

Notes on TRUST AND ESTATE NON-RESIDENCE

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■ *Residence status – general*

These Notes help you to determine:

- whether the trustees/personal representatives are
 - not resident in the UK for Income Tax purposes
 - not resident in the UK for Capital Gains Tax purposes
- how residence affects Income Tax and Capital Gains Tax and the amount of tax the trustees/personal representatives have to pay
- what Double Taxation Agreements are and how they can reduce the UK tax the trustees/personal representatives have to pay
- what to do if the trustees are resident in the UK and, for tax purposes, also resident in a country with which the UK has a Double Taxation Agreement
- how in general terms other supplementary pages relevant to the Trust and Estate Tax Return are to be completed as a result of the trustees'/personal representatives' tax status
- what other information is available (see also the Trust and Estate Tax Return Guide for advice on where to get more help generally).

■ *Deciding the trustees' residence status for Income Tax and Capital Gains Tax purposes*

From 6 April 2007, the rules for working out the residence status of trustees are the same for both Income Tax and Capital Gains Tax. So trustees will usually have the same status for both taxes (but see Notes 2 and 3 below). For periods before this date, the rules were different and it was possible to be resident for one tax and not resident for the other.

You can find out the trustees' residence status for Income Tax and Capital Gains Tax purposes by working through Questions 1 to 3 and reading Note 1 (if relevant).

1. Were **all** the trustees resident in the UK throughout the year to 5 April 2011?

Yes ☐ No ☐

If 'YES', the trustees as a whole are resident in the UK for Income Tax and Capital Gains Tax purposes. Tick boxes 6.1 and 6.3.

If 'NO', go to Question 2.

2. Were **all** the trustees not resident in the UK throughout the year ended 5 April 2011?

Yes ☐ No ☐

If 'YES', the trustees as a whole are not resident in the UK for Income Tax and Capital Gains Tax purposes. Tick boxes 6.2 and 6.4. Please also complete boxes 6.7 to 6.16, 6.19 and 6.20 as appropriate.

If 'NO', go to Question 3. (See Notes 2 and 3 below.)

3. At the time funds were provided for the trust, was any person who provided, directly or indirectly, such funds:

- resident in the UK, or
- ordinarily resident in the UK, or
- domiciled within some part of the UK?

Yes ☐ No ☐

If 'YES', the trustees as a whole are resident in the UK for Income Tax and Capital Gains Tax purposes. Tick boxes 6.1 and 6.3.

If 'NO', the trustees as a whole are not resident in the UK for Income Tax and Capital Gains Tax purposes. Tick boxes 6.2 and 6.4. Please also complete boxes 6.7 to 6.16, 6.19 and 6.20 as appropriate.

Note 1 – Non-UK resident professional trustees

For the purposes of Questions 1 and 2 a trustee who is actually non-UK resident is treated as UK resident if acting as trustee in the course of a business which the trustee carries on in the UK through a branch, agency or permanent establishment.

Note 2

If, for part of the year to 5 April 2011, all the trustees were not resident in the UK, then the trustees as a whole will not be resident in the UK for that period for Income Tax purposes. Tick box 6.2. Please also complete boxes 6.7 to 6.12 as appropriate. In completing the Trust and Estate Tax Return do not include overseas income arising during the period of non-residence but remember to include all income arising during the period of residence.

Note 3

For Capital Gains Tax purposes, if the trustees were not resident for part of the year to 5 April 2011 but resident for the other part, they are treated as resident throughout the year.

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■ Deciding the personal representatives' residence status for Income Tax purposes

You can find out the personal representatives' residence status for Income Tax purposes by working through Questions 4 to 6.

4. Were **all** the personal representatives resident in the UK throughout the year to 5 April 2011?

Yes ☐ No ☐

If 'YES', the personal representatives as a whole are resident in the UK for Income Tax purposes. Tick box 6.1. Go to Question 7.

If 'NO', go to Question 5.

