

TRUST MANAGEMENT EXPENSES (TMEs)

This helpsheet will help:

- trustees of accumulation or discretionary trusts fill in **Section 13 of the Trust and Estate Tax Return. See Part 1**
- trustees of interest in possession (liferent) trusts **establish the correct trust management expenses to take into account before advising beneficiaries of their net entitlement. See Part 2**
- trustees of mixed trusts. **You will need to look at all three parts.**

Trustees may use this guidance to make returns or advise beneficiaries for the tax year 2009–10 and future years. The helpsheet is a guide only and does not cover all issues. Further detail is available in the Trusts Settlements and Estates Manual.

BACKGROUND – WHAT ARE TRUST MANAGEMENT EXPENSES (TMEs)?

In managing a trust the trustees may incur expenses in the course of exercising their duties and powers. These expenses are quite separate from any expenses trustees may incur in, for example, carrying on a trade or property income business, which are deductible in arriving at the amount of profits from these sources.

TMEs are not the same as payments made to or on behalf of beneficiaries (distributions).

For tax purposes, only income expenses are allowable as TMEs. Expenses that are incurred for the benefit of the capital beneficiaries, or for the benefit of both income and capital beneficiaries ('the whole estate'), are not allowable as TMEs. They cannot be charged to income, and they cannot be apportioned.

Expenses that are *exclusively* for the benefit of the income beneficiaries are chargeable to income and so are allowable. Such expenses may have been separately recorded, and can be identified. Where such an expense is not separately recorded, but the time related to these activities has been specifically recorded, the expenses can be apportioned on a time basis. Where time records alone are not determinative, the trustees can make a realistic estimate taking all factors into account. For tax purposes, the onus is on the trustees to show that expenses were incurred exclusively for the benefit of the income beneficiary, and to identify the relevant expenses.

This guide includes a table of specific items on pages 2 to 4. The table covers trustees of accumulation/discretionary trusts. It also covers interest in possession beneficiaries where there is no specific provision for the item, or giving the trustees general discretion as to the incidence of expenses, in the trust deed.

Part 1 – accumulation or discretionary trusts

TMEs are taken into account only in calculating how much of trustees' income is chargeable at the special trust rates. The calculation method is set out in the Trust and Estate Tax Return Guide in the notes to Question 13.

Only expenses that are properly chargeable to income in general trust law are allowable, disregarding any special provisions of the trust deed. For specific items, see the table on pages 2 to 4.

Expenses are taken into account in the tax year in which they are incurred.

Part 2 – interest in possession (liferent) trusts

TMEs are taken into account only in arriving at the income of the income beneficiary and do not reduce the trustees' taxable income. The calculation method is set out in the Trust and Estate Tax Return Guide in the notes to Question 13.

In contrast to accumulation or discretionary trusts, the provisions of the trust deed are taken into account. The beneficiary is taxable on their income entitlement under the deed. For specific items see the table on pages 2 to 4, but note that it covers IIP beneficiaries only generally. The general guidelines in the table should be supplemented by reference to the deed.

Expenses are taken into account in the tax year in which they are incurred.

Part 3 – mixed trusts

Trustees should make a just and reasonable apportionment of TMEs between income chargeable at the special trust rates and income of the beneficiaries who are entitled to it. Trustees should refer to the rules for both types of trust as set out in Parts 1 and 2 here and in the Trust and Estate Tax Return Guide in the notes to Question 13.

TRUST MANAGEMENT EXPENSES TABLE: WHAT IS ALLOWABLE/NOT ALLOWABLE

Item	Allowable	Not allowable
Accountancy	<p>Identifiable or realistically estimated costs of:</p> <ul style="list-style-type: none"> • accounting for the trust's income • returning the trust's income, including costs of tax return software incurred by the trustees • making Income Tax repayment claims • obtaining tax advice relating directly to the preparation of Income Tax returns or Income Tax repayment claims. 	<p>All other accounting costs.</p> <p>All other costs of making the tax return including return of capital gains.</p> <p>All other tax advice costs including costs that relate to Capital Gains Tax or Inheritance Tax.</p>
Audit	<p>Audit undertaken because of S22(4) Trustee Act 1925: where trustees exercise their discretion, expenses they decide to charge to income; where they do not, only the expenses associated with auditing income.</p> <p>Otherwise, identifiable costs of auditing the trust's income.</p>	<p>Audit undertaken because of S22(4) Trustee Act 1925: where trustees exercise their discretion, expenses they decide to charge to capital; where they do not, the expenses associated with auditing capital.</p> <p>Otherwise, all other audit costs.</p>
Bank charges	<p>Identifiable costs of operating a bank account that deals exclusively with income.</p>	<p>Charges to secure a facility that is for the better administration of the trust as a whole, for example charges on a current account, whether or not it incidentally bears interest, or to keep open an overdraft facility.</p>
Depreciation	<p>None.</p>	<p>All.</p>
Distributing trust funds - cost of	<p>Identifiable or realistically estimated costs of deciding which income beneficiaries to pay and how much, and of paying income to beneficiaries.</p>	<p>All other distribution costs.</p>
Insurance or assurance premiums	<p>Only where:</p> <ul style="list-style-type: none"> • the premiums relate to buildings insurance for a property, and • the lease contains an obligation to insure the property, and • the trustees are lessees of the property, and • the leasehold property is occupied by beneficiaries under the terms of the trust, and • neither the beneficiaries nor any tenants (as the case may be) are under a legal obligation to meet the insurance premium. 	<p>Premiums for insuring trust assets already allowed as a deduction against trading or rental income of the trustees.</p> <p>Insurance on trust assets other than buildings.</p> <p>Premiums payable in respect of trust buildings used or occupied by a beneficiary where the terms of the beneficiary's use or occupation provide that they must meet the insurance premium.</p> <p>Annual premiums on assurance policies.</p>

