) for all non-UK resident trusts have changed. Match the value of any capital payments made to a beneficiary with trust gains, on a last in first out basis.

For guidance on identifying which trust gains and capital payments for years before 2008-09 are unmatched at 5 April 2008, go to www.hmrc.gov.uk

Non domiciled beneficiaries

From 2008-09 non-UK domiciled beneficiaries are brought within the section 87 TCGA 1992 charge on beneficiaries:

- provided they are resident, or
- ordinarily resident in the UK.

But a non-domiciled settlor remains outside the section 86 TCGA 1992 charge on settlors.

Where a trust gain is treated as accruing to a beneficiary:

- who is resident or ordinarily resident
- but not domiciled in the UK

it will not be a chargeable gain to the extent that, in the matching process:

- the capital payment was made, or
- the trust gain was made

before 6 April 2008.

continued >>>

Help

If you would like more help with Capital Gains Tax or about the changes shown on this fact sheet:

- go to www.hmrc.gov.uk
- phone us on **0151 472 6384**

Or if you phone from abroad please phone **+44 151 472 6384**

HM Revenue & Customs commitment

We will

- be professional and helpful
- act with integrity and fairness, and
- treat your affairs in strict confidence within the law.

We aim to handle your affairs promptly and accurately so that you receive or pay only the right amount due.

Putting things right

If you are not satisfied with our service, please let the person dealing with your affairs know what is wrong. We will work as quickly as possible to put things right and settle your complaint.

If you are still unhappy, ask for your complaint to be referred to the Complaints Manager.

A capital payment received between 12 March 2008 and 5 April 2008 by a beneficiary:

- who is resident or ordinarily resident
- but not domiciled in the UK

both when the payment was received and in the year it would be matched is ignored in the matching process.

Election to use 5 April 2008 values

Any body of trustees which is non-resident throughout the year ended 5 April 2009 can make an election under paragraph 126 Schedule 7 Finance Act 2008.

This election restricts the amount of gains chargeable to tax on a beneficiary who is:

- resident or ordinarily resident in the UK, but
- not domiciled in the UK.

The full gain is treated as accruing to such a beneficiary. But the proportion of the gain that accrued before 6 April 2008 is not charged to tax on the beneficiary.

The election:

- is commonly called a 'rebasement election', and
- is irrevocable, and
- applies to all the assets in the trust and those in certain underlying companies, held at 5 April 2008.

The election should be made on form RBE1. This form can be downloaded from the HMRC website www.hmrc.gov.uk or can be ordered by phone on **0151 472 6384** or **+44 151 472 6384** if you are calling from abroad.

The time limit for making the election is 31 January after the end of the first tax year in which either of the following happens after 5 April 2008:

- a capital payment is received by a UK resident beneficiary, or
- there is a transfer of settled property to another settlement and section 90 TCGA 1992 applies to the transfer.

An election may be made before either of these events happens.

Remittance basis

The remittance basis applies if the beneficiary is a remittance basis user in a year in which a gain is treated as accruing to them under section 87 TCGA 1992. It applies even if the asset which gave rise to the trust gain was situated in the UK.

The gain is treated as remitted to the UK:

- when the capital payment in the matching process or
- any property, service or consideration deriving directly or indirectly from the capital payment

is received in, or remitted to, the UK

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- home visits, if you have limited mobility or caring responsibilities and cannot get to one of our Enquiry Centres
- services of an interpreter
- sign language interpretation
- leaflets in large print, Braille and audio.

For complete details please:

- go online at www.hmrc.gov.uk/enq or
- contact us. You will find us in *The Phone Book* under HM Revenue & Customs.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

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