Income Tax and Capital Gains Tax for non-resident trusts

Trustees abroad

These pages give a non-statutory outline of the UK tax liabilities that may arise in respect of income and gains arising to trustees operating abroad. They do not deal with:

- resident trusts
- specialised trusts such as unit trust schemes
- the Employment Income tax or PAYE (Pay As You Earn) aspects of company employee non-resident trusts
- any other tax liabilities, for example Inheritance Tax, that may arise

They offer general guidance on how the rules apply. But the rules are complex and the way in which they apply in a particular case will depend on all the facts of that case. For fuller information see the legislation itself.

Some practices explained in this guide are concessions that HM Revenue & Customs (HMRC) makes. A concession will not be given in any case where there is an attempt to use it for tax avoidance. These notes are for guidance only. They do not affect any right of appeal.

Residence' is a complicated subject. The RDR1 contains guidance on the residence, domicile and the remittance basis rules for tax years 2012-13 onwards.

The HMRC6 booklet should be used as a guide by residents or non-residents for information on rules affecting their tax liability in the UK up to the end of tax year 2012-13 only.

Self Assessment

Responsibility to notify liability

Like any other taxpayer, non-resident trustees are obliged to notify liability to Income Tax and Capital Gains Tax.

There is no separate legislation. The obligation applies to all trustees who are liable to UK tax. It does not matter where they live.

Non-resident trustees must submit a Self Assessment tax return to HMRC by the usual date.

Non-resident trustees will require the Trust and Estate Tax Return pages. They may need other supplementary pages, including those for capital gains.

Trusts that HMRC Trusts & Estates, non-resident trusts deals with

HMRC Trusts & Estates, is the tax office for most non-resident trusts:

- with trustees who are not resident in the UK for Income Tax purposes
- with trustees who are not resident in the UK for Capital Gains Tax purposes

HMRC Trusts & Estates also deal with, or give advice on, foreign estates.

Contact HMRC Trusts & Estates

Residence rules for trustees

From 6 April 2007 there is a common residence test for Income Tax and Capital Gains Tax.

The rules treat the trustees as a single and continuing body of persons. That body's residence status depends on the residence status of each trustee.

Guidance can be found in this appendix to the Trusts, Settlements and Estates Manual

Non-resident professional trustee being deemed to be UK resident

There is a special rule that can deem a trustee to be UK resident even though the trustee is non-resident. The deeming is only for the purposes of determining the residence status of the body of trustees. The rule only applies if a non-resident trustee:

- carries on a business in the UK through a branch, agency or permanent establishment in the UK
- acts as a trustee in the course of that business

There is further guidance on this available in the appendix to the Trusts, Settlements and Estates Manual

The legislation

The rules are in Section 475 Income Tax Act 2007 and Section 69 Taxation of Chargeable Gains Act 1992.

Dual-resident trustees

Trustees may be resident in the UK and another country at the same time. HMRC Trusts & Estates checks in detail any claim for dual residence.

If there is a Double Taxation Agreement with another country, it may have a 'tie-breaker' provision. A tie-breaker makes the trustees a resident of one of the countries. But this is only for the purposes of applying the provisions of the Double Taxation Agreement.

Change in residence status of body of trustees

A change in the residence status of a body of trustees is usually caused by a change in the trustees who make up the body. It can also happen where the trustees remain the same but one of them changes their residence status.

For Income Tax purposes for periods to 5 April 2013, where the residence status of the body of trustees changes during a tax year, the year is split, so that a trust could be resident for part of the year and non-resident for the other part. If the residence status of a body of trustees changes during the tax year then the trustees are potentially liable for Income Tax on all their worldwide income for the period they were actually resident. They are only liable for Income Tax on their UK source income for the period they were actually non-resident.

With the introduction of the Statutory Residence Test from 6 April 2013 there is no longer a split year treatment where the trustees are individuals and the residence status of the trust changes. In such circumstances if a trust is resident for part of the tax year, it is treated as resident for all of the tax year. However, if an individual becomes or ceases to be a trustee, that tax year is split in respect of the individual. If the individual was acting as trustee only in the period when they were not resident in the UK, for the purposes of determining the trust residence they will be treated as if they were non-resident for the year. The residence position of a corporate trustee follows the general rules relating to company residence when determining their residence for the purpose of the trust's residence.