5. Were **all** the personal representatives not resident in the UK throughout the year to 5 April 2011?

Yes ☐ No ☐

If 'YES', the personal representatives as a whole are not resident in the UK for Income Tax purposes. Tick box 6.2. Please also complete boxes 6.7 to 6.12 as appropriate. Go to Question 7.

If 'NO', go to Question 6.

6. At the time of death, was the deceased person whose estate is being administered:

- resident in the UK, or
- ordinarily resident in the UK, or
- domiciled in the UK?

Yes ☐ No ☐

If 'YES', the personal representatives as a whole are resident in the UK for Income Tax purposes. Tick box 6.1. Go to Question 7. Also, if the deceased was domiciled outside of the UK at the date of death, see the notes aside 'Personal representatives: application to Income Tax'.

If 'NO', the personal representatives as a whole are not resident in the UK for Income Tax purposes. Tick box 6.2. Please also complete boxes 6.6 to 6.12 as appropriate. Go to Question 7.

■ Deciding the personal representatives' residence status for Capital Gains Tax purposes

You can find out the personal representatives' residence status for Capital Gains Tax purposes by answering Question 7. If there is more than one set of personal representatives for the purposes of general law, for Capital Gains Tax purposes they are all treated as a single body.

7. At the time of death, was the deceased person whose estate is being administered:

- resident in the UK, or
- ordinarily resident in the UK?

Yes ☐ No ☐

If 'YES', the personal representatives as a whole are resident in the UK for Capital Gains Tax purposes. **The remittance basis is not available.** Tick box 6.3.

If 'NO', the personal representatives as a whole are not resident in the UK for Capital Gains Tax purposes. Tick box 6.4. Please also complete boxes 6.13 to 6.16 as appropriate.

■ Tax implications

- Trustees: application to Income Tax

If the trustees are not resident for Income Tax purposes, they will not be liable to Income Tax on overseas income. In such circumstances, when completing the Trust and Estate Trade, Partnership, and Foreign pages and boxes elsewhere on the Trust and Estate Tax Return, you should **not** include that income.

Details of such income may, however, be required from the trustees if the beneficiary has made or intends making a claim to relief under *Extra-Statutory Concession B18*. The HM Revenue & Customs office responsible for dealing with these claims is:

HMRC Charity Assets and Residence
Trusts & Estates – Nottingham Office
1st Floor Ferrers House
Castle Meadow Road
Nottingham
NG2 1BB
England

For UK customers - Phone: **0845 604 6455**

For overseas customers - Phone: **01872 245359**

Email via our website at www.hmrc.gov.uk

HMRC Charity Assets and Residence may contact you for this additional information when they receive a claim. If you need more information about how *Extra-Statutory Concession B18* applies, please contact them.

- Trustees: application to Capital Gains Tax

If the trustees are not resident for Capital Gains Tax purposes, they will not be liable to Capital Gains Tax except in the special circumstances specified below. You need not therefore give information about Capital Gains Tax unless these circumstances apply.

Special circumstances

Trustees who are not resident but are carrying on a trade in the UK through a branch, agency or permanent establishment are subject to Capital Gains Tax on gains resulting from the disposal of:

- assets situated in the UK and used in, or for the purposes of, the trade at or before the time when the capital gains accrued, or
- assets situated in the UK and used or held for the purposes of the branch, agency or permanent establishment at or before that time, or assets acquired for use by, or for the purposes of, the branch, agency or permanent establishment.

The charge does not, however, arise unless the disposal is made at a time when the trustees are carrying on the trade in the UK through a branch, agency or permanent establishment.

You should enter relevant details on the Trust and Estate Capital Gains pages.

- Personal representatives: application to Income Tax

If the personal representatives are resident in the UK, their taxable income will depend on the domicile of the deceased, whose estate is being administered, at the date of death.

If the deceased was domiciled in the UK, then the personal representatives will be taxable in the normal way on both UK and overseas income.

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If the deceased was domiciled outside of the UK, they will be taxable only on UK income. In such circumstances, you should **not** include overseas income. Please also tick box 6.6.

If the personal representatives are not resident in the UK, they will not be taxable in respect of foreign income. In such circumstances, you should **not** include such income. In addition, such personal representatives will not need to include details of income from UK government securities that has been paid without deduction of tax.

However, this does not mean that income which is not taxable on personal representatives is not chargeable to tax on a UK resident beneficiary. Details of such income may be requested by the beneficiary to enable them to complete their personal tax return.

● Personal representatives: application to Capital Gains Tax

If the personal representatives are not resident for Capital Gains Tax purposes, they will not be subject to Capital Gains Tax except in the special circumstances specified below. They need not, therefore, make any entries for Capital Gains Tax on page 3 of the Trust and Estate Tax Return or the Trust and Estate Capital Gains pages unless these circumstances apply.

Special circumstances

Personal representatives who are not resident but are carrying on a trade in the UK through a branch, agency or permanent establishment are subject to Capital Gains Tax on gains resulting from the disposal of:

- assets situated in the UK and used in, or for the purposes of, the trade at or before the time when the capital gains accrued, **or**
- assets situated in the UK and used or held for the purposes of the branch, agency or permanent establishment at or before that time, or assets acquired for use by, or for the purposes of, the branch, agency or permanent establishment.

The charge does not, however, arise unless the disposal is made at a time when the personal representatives are carrying on the trade in the UK through a branch, agency or permanent establishment.

You should enter relevant details on the Trust and Estate Capital Gains pages.

Double Taxation Agreements

A Double Taxation Agreement is an arrangement by the governments of two countries to resolve taxation issues affecting them both. Agreements contain detailed provisions designed to eliminate or relieve the double taxation that can occur when income arises in one country to a resident of another. They do this either by exempting the income from tax in one country, or by reducing the rate at which tax is charged in one country and allowing credit for that reduced rate of tax in the other country.

A list of countries with which the UK has Double Taxation Agreements can be found in the Digest of Double Taxation Treaties on our website. Go to www.hmrc.gov.uk and look for *DT Digest* within the *Search* facility.

■ Non-UK residents

If the trustees/personal representatives are not resident in the UK but resident in a country with which the UK has a Double Taxation Agreement, they may be able to get relief from UK tax under the terms of that agreement in respect of income arising in the UK from:

- royalties
- dividends
- interest.

Some agreements require the trustees/personal representatives to be subject to tax in the other country on the income in question before they get relief from UK tax.

You can find the precise conditions for exemption or relief in the relevant agreement. It is not possible to give full details here as they vary from agreement to agreement. If you require further assistance to help you decide whether any relief is due under a Double Taxation Agreement, ask us or your tax adviser.

■ Dual residents

It may be that the trustees/personal representatives are resident in the UK under UK domestic tax law **and also** resident for the same period in another country under that country's rules (that is, they are 'dual resident'). If the other country is one with which the UK has a Double Taxation Agreement, the agreement will usually provide special rules for determining, but only *for the purpose of applying its detailed provisions*, in which of the two countries they are regarded as a resident.

If they are 'dual resident', the trustees/personal representatives may be able to claim the exemptions and reliefs from UK tax granted to residents of that other country. For the purposes of certain Capital Gains Tax reliefs, dual resident trustees are treated as not resident.

The rules for determining residence for the purposes of a Double Taxation Agreement can be complex. Broadly, the standard provisions look at criteria such as the availability of a 'permanent home', personal and economic relations with both countries, 'habitual abode' and nationality. For trustees, the provisions look at where the effective management of the trust is situated.

Some of these terms have special meanings and interpretation of them is not always straightforward. Not all agreements have identical rules, or similar effect on tax liability.

The precise conditions for exemption or relief can be found in the relevant agreement. If you require further assistance to help you decide whether any relief is due under a Double Taxation Agreement, ask us or your tax adviser.

If you intend to make a claim, tick box 6.5. Please also complete boxes 6.21 to 6.34 as appropriate and contact us for further advice. You will also need to obtain a certificate from the overseas tax authority showing that they regard the trustees/personal representatives as residents under the domestic tax law of that country for the period of claim. This should be stated on the certificate. Keep it in case it is needed later to support your claim.

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