HM Revenue & Customs

Trusts with settlor interest and trusts for the vulnerable: taper and losses

This Help Sheet explains how taper and personal losses are dealt with in the case of 'settlor-interested trusts'. It explains how settlors and trustees should complete their Returns for the year ended 5 April 2008 in respect of the gains of such trusts. But it is only an introduction. If you are in any doubt about your circumstances you should ask your tax adviser. We will also be pleased to help. You can also consult our Capital Gains Manual, which explains the rules in more detail, at **www.hmrc.gov.uk**

Meaning of settlor-interested trust

Where a settlement is a settlor-interested trust for Capital Gains Tax purposes, the broad effect is that the chargeable gains minus allowable losses of the trustees are calculated, and the net amount is not charged on the trustees, but instead an equal amount is added to the settlor's personal chargeable gains.

Where the trustees are resident in the UK, a settlement is a settlor-interested trust for a tax year if the settlor or the settlor's spouse or civil partner or minor child or step-child are, or may be, entitled to benefits at any time in that year or in any future year, or if they receive a benefit during the year. This is explained in more detail on page 5 of Help Sheet 294 *Trusts and Capital Gains Tax*.

Where the trustees are not resident in the UK, a settlement can also be a settlor-interested trust if the range of beneficiaries extends to certain other members of the settlor's family, see Help Sheet 299 *Non-resident trusts and Capital Gains Tax*, whether or not the settlor or the settlor's spouse or civil partner are beneficiaries.

All references to settlor-interested trusts and settlors in this Help Sheet apply equally to UK resident trusts for UK resident 'vulnerable beneficiaries', substituting vulnerable beneficiary for settlor, where an election is in force and a claim has been made for the year. In the case of such a trust, Capital Gains Tax is charged as if it were a settlor-interested trust and the vulnerable beneficiary were the settlor. More details are at **www.hmrc.gov.uk**

Contacts

Please phone:
- the number printed on page TR 1 of your Return
- the Helpline on **0845 9000 444**
- the Orderline on **0845 9000 404** for Help Sheets

or go to **www.hmrc.gov.uk**

Broad description of method

An amount equal to the gains of the trustees after trust losses but before taper relief is attributed to the settlor. Personal losses, including losses brought forward, which are not needed to cover personal gains are then deducted from the gross attributed gains before taper relief. Taper relief is then applied to the net trust gains attributed to the settlor. There is an example on page 3.

There is a detailed explanation of taper relief in Help Sheet 279 *Taper relief.* In cases of settlor-interested trusts it is calculated by reference to the circumstances of the trust.

Resident trustees: completion of Trust and Estate Tax Returns

Taper relief is not due to the trustees. Therefore, enter '100%' in Column J on Page TC 3 of the *Trust and Estate Capital Gains* Pages. Deduct the trust's allowable losses in the normal way. The amount to go in box 5.6A on Page TC 3 is, therefore, an amount after losses but without any taper relief.

'Special case': temporary non-residents

This paragraph applies where an individual is temporarily non-resident. See Help Sheet 278 *Temporary non-residents and Capital Gains Tax.* If the trustees of a settlor-interested non-resident trust have gains while the settlor is temporarily non-resident and gains are attributed to beneficiaries under Section 87 of the Taxation of Capital Gains Act 1992, then special rules apply.

Please ask your tax adviser or phone HMRC - Residency on **0845 070 0040** if you need more information.

Settlor: completion of Tax Return

This provides additional guidance to the *Capital Gains Summary notes*. In setting out your computations to accompany the *Capital Gains Summary* pages of your Tax Return the following guidance may help you as a settlor to deduct your personal losses.

First, list each of your personal gains with a description of the asset, and work out the chargeable gain, after reliefs, but before losses and taper relief, on each disposal. For each disposal also work out and note the percentage of the gain chargeable after taper relief.

Next, add to the list above, in the way described below, the trust gains attributed to you (excluding gains attributed to you in your capacity as non-vulnerable beneficiary or gains from settlor-interested trusts within the special case referred to earlier). For each settlement, instead of listing individual disposals and their description, list the total chargeable gains to which a particular rate of taper relief applies and the name of the settlement. Note the percentage of the gain chargeable after taper relief next to each entry in the list.

The next step is to deduct your personal losses of the year and those brought forward following the guidance set out in the *Capital Gains Summary* notes:

- first set the losses against your personal gains according to the percentage of the gain chargeable after taper relief, starting with the highest, in accordance with the guidance on page CGN 8 of the *Capital Gains Summary notes*
- if there are losses left, then set them against the trust gains in the same way. If there are gains from two or more settlements with the same percentage of the gain chargeable after taper relief, and you cannot use up all the losses against all the gains at that percentage, then the losses must be deducted in proportion to the gains. This is to ensure that the correct amount of tax relates to each settlement
- enter in box 32 of the *Capital Gains Summary* pages any attributed gains not covered by the above, that is, gains attributed to you in your capacity as beneficiary or gains from settlor-interested trusts within the special case referred to earlier.

Example

The layout of a list might look like this. Personal losses of the year available are £25,000.

Brief description of the asset	Chargeable gains after relief, but before losses and taper relief (£)	Percentage of the gain chargeable after taper relief	Losses deducted (£)	Gains after losses (£)	Tapered gains
XYZ plc	5,000	90%	5,000	0	0
Jones Ltd	2,000	25%	2,000	0	0
No. 1 Trust	5,000	95%	5,000	0	0
No. 2 Trust	8,000	95%	8,000	0	0
No. 1 Trust	6,000	90%	3,000	3,000	2,700
No. 2 Trust	4,000	90%	2,000	2,000	1,800
No. 3 Trust	8,000	25%	0	8,000	2,000

Note: the losses go against personal gains first, despite the fact that the percentage of the gain chargeable after taper relief on Jones Ltd is by far the lowest. (For the sake of this example it may be assumed that Jones Ltd is a company whose shares have qualified as business assets at all material times.)

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