For Capital Gains Tax purposes if trustees as a body are regarded as resident for any part of a tax year, gains arising at any time in the tax year are chargeable to Capital Gains Tax. However, with the introduction of the Statutory Residence Test from 6 April 2013 if an individual was acting as a trustee only in the period when they were not resident in the UK , for the purposes of determining the trust residence they will be treated as if they were non-resident for the year. Where the trustees become not resident during the year, there may be an exit charge.

Information needed for trusts

When setting up records for a trust, HMRC Trusts & Estates requires a completed form 41G (Trust)

You do not have to complete the form and provide the information but it will help in dealing with the tax affairs of the trust, its settlor and the beneficiaries.

Notifying income and gains by non-resident trustees

Income

Guidance can be found at TSEM1563.

The beneficiary gets credit for UK Income Tax that the bare trustee has paid.

The beneficiary of a bare trust returns the income on their Self Assessment tax return.

Capital gains

Bare trustees are not chargeable on any capital gains they make and do not make a return of those gains to HMRC. The beneficiaries must return gains personally.

Income Tax liability of non-resident trustees

It is necessary to decide if the trust is within Section 479 Income Tax Act 2007.

A trust is within Section 479 Income Tax Act 2007 if:

- The trustees have the power to accumulate income or make discretionary payments
- The trust income is not treated as that of the settlor. (This condition applies for years up to and including 2005-06 only. For 2006-07 onwards the exemption from the special trust rates for settlor-interested settlements no longer applies.)

Tax is charged at the trust rate. For 1999-2000 onwards, dividend type income is charged at the dividend trust rate. From 2005-06 onwards the first slice of income is charged at ordinary rates instead of the trust rate or dividend trust rate - Section 491 Income Tax Act 2007.

The following income of an accumulation or discretionary trust, is exempt from charge under Section 479 Income Tax Act 2007:

- income arising to a trust established for charitable purposes only
- income from investments, deposits or other property, held for an approved superannuation fund

Non-resident trust within Section 479 Income Tax Act 2007

Foreign income

Foreign income is not chargeable to UK tax.

FOTRA securities

Interest from FOTRA (free of tax to residents abroad) securities remains chargeable to UK tax unless:

- HMRC Trusts & Estates confirms that it is exempt.

- The provisions of Section 811 Income Tax Act 2007 apply. Briefly, if no beneficiaries are resident in the UK, the trustees do not pay tax on interest they receive gross.

For more information see FOTRA securities.

Other UK interest received gross

Under Section 811 Income Tax Act 2007, if no beneficiaries are resident in the UK, the trustees do not pay tax on interest they receive gross. If Section 811 Income Tax Act 2007 does not apply, the trustees are chargeable to tax.

Other UK income

Subject to the possible effects of Section 811 Income Tax Act 2007, other UK income remains chargeable to UK tax.

HMRC Trusts & Estates will give general advice about Section 811 Income Tax Act 2007.

Non-resident trust not within Section 479 Income Tax Act 2007: Interest in possession trust

This type of trust exists when a beneficiary, known as an 'income beneficiary', has a current legal right to the income from the trust as it arises. The trustees must pass all of the income received, less any trustees' expenses and tax, to the beneficiary. An interest in possession trust is not within Section 479 Income Tax Act 2007.

A beneficiary who is entitled to the income of the trust for life is known as a 'life tenant' (a 'liferenter' in Scotland) or as having a 'life interest' (a 'liferent interest' in Scotland).

The income beneficiary need not, and often does not, have any rights over the capital of such a trust. Normally, the capital will pass to a different beneficiary, or beneficiaries, at a specific time in the future or after a specific future event. Depending on the terms of the trust, the trustees might have the power to pay capital to a beneficiary even though that beneficiary only has a right to receive income.

A beneficiary who is entitled to the trust capital is known as the 'remainderman' ('fiar' in Scotland) or the 'capital beneficiary'.

Foreign income

Foreign income is not chargeable to UK tax.

FOTRA securities

Section 811 Income Tax Act 2007 applies to interest from FOTRA securities. Briefly, if no beneficiaries are resident in the UK, the trustees do not pay tax on interest they receive gross.

For more information see [FOTRA securities]

Other UK income

Subject to the possible effects of Section 811 Income Tax Act 2007, other UK income remains chargeable to UK tax.

Trustees becoming non-resident

Where trustees become not resident in the UK, there may be a charge to Capital Gains Tax. Before 6 April 2013 trustees needed to become not resident and not ordinarily resident in the UK for this to apply. The relevant rules treat the trustees as disposing of, and immediately reacquiring, the trust assets. This deemed disposal is immediately before the trustees became not resident. The deemed disposal and re-acquisition are at the market value at that time.

