HMRC - CG34700 - Settlor Trusts: Introduction

There are special Capital Gains Tax rules to deal with the case where the person who made the settlement (the `settlor’) or the settlor’s spouse or civil partner is entitled to benefit or does in fact benefit from the settlement. There have been similar rules for Income Tax since the early part of the last century. But rules of this kind were not needed for CGT when it was introduced, because the rate of CGT for trustees was the same as or higher than that for individuals until FA88. Neither are they needed for 2008-09 onwards because FA08 introduced a single rate of CGT for all taxpayers. FA08 repealed the rules that apply to UK resident settlement. The special rules that apply to non-resident settlements continue to operate. See CG38400+.

Between 6 April 2006 and 5 April 2008 the provisions also apply to settlements, whenever made, where the settlor’s minor child or step-child (unless married or with a civil partner) is entitled to benefit or does in fact benefit from the settlement, except to the extent that as a result of a claim the settlement falls within the vulnerable beneficiaries’ régime described in CG35550+.

FA88 provided that individuals were liable to CGT at the same rates as for Income Tax. On the other hand trustees were liable at 25 per cent or 35 per cent. Therefore, without special rules it would have been simple for higher rate taxpayers to transfer property to the trustees of a settlement which provided that the income was theirs and they could get out the capital when they wanted.

Therefore there are rules which provide that in these cases the chargeable gains of the trustees are treated as if they were, in effect, chargeable gains of the settlor. For 2004-05 to 2007-08 trustees were taxed at 40%. The provisions discussed in the following paragraphs continued to apply to those years. They will however operate to reduce tax liability where the settlor is not liable at the higher rate. The special rules do not apply for the year 2008-09 onwards.

These rules apply to UK-resident settlements only. See CG38400+ for non-resident settlements.

Special restrictions to the gifts hold-over provisions of TCGA92/S165 and TCGA92/S260, set out in TCGA92/S169B onwards, apply in the case of transfers to settlor-interested settlements.

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