

Income and benefits from transfers of assets abroad and income from non-resident trusts

i **Contacts**

Please phone:

- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

or go to
www.hmrc.gov.uk

This helpsheet gives you information to decide whether:

- you should report income of a person abroad as your income
- you should report benefits received out of income, or assets of a person abroad, as your income
- any of the amounts you report above are exempt from tax
- you should report income payments from a foreign trust.

Transfers of assets – power to enjoy income

If you have:

- transferred or taken any part in the transfer of assets, or
 - there has been an operation associated with a transfer and as a result of any of these transactions income has become payable to a person abroad
- then if the following conditions are met, you should report the income in the way described in ‘How do you report the income’ on page 2.

The conditions are:

- you are ordinarily resident in the United Kingdom (UK) for the tax year in which income becomes payable to the person abroad
- you have power (in whatever form) in the tax year to enjoy that income now or at any other time
- if that income were yours and received by you it would be chargeable to Income Tax.

Transfers of assets – entitlement to capital sums

If you have:

- transferred or taken any part in the transfer of assets, or
 - there has been an operation associated with a transfer and as a result of any of these transactions income has become payable to a person abroad
- then if the following conditions are met, you should report the income in the way described in ‘How do you report the income’ on page 2.

The conditions are:

- you are ordinarily resident in the UK for the tax year in which income becomes payable to the person abroad
- you (or another person at your direction or on your assignment) have received this year or in the past, or are entitled to receive, a capital sum (including for example, a loan) connected in any way with a relevant transaction.

Transfers of assets – benefits received as a result of a relevant transaction

If someone else has made the same sort of relevant transactions mentioned in the paragraphs on page 1 and you have been provided with a benefit as a result of these relevant transactions, then if the following conditions are met the value of any benefit (including payment) you receive may be treated as your income for tax purposes and you should report the amount as income in the way described in ‘How do you report benefits?’ on page 4.

The conditions are:

- you are ordinarily resident in the UK for the tax year in which the benefit is received
- you are not liable to Income Tax in respect of the relevant transaction under either of the above provisions
- you are not otherwise liable to Income Tax on the benefit apart from this provision
- the person abroad has ‘available relevant income’ up to the amount of the ‘total untaxed benefits’ (this is explained further on page 3).

What is the income?

The income is the amount of income of the person abroad for the tax year that has become income of that person as a result of relevant transactions. All forms of income are included as well as certain items treated as income, like offshore income gains (see notes on ‘Gains on disposals of holdings in offshore funds’ on page FN 16 of the *Foreign notes*), and chargeable event gains on certain insurance policies (see, for example, Helpsheet 321 *Gains on foreign life insurance policies*).

How do you report the income?

Unless you are completing box 46 on page F 6 of the *Foreign* pages – see ‘How do you qualify for an exemption from charge on income or benefits?’ on page 6 – report the amount of income as follows:

- enter in box 11 on page F 3 of the *Foreign* pages details of all dividends received on which you are chargeable including any allowable UK or foreign tax credit
- enter in box 13 on page F 3 of the *Foreign* pages all other income including any tax paid on that income.

You should enter details of the relevant transactions that have given rise to the income, and the offshore structures involved, in the ‘Any other information’ box, box 19 on page TR 6 of your tax return.

All income that is chargeable to tax under the transfer of assets provisions should be entered at boxes 11 and 13 of the *Foreign* pages **not** in the corresponding boxes elsewhere in the return for the type of income involved. For example, if interest income arose to a foreign company and that income is treated as yours under the transfer of assets provisions, then the income should be entered at box 13 not in the relevant boxes for interest. If you are non-UK domiciled then you may not have to enter all of the income if some of the income arising to the person abroad is from a source outside the UK and not remitted to the UK. See ‘How do you report income or benefits if you are non-UK domiciled?’ on page 6.

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What is relevant income if you have received benefits?

To calculate the amount that you should report in the tax return you will need to follow these steps.

- Step 1** Identify the amount or value of benefits received in the tax year and in any earlier tax year in which there were taxable benefits ('the total benefits').
- Step 2** Deduct from the total benefits the total amount treated as your income under these provisions for earlier tax years as a result of the relevant transactions. This is 'the total untaxed benefits'.
- Step 3** Identify the amount of any income arising to the person abroad in the tax year which can, as a result of relevant transactions, be used directly or indirectly for providing a benefit. This is 'the relevant income of the tax year'.
- Step 4** Add together the relevant income of the tax year and the relevant income of earlier tax years (identified on the same basis as Step 3). The sum of these amounts is 'total relevant income'. Ignore any income that arose before 10 March 1981.
- Step 5** Deduct from total relevant income the amount deducted at Step 2 and any other amount not to be taken into account (for example, because of provisions for no duplication of charges). The result is 'the available relevant income'.
- Step 6** Compare the total untaxed benefits and the available relevant income. Enter on your return the total untaxed benefits unless the available relevant income is lower. If the available relevant income is lower, then enter that amount.

