

Non-resident trusts and Capital Gains Tax

This Help Sheet gives you information to help you decide whether you have taxable capital gains as settlor of a non-resident trust.

What is a non-resident trust?

Trustees are treated as a single deemed person, the residence status of which depends on the residence status of each trustee.

A non-resident trust is one:

- that has trustees who are all resident outside the UK, or
- where there is a mixture of resident and non-resident trustees acting at the same time and the settlor was
 - not resident in the UK
 - not ordinarily resident in the UK, and
 - not domiciled in the UK

when the settlement was set up and when any later funds were added.

If a non-resident trustee:

- carries on a business in the UK through a branch, agency or permanent establishment in the UK, and
- acts as a trustee in the course of that business

then, in applying the tests above, the trustee is treated as resident in the UK.

These notes may also apply if the trustees are resident in the UK but they are treated, for the purposes of a Double Taxation Agreement, as resident in another country. If you are in any doubt about whether this applies to your case, ask us or your tax adviser for help.

Who is liable to Capital Gains Tax when gains arise to non-resident trustees?

If you are the settlor because you have directly or indirectly provided money or other value for the trust, you may be liable to Capital Gains Tax when gains arise to the trustees. You may also be liable to Capital Gains Tax when gains arise to relevant overseas private companies in which the trustees have invested.

In this Help Sheet, a 'relevant overseas private company' is one in which the trustees have an interest and which is one under the control of either the directors or no more than five participators. If you are in doubt, please ask us or your tax adviser.

If you are a beneficiary (whether or not you are also the settlor) you may be liable to Capital Gains Tax if you directly or indirectly receive capital or some other benefit from the trust – ask the Orderline for Help Sheet 301 *Beneficiaries receiving capital payments from non-resident trusts and the calculation of the increase in tax charge*.

When is a settlor liable to Capital Gains Tax as gains arise?

You, as settlor, are liable to Capital Gains Tax when gains arise to the non-resident trustees of your trust and/or to any relevant overseas private company in which they have invested, if you are resident and domiciled in the UK and any of the persons listed overleaf (the 'defined persons') can or do benefit from the trust.

Trusts for minor children

The rule described in the previous paragraph does not apply if, by 5 April 1999 and at each subsequent 5 April, the only defined persons who could have benefited from the trust were your children and/or any children of your spouse or civil partner, and they were all under age 18 on that date. In deciding whether this exception applies, do not take into account the possibility (if appropriate) that future children or future spouses or civil partners may benefit.

But the rule described above does apply, even where only children and/or children of your spouse or civil partner can benefit, if:

- you made the trust after 18 March 1991, or
- extra capital, income or other value was directly or indirectly added to the trust after 18 March 1991*, or
- the non-resident trustees were first appointed to act after 18 March 1991, or
- the terms of the trust were varied after 18 March 1991 to allow any of the defined persons listed below to benefit for the first time, or
- any of the defined persons listed below actually benefited after 18 March 1991 for the first time, without the trust provisions actually allowing them to benefit.

*A sale at full open market value is not an addition for this purpose. 'Indirect addition' includes the gifting of money or other assets to companies in which the trustees have invested.

Who are the defined persons?

In applying the tests in the notes above, consider whether any of the following persons can benefit, or have benefited, from the trust:

- you
- your spouse or civil partner
- any of your children, or children of your spouse or civil partner
- spouses or civil partners of such children
- companies that any of the above persons, alone or jointly, control
- companies associated with such controlled companies (ask your tax adviser if you think there may be controlled or associated companies that can benefit from your trust).

See, however, the next paragraph if none of the above can benefit.

Trusts for grandchildren or grandchildren's spouses or civil partners

You, as settlor, will also be liable to Capital Gains Tax when gains arise to the non-resident trustees of your trust and/or to any relevant private overseas company in which they have invested, if:

- you made the trust after 16 March 1998, or
- extra capital, income or other value was directly or indirectly added to the trust after 16 March 1998, or
- the non-resident trustees were first appointed to act after 16 March 1998, or
- the terms of the trust were varied after 16 March 1998 to allow the persons described below to benefit for the first time, or
- any of the persons described below actually benefited after 16 March 1998 for the first time, without the trust provisions actually allowing them to benefit

and

any of your grandchildren, or grandchildren of your spouse or civil partner, or any of their spouses or civil partners, or any companies controlled by one or more of them (or by one or more of them together with one or more defined person - see above), or any companies associated with such controlled companies, can or do benefit from the trust.

Where are the gains to be entered?

If you are liable to tax when gains arise to the non-resident trustees of your trust and/or to relevant overseas private companies in which they invest, the trustees' net chargeable gains are attributed to you and should be included in the overall figure in box 31 on the page CG 2 of the *Capital gains summary* pages. Details of these gains should be included in your computations accompanying these pages.

If you are liable to tax as a beneficiary (whether or not you are also the settlor), because you directly or indirectly receive capital or some other benefit from the trust, details of such gains should be set out in a computation accompanying the *Capital gains summary* pages and the amount included in box 32 on page CG 2. If this applies, ask the Orderline for Help Sheet 301 *Beneficiaries receiving capital payments from non-resident trusts and the calculation of the increase in tax charge*.

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