



TAX CHANGES FOR NON-RESIDENT TRUSTS

WITH EFFECT FROM 6 APRIL 2008

Calculation of Gains and Non-Domiciled UK Resident Beneficiaries

The method of calculating chargeable gains realised directly by non-resident trustees has changed. Now, there is no taper relief and no indexation allowance. However, the calculation of gains in underlying companies, attributable to non-resident trustees, has not changed, and indexation allowance will still apply to those gains.

Trustees will be able to make an irrevocable election to rebase assets held at 6 April 2008, in order to exclude any part of a chargeable gain relating to the period prior to 6 April 2008 from being taxed on non-domiciled beneficiaries.

This one-time election will relate to all trust assets and to assets held by an underlying company. Those assets will be treated as if they had been sold and reacquired at their market value on 6 April 2008. This has the effect of washing out the accrued gain. The election must be made on or before 31 January following the tax year during which (i) a capital payment is made to a UK resident beneficiary, or (ii) part of the trust fund is transferred to a new trust. The election will not be treated as realising the gain. Instead when the asset is sold, and the gain is actually realised, the gain will be split between a pre-6 April 2008 pool and a post 6 April 2008 pool. Thus the paperwork to be maintained by non-resident trustees will increase.

Up until 6 April 2008 capital payments to non-domiciled UK resident beneficiaries were not liable to CGT. From 6 April 2008 capital payments will be liable to UK CGT, if the payment is “matched” with gains arising after 6 April 2008, unless the remittance basis is claimed. See our note on the Remittance basis of charge for foreign income & foreign gains, which has also changed from 6 April 2008. Non-domiciled UK resident beneficiaries will not pay tax on benefits/capital payments matched with gains in the pre-6 April 2008 pool. The supplementary CGT charge may apply if there is a delay in trust gains being matched with capital payments. The rate of UK CGT for individuals was 18% before 23/6/2010 and 18%/28% from 23/6/2010, with the maximum supplementary charge being 28.8% to 44.8%.

For all beneficiaries, capital payments will be matched with the later gains first, on a “last in first out” basis, which is the reverse of the position up to 5 April 2008. Thus, once capital payments have been matched with post-6 April 2008 gains, any balance will be matched with earlier gains, and if paid to non-domiciled UK residents this element will continue to be tax-free.

Prior to 6 April 2008 UK resident non-domiciled settlors of non-UK trusts were not liable to CGT on gains made by the trustees on the disposal of trust assets. This rule will NOT change for non-domiciled settlors after 6 April 2008. Therefore gains made by non-resident trusts, with UK resident non-domiciled settlors, will be calculated as normal but will only come into charge when/if paid to UK resident beneficiaries, who, if they are not UK domiciled, may be able to benefit from the remittance basis rules.

If you would like to know more then please contact

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