If you received your payment or other 'benefit' from a UK resident trust which either has been a non-resident trust, or which has received assets from a trust which either is or has been a non-resident trust, only count income that arose while the relevant trust was abroad. If you are unsure whether the trust is or has been a non-resident trust you should ask the trustees or your tax adviser.

Benefits include, for example, loans at less than a commercial rate of interest and the occupation or use of property at less than a commercial rental. The value of the benefit will be determined from the circumstances of the case, but may be the difference between the amount payable at the commercial rate of interest or rental and any amount actually paid by you.

You must also include indirect receipt of benefits, for example, if the benefit came from a company controlled by trustees, or from a UK resident trust that has been, or has received funds from, a non-resident trust.

You may need to ask the person abroad for information to complete your return.

If you are non-UK domiciled then you may not have to report benefits if the available relevant income – referred to at Step 6 – includes foreign income. See 'How do you report income or benefits if you are non-UK domiciled?' on page 6.

If the value of what you have received or benefited from exceeds the available relevant income, you may be liable to Capital Gains Tax on the excess. You may need Helpsheet 301 *Beneficiaries receiving capital payments from non-resident trusts: calculation of the increase in tax charge*, as well as the *Capital gains summary* pages. You can get these at www.hmrc.gov.uk or from the SA Orderline on 0845 9000 404. Otherwise, that excess will need to be taken into account when completing your tax return next year.

How do you report benefits?

Unless you are completing box 46 of the *Foreign* pages – see ‘How do you qualify for an exemption from charge on income or benefits?’ on page 6 – you should enter the amount computed at Step 6, in box 42 on page F 6 of the *Foreign* pages.

Please enter in the ‘Any other information’ box, box 19 on page TR 6 of your tax return:

- the full name and address of the person abroad receiving the available relevant income
- the details of the relevant transactions that have given rise to the income
- how you have calculated the benefits included on the return.

Where the benefit has come from a UK resident trust in the circumstances described in the previous section, also give details of those circumstances including the full name of any other trust involved.

What is a relevant transaction?

A relevant transaction is a relevant transfer or an associated operation.

A transfer is a relevant transfer if it is a transfer of assets and as a result of the transfer, or as a result of an operation associated with such a transfer, income becomes payable to a person abroad.

In this connection:

- ‘assets’ means tangible assets (for example, cash, property or shares) or intangible assets (for example, rights, such as rights to your services etc.)
- associated operation means an operation of any kind, effected by any person, in relation to
 - (i) any of the assets transferred
 - (ii) any assets directly or indirectly representing any of the assets transferred
 - (iii) the income arising from any assets within (i) or (ii), or
 - (iv) any assets directly or indirectly representing the accumulations of income arising from any assets within (i) or (ii).

Who or what is a ‘person abroad’?

For the purpose of these provisions a ‘person abroad’ means a person who is resident or domiciled outside the UK. That person could, for example, be an individual, a body of trustees, or a company. Certain persons are treated as resident outside the UK, including:

- a company that is incorporated outside the UK whether it is resident outside the UK or not
- trustees of certain settlements regarded as neither UK resident nor ordinarily UK resident, and
- certain personal representatives of a deceased person who are treated as non-UK resident.

What if your spouse or civil partner is involved?

You may still have to report income under this section even if you did not, yourself, make the relevant transactions or if you did, you cannot enjoy the income of the person abroad, or are not entitled to receive any capital sum connected in any way with the transfer. This may be the case where your spouse or civil partner made the relevant transactions or they can enjoy such income or receive, or be entitled to receive, such a capital sum.

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What if tax has been paid on the income?

The following paragraph only applies if you are reporting income according to 'How do you report the income?' on page 2.

If the amounts included in boxes 11 and 13 of the *Foreign* pages include tax credits or other tax paid on the income of the person abroad, then you may be able to claim a deduction against your liability for that tax. You will only be entitled to relief for the tax paid by the person abroad if it is in effect tax on 'the same' income, and only to the extent that the tax has actually been paid by, and not refunded to, the person abroad.

The amount of tax for which you can claim relief should be included in Column C and also included in box 2 of the *Foreign* pages. You should note Column E of your claim. In addition, you should send a schedule with the *Foreign* pages, showing the amount of each item of income, and tax credit/tax paid on that income, which has been included in boxes 11 and/or 13, and Column C.

If the tax for which you are claiming relief is foreign tax, for which you wish to claim Foreign Tax Credit Relief (see page FN 3 of the *Foreign notes*) the details to be entered on the schedule should include:

Column A – Country or territory code

Column B – Amount of income arising or received before any tax taken off

Column C – Amount of eligible foreign tax

Column E – That you wish to claim Foreign Tax Credit Relief and rate of tax allowed (see page FN 3 of the *Foreign notes*)

Column F – Amount included in box 11 and/or box 13 which should be the amount arising before any tax taken off.

In the event that you do not wish to claim Foreign Tax Credit Relief for foreign tax, no entry should be made in Column E and the amount to be included in box 11 and/or box 13 should be the income after foreign tax.