There are two exceptions to the charge:

1. The trustees may have assets in the UK that they use for the purposes of a trade. If the trustees trade through a branch or agency in the UK, these assets are excluded from the charge.

2. Some double taxation agreements exempt gains on certain assets. If a disposal immediately before the change of residence would be exempt, there is no charge under these rules on those assets.

These rules deem the trustees to have disposed of assets. The charge therefore falls on the trustees.

Failure to pay tax due

If the non-resident trustees do not pay the tax due on gains arising under these rules within six months, a former trustee may be required to pay the unpaid tax and interest. The trustee must pay it within 30 days of the notice. This trustee must have held office in the 12 months before the trustees became not resident. Before 6 April 2013 trustees needed to become not resident and not ordinarily resident in the UK for this to apply. The former trustee does not have to pay the tax and interest if they show:

- they ceased to be a trustee before the date the trustees became not resident
- there was no proposal for the trustees to become not resident when they ceased to be a trustee

Trustees becoming dual resident

Trustees can be resident in both the UK and another country. They become 'dual resident'. A Double Taxation Agreement may exempt gains on the disposal of certain of the trust assets. These are known as relevant assets.

The rules treat the trustees as having made a deemed disposal of the relevant assets. The deemed disposal and re-acquisition is immediately before the date the trustees became dual resident.

Income

Bare trustees are not obliged to complete Self Assessment tax returns. But they can choose to make a return of trust income. They would then account for the UK Income Tax due.

The beneficiary gets credit for UK Income Tax that the bare trustee has paid.

The beneficiary of a bare trust returns the income on their personal Self Assessment tax return. The beneficiary enters it on the page for the particular income in question.

Interest in possession trusts - beneficiary entitled to trust income

This guidance refers to a beneficiary who is absolutely entitled to trust income, as it arises, subject to any prior claims by the trustees for expenses or other outgoings properly payable out of income.

Beneficiaries who are resident in the UK and are absolutely entitled to trust income except from a bare trust should follow the instructions contained in the SA107 (Notes) under the heading 'Income from trusts and settlements' when making their Self Assessment.

Beneficiary is not resident in the UK

Beneficiaries who are:

- not resident in the UK
- absolutely entitled to trust income except from a bare trust

should follow the instructions contained in the SA107 (Notes) under the heading 'Income from trusts and settlements' when making their Self Assessment.

The beneficiary should not declare any income from a non-UK source.

Income - interest in possession trusts

Trusts governed by foreign law

Trusts governed by foreign law are either Baker types or Garland types. These classifications are based on the cases of Archer-Shee v Baker (11TC749) and Garland v Archer-Shee (15TC693).

Baker type trust

Beneficiaries of a Baker type trust are entitled to their appropriate share of each item of income as and when it arises to the trust. This is subject only to a deduction for trustees' expenses.

Unless the remittance basis applies, the beneficiaries are chargeable on their share of the trust income, less a rateable proportion of the trust expenses. If the trust income has borne UK tax, it is taxed income of the beneficiaries.

Each beneficiary's share (after a rateable proportion of trust expenses) is income that has been taxed at whatever rate of tax it has borne.

Beneficiaries of a Baker type trust should make their Self Assessment on the Trust etc supplementary pages. They follow the instructions in the SA107 (Notes) under the heading 'Income from trusts and settlements'.

See the list of countries that shows if trusts governed by the law of those countries are Baker or Garland.

Garland type trust

Beneficiaries of a Garland type trust are entitled only to their appropriate share of the net trust income remaining after the trustees have ascertained the balance available after meeting the expenses of administering the trust.

Beneficiaries chargeable on the arising basis are liable by reference to the actual income receivable from the trust in the basis year. This applies whether or not it was paid out by the trustees or remitted to the UK. The nature of the income that arose to the trustees is irrelevant.

Beneficiaries of a Garland type trust should enter the amount received on their Self Assessment tax return, on the 'Foreign' supplementary pages. It is an untaxed source.

Some of the income chargeable may be from trust income that has borne UK tax. A claim for relief in respect of the tax must be a free standing claim. It must not affect a beneficiary's Self Assessment.

Trust income may have suffered foreign tax. Beneficiaries can claim credit relief for that foreign tax. This is in the same way and to the same extent as if the beneficiaries were entitled to their proportionate share of the underlying investments of the trust. A claim for credit must be a free-standing claim. It must not affect a beneficiary's Self Assessment.

See the list of countries that shows if trusts governed by the law of those countries are 'Baker' or 'Garