



RESIDENT STATUS OF TRUSTEES & PERSONAL REPRESENTATIVES

UK OR NOT UK?

The rules for determining the residence of trustees were harmonised for UK Income Tax and Capital Gains Tax from 2007/08. The new definitions apply from 2007/08.

TRUSTEES

Trustees all non-UK resident

The trust will be treated as not UK resident for both Income Tax and Capital Gains Tax.

Trustees all UK resident

The trust will be treated as resident in the UK for both Income Tax and Capital Gains Tax irrespective of the residence and domiciled of the settlor.

Trustees of mixed residence

Where at least one trustee is UK resident and at least one trustee is not UK resident, the trust will be treated as UK resident for Income Tax and Capital Gains Tax if the settlor was resident or ordinarily resident or domiciled in the UK at the relevant time when the assets were settled. However the trust will be treated as not UK resident for Income Tax or Capital Gains Tax if the settlor was not UK resident or ordinarily resident or domiciled at the relevant time when the assets were settled.

PERSONAL REPRESENTATIVES (PRs)

UK INCOME TAX

PRs all UK resident

If all the PRs are UK resident in their personal capacity, they will be liable to UK Income Tax. This means that all the estate income, no matter where it arises, will be liable to UK income tax regardless of the country of residence or domicile of the deceased. However the notes to complete the 2010 Self Assessment return state that if the deceased was UK resident but not UK domiciled, the UK resident PRs will not be taxable on overseas income, and such income need not be returned. Strictly this is not correct in law, but one can assume that as this is in HMRC guidance notes it is accepted concessionary practice.



PRs all non-UK resident

If all the PRs are not UK resident in their personal capacity, then they will be not UK resident, and only UK source income will be liable to UK Income Tax.

Liability to UK income tax

Where UK Income Tax is in point, it will be at the basic or dividend rate. Higher rate tax is not chargeable on PRs.

Mixed residence PRs

Where the PRs are of mixed residence, the non-resident PRs will be treated as UK resident if the deceased was UK resident, UK ordinarily resident or UK domiciled, and therefore UK Income Tax will be charged accordingly on all estate income, subject to the concession mentioned above.

Where the PRs are of mixed residence, the UK resident PR will be treated as non-UK resident if the deceased was not UK resident, or not ordinarily UK resident or not UK domiciled, and therefore only UK source income will be liable to UK tax.

CAPITAL GAINS TAX

For CGT purposes, the PRs will be treated as having the deceased's residence, ordinary residence and domicile at the date of death. Therefore if the deceased was not UK resident or ordinarily resident, there will be no liability to CGT on any disposals of assets during the administration of the estate, even though the PRs themselves are all UK resident or have mixed residence. Therefore in these circumstances the PRs are outside the scope of CGT.

If the deceased was UK resident or ordinarily resident, then the PRs will be liable to UK CGT on all gains during the administration period, irrespective of the residence of the PRs. If the deceased was UK resident but not UK domiciled, then the PRs are treated as UK resident but not domiciled. However the remittance basis of charge is not available to them because it is only available to individuals, not to PRs.

Where for example there are non-resident PRs who hold shares in a non-resident company and the company realises a gain, as the PRs are non-resident and are not trustees, they will not be treated as if the company gain had accrued to them.

If you would like to know more then please contact

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