If the tax for which you are claiming a deduction is UK Corporation Tax then, in addition to entering the above details on the schedule, full details of how you have calculated the amount of credit claimed, and particulars (name, address and, where appropriate, tax reference number) of the person or company which paid the tax should be given in the 'Any other information' box of your tax return. If you do not yet know the final amount of tax paid by the person abroad, you should estimate the amount of credit available and amend your tax return when the final details are known. You must draw attention to the estimate and explain the circumstances in the 'Any other information' box of your tax return. If any additional tax becomes payable as a result of using an estimate the usual provisions for charging interest on tax paid late will apply.

If the income on which you are liable to tax under these provisions is a 'foreign dividend', then you may be entitled to a non-payable UK tax credit (see page FN 6 of the *Foreign notes*).

What if you are entitled to the income of a trust?

If, as a result of your transfer of assets, income has become payable to a trust situated abroad, and you have received or are deemed to have received income from the trust, then you should ask for or download the *Trusts etc.* pages and Helpsheet 270 *Trusts and settlements – income treated as the settlor's*. This will enable you to consider whether income of the trust should be reported under this heading or elsewhere on the tax return.

How do you qualify for an exemption from charge on income or benefits?

Income or benefits may be excluded from charge under these provisions if you can show from all the circumstances of the case that the purpose of avoiding liability to taxation was not the purpose, or one of the purposes, for which the relevant transactions or any of them were effected. But if you omit income for this reason from boxes 11, 13 or 42 of the *Foreign* pages, you must enter the amount omitted in box 46 and provide relevant details and an explanation in the 'Any other information' box of your tax return including details of the assets transferred and any associated operations, the persons abroad concerned, the circumstances of the relevant transactions and the basis for your claim to exclusion.

How do you report income or benefits if you are non-UK domiciled?

If you are non-UK domiciled you have to report the income arising to the person abroad or the amount calculated where benefits have been received exactly as described above. There is however an exception to this for a non-UK domiciled individual if the 'Remittance basis' applies or has applied to you. Information about the remittance basis and whether it applies to you can be found on page RRN 10 of the *Residence, remittance basis etc. notes*.

If the remittance basis applies to you this year then, to the extent that the amount you are due to otherwise report represents foreign deemed income, you only have to report that amount if, and to the extent that, it is remitted to the UK. Further information about what 'remitted to the UK' means can be found on page RRN 21 of the *Residence, remittance basis etc. notes*. All other amounts are reportable in full. Guidance on what is 'foreign deemed income', and how to calculate it, can be found at

www.hmrc.gov.uk/cnr/non-doms-final.pdf

You will need to keep track of any amounts not reported this year under the previous paragraph as those amounts are 'ring-fenced' until they are remitted to the UK. To help you keep track of any amounts that you have ring-fenced this year, you may wish to enter details in the 'Any other information' box of your tax return.

If the remittance basis applied to you in an earlier year, in addition to any amounts arising to you this year, then you have to report any of the ring-fenced amounts of those earlier years remitted to the UK this year.

If you are reporting ring-fenced amounts that have been remitted to the UK this year, whether income or benefits, the amount should be entered in box 13 (along with any amounts to be included as income arising this year). Columns B and C should be completed as appropriate. No amounts should be entered in box 11 for remittances of ring-fenced income. You may also wish to draw attention to the fact that the return includes remittances of previously ring-fenced amounts in the 'Any other information' section of your tax return.

These provisions only apply to amounts that are treated as foreign income arising on or after 6 April 2008.

If you are unsure about what amount to report, you should ask your tax adviser or report the full details including amounts and your doubts in the 'Any other information' section of your tax return.

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Income from non-resident trusts

If you have an absolute entitlement to the income from a non-UK resident trust, enter the foreign source income in boxes 4 to 9 on page F 3 of the *Foreign* pages according to the nature of the income. You should enter UK source income in boxes 3 to 5 on page T 1 of the *Trusts etc.* pages (or as directed in the notes for those boxes on page TN 2 of the *Trusts etc. notes*).

If you have received a discretionary payment from the non-UK resident trust, enter all of the income in box 41 on page F 6 of the *Foreign* pages unless the situation mentioned in the next paragraph applies. If you wish to make a claim under Extra Statutory Concession B18, you should phone HMRC Trusts & Estates, Non-Resident Trusts Nottingham on **0845 604 6455**. In addition, you should advise your tax office that you are making a claim under Extra Statutory Concession B18 and, in the 'Any other information' box of your tax return, enter details of the name of the trust from which the income payment was received and the tax reference of the trust.

If part or all of the income distribution has already been charged to tax in the UK on the settlor of the trust, see page TN 1 of the *Trusts etc. notes*. Instead of entering the amount so charged in box 41 of the *Foreign* pages, include it in box 2 of the *Trusts etc.* pages. If you are the settlor and already chargeable on the income arising to the trustees, there is no need to include in box 41 or box 2 on the *Trusts etc.* pages any discretionary payments made to you by the trustees.

The amount to be entered either in box 41 or in box 2 of the *Trusts etc.* pages should take account of the effects of your residence/domicile status.

These notes are for guidance only, and reflect the position at the time of writing. They do not affect any rights of appeal. Any subsequent amendments to these notes can be found at www.hmrc.gov.uk