TRUST MANAGEMENT EXPENSES TABLE: WHAT IS ALLOWABLE/NOT ALLOWABLE

Item	Allowable	Not allowable
Interest	<p>Interest on a loan taken out in order to purchase an income-bearing asset, such as shares, that is to be held in the trust for as long as the asset is held in the trust.</p> <p>Interest on a loan taken out or overdraft arranged by trustees for acquiring a non-income generating property that is occupied by a beneficiary.</p>	<p>Interest on a loan taken out or overdraft arranged to pay for general administration or to buy a non-income generating asset (other than property to be occupied) for the trust, or an asset that is to be sold.</p> <p>Interest on a loan used by the trustees to make a gift or non-commercial loan to a third party (not an income beneficiary of the trust).</p> <p>Interest incurred in the course of a trade or rental business and already allowed as a deduction against trading or rental income.</p>
Interest on unpaid/overdue tax, etc.	Interest on overdue income tax.	<p>Interest on overdue Capital Gains Tax.</p> <p>Interest on unpaid Inheritance Tax.</p> <p>Interest on loans taken out to pay Inheritance Tax.</p> <p>Tax penalties.</p> <p>Surcharges under S59C TMA 1970.</p> <p>Interest on penalties and surcharges.</p>
Investment advice	Exceptionally, identifiable costs incurred for the purpose of temporarily investing income while deciding whether or not to distribute income to beneficiaries, to the extent that the income was distributed and not accumulated.	Normally, all costs, including the costs incidental to the investment or change of investment of trust funds and the costs of obtaining investment advice.
Legal costs	Identifiable or realistically estimated costs that relate exclusively to the income beneficiaries.	<p>All other costs including:</p> <ul style="list-style-type: none"> • the costs of the appointment of new trustees • the costs of obtaining legal advice, and of taking the direction of the court • the costs of an administration action • the costs of paying money into court under the Trustee Act • the costs of bringing or defending actions against third parties for the protection of the estate (for example, against lessees for breach of their covenants to repair), and the like.
Personal expenses of beneficiary	None.	All, including items that are the occupier's responsibility, as opposed to the owner's (trustee's) responsibility, for example utility bills and Council Tax (including business rates, if appropriate).
Premiums on life policies	None.	All.

TRUST MANAGEMENT EXPENSES TABLE: WHAT IS ALLOWABLE/NOT ALLOWABLE

Item	Allowable	Not allowable
Property costs	Identifiable costs of: <ul style="list-style-type: none"> • maintenance of a freehold property • rent or maintenance of a leasehold property, paid by trustees pursuant to the terms of a lease of which they are the lessees where: <ul style="list-style-type: none"> • the property is properly held by the trust for the occupation of a beneficiary, and • is actually occupied by a beneficiary, or the only reason it is not is because the property is in a state of disrepair that makes it uninhabitable, and • the beneficiary is not occupying on terms that he or she meets those expenses personally. 	Otherwise not allowable.
Property income business expenses	None.	All.
Reimbursement of expenses to trustees	Allowable or not according to what costs the reimbursement is for - see specific categories.	Allowable or not according to what costs the reimbursement is for - see specific categories.
Running costs	None.	All, including maintaining an office, salaries of personnel, expenses of accommodation, cleaning, and maintenance of equipment and premises.
Trading expenses	None.	All.
Travel and subsistence costs of trustees	Identifiable costs incurred exclusively to confer benefit on the income beneficiaries.	All other costs.
Trustees' fees - the Public Trustee	Costs specifically chargeable to income by statute – the Public Trustee (Fees) Order SA 1999 No. 855.	All other costs.
Trustees' fees - other trustees	Identifiable or realistically estimated costs of conferring benefit exclusively on income beneficiaries, such as securing the income of the trust, and determining and making income distributions.	All other costs.

These notes are for guidance only and reflect the position at the time of writing. They do not affect the right of appeal. Any subsequent amendments to these notes can be found at www.hmrc.gov.uk