HMRC - CG34912 - Settlor Trusts: Computations: Double Taxation Relief

A settlor may be able to claim exemption on some or all of the attributed trust gains, but this depends on the terms of the particular double taxation agreement. The gain which is chargeable on the settlor is not the same as the gain which accrues to the trustees. Therefore Articles which exempt trustees from UK tax on gains accruing on the disposal of particular property do not necessarily operate to exempt the settlor from liability under Section 77. However section 77(1)(b) requires there to be an amount on which the trustees would have been chargeable for the year in respect of the gains in question. So if the correct interpretation of the Double Taxation Agreement by reference to the relevant acts is that the trustees would be exempt if they were chargeable then there is no liability. This is by way of contrast with section 86 where there is a hypothesis in subsections (1)(e)(i) and (3) that the trustees are in fact resident in determining whether the section applies and therefore one cannot take into account the actual non-residence. Compare Bricom Holdings v CIR 70TC272.

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