Beneficiaries receiving capital payments from non-resident trusts and the calculation of the increase in tax charge

This Help Sheet gives you information to help you fill in box 9 in the *Capital gains summary* pages of your Tax Return. It explains how Capital Gains Tax is chargeable on capital payments or benefits from a non-resident, dual resident or immigrating trust, but it is only an introduction.

The following instructions will show you how to complete the Working Sheet on page 3 to arrive at a figure for box 9.

If you are in any doubt about whether you are liable to Capital Gains Tax on capital payments or benefits from a non-resident, dual resident or immigrating trust, or about how the tax is calculated, ask us or your tax adviser.

Who should use this Help Sheet

Any person resident in the UK who has directly or indirectly benefited from a non-resident, dual resident or immigrating settlement may be liable to Capital Gains Tax as a result. That person must be resident and domiciled in the UK to be liable to an increase in tax charge.

In the Help Sheet the term 'immigrating' settlement or trust means one which is resident in the UK but either had been resident abroad previously or has had money or other assets transferred to it by a trust that still is abroad or had been abroad previously.

For further information on what is a non-resident trust or a dual resident trust and whether you are liable to tax on the capital gains of such a trust if you are its settlor, see Help Sheet 299 *Non-resident trusts and Capital Gains Tax.*

How Capital Gains Tax is charged

Capital Gains Tax may be due if you have received a capital payment or benefit from a non-resident, dual resident or immigrating trust. The maximum amount chargeable is the total capital gains made by the non-resident or dual resident trustees, calculated as if they had been resident in the UK. Gains of overseas companies in which the trustees have invested may also be taken into account.

A benefit includes interest-free loans and loans at less than a commercial rate of interest, rent-free occupation of trust property or use of trust property at less than market rental.

If you have directly or indirectly received, or are treated as having received, capital or a benefit from a non-resident, dual resident or immigrating trust, its value must be matched against capital gains made by the trustees and by any foreign private company in which they have invested. The trustees or their tax advisers should be able to tell you whether there are capital gains and how those are matched with your receipts or benefits. Enter the gains at box 32 in your *Capital gains summary* pages. You cannot set any personal losses against these gains.

If you are non-UK domiciled see 'What if I am non-UK domiciled' on page 3.

Example

James is UK resident and domiciled. He received a capital payment of £10,000 from a non-resident trust during the year ended 5 April 2009, but the trustees made gains of £20,000 in the year ended 5 April 2007 that have not yet been matched with payments made to, or benefits provided for, beneficiaries.

Capital Gains Tax is due on the £10,000 James received.

How to calculate the increase in tax

Where the capital gains which have been matched against the capital payment or benefit were made in an earlier year you may have to pay extra tax. In the above example James would have to pay an increased amount of tax to reflect the fact that the gain made by the trustees actually arose two years earlier. The table below shows by what percentage the normal Capital Gains Tax bill is increased.

You should assume that the normal tax bill is calculated as if the gains deemed to arise to you from this source are the first slice of your total gains. So the benefit of your Capital Gains Tax annual exempt amount will be given against these gains.

Then match the gain against the gains of the trust and any foreign private company involved and work out by how much your normal tax bill would be increased, using the Working Sheet on page 3.

If the matching is against gains arising in more than one of the periods listed in the table below, the normal tax bill should be apportioned proportionally and the appropriate percentages applied to the apportioned amounts. In case of difficulty the HM Revenue & Customs Residency office (formerly the Centre for Non-Residents) will be pleased to help you, on **0845 070 0040**.

Table of increase in tax

2008-09 value of capital or benefit matched against gains which arose	Normal tax bill increased by
Before 6 April 2003	60%
In the year ended 5 April 2004	50%
In the year ended 5 April 2005	40%
In the year ended 5 April 2006	30%
In the year ended 5 April 2007	20%
In the year ended 5 April 2008	10%*
In the year ended 5 April 2009	No increase due

* This increase does not apply unless the special anti-avoidance provisions in relation to transfers of value by trustees linked with trustee borrowing also apply.

Working Sheet

Total payments and benefits received from non-resident, dual resident or immigrating trusts		£		
Matched with trust gains from:				
• years before 6 April 2003	Normal tax due	£	x 60% =	£
• year ended 5 April 2004	Normal tax due	£	x 50% =	£
• year ended 5 April 2005	Normal tax due	£	x 40% =	£
• year ended 5 April 2006	Normal tax due	£	x 30% =	£
• year ended 5 April 2007	Normal tax due	£	x 20% =	£
• year ended 5 April 2008	Normal tax due	£	x 10%* =	£
• year ended 5 April 2009	Normal tax due	£	no increase due	
		Total increase in tax		£

Copy this figure to box 9 of your *Capital gains summary* pages.

* This increase does not apply unless the special anti-avoidance provisions in relation to transfers of value by trustees linked with trustee borrowing also apply.

What if I am non-UK domiciled

From 6 April 2008 as a non-UK domiciled beneficiary you can be chargeable to Capital Gains Tax where you have received a capital payment or benefit from a non-resident, dual resident or immigrating trust. You will only have a Capital Gains Tax charge if:

- you received the capital payment or benefit after 5 April 2008, and
- the gain made by the trustees or any foreign private company in which they have invested, matched against the capital payment or benefit, arose after 5 April 2008.

The trustees or their tax advisers should be able to tell you whether you could have a Capital Gains Tax charge.

If there could be a Capital Gains Tax charge on you, then:

- if you are a remittance basis user the gain attributed to you will only be chargeable when the capital payment or benefit you received is received in, or remitted to, the UK. Further details on when something is remitted to the UK are on page RRN 21 of the *Residence, remittance basis etc. notes*
- if you are **not** a remittance basis user the gain attributed to you will be chargeable to Capital Gains Tax when it is attributed to you.

When a gain becomes chargeable to Capital Gains Tax it should be entered at box 32 in your *Capital gains summary* pages.

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