HMRC - CG34870 - Settlor Trusts: Computations: Personal Losses: Temporary Non-Residents: Gains Restricted

The operation of S86, S86A, S87 and S89 is the responsibility of HMRC Charities, Savings and International, Bootle, see CG38400+.

Individuals who are temporary non-residents may be taxed on their return to the UK in accordance with S10A TCGA 1992, see CG26200. Section 10A(2)(b) specifically includes gains attributed under section 86 in the list of gains that may be charged on return. Section 77 gains are not attributed to temporary non-resident settlors who return to UK residence. This is because the trustees, being UK resident, will have been charged to tax on the gains in question whilst the settlor was non-resident.

Where a settlor has been temporarily non-resident and is chargeable under S10A on return to the UK, there may be a reduction in the amount to be attributed to him because of TCGA1992/S86A (2) where capital payments have been made to trust beneficiaries during the intervening years, see CG26220.

For 2003-04 onwards S86A(2)(a),(b), (2A) and (2B) apply where the amount of chargeable gains to be attributed to the returning settlor in respect of gains of a non-resident trust has been reduced because beneficiaries of the trust are charged to tax for intervening years under S87 TCGA, see CG38570c, or S89(2). The trustees of the settlement will then have applied taper relief before determining the amount to be attributed to the settlor. The gains attributed to the settlor are therefore tapered and the settlor will not able to apply personal allowable losses off against the attributed gains, because that would involve setting losses off against tapered gains.

S86A(7) and (7A) TCGA and S87(3) and (3A) ensure that the reduction in the pool of gains that might be attributed to beneficiaries is equal to the amount of gains attributed to the settlor after the application of taper relief (irrespective of whether taper relief was in fact applied by the trustees).

It should be noted that for years before 2003-04 (but see CG34873) personal losses cannot be deducted from S86 gains including such gains treated as accruing to the settlor by virtue of S10A. The effect of the legislation outlined above is to maintain this treatment for later years in the narrow circumstances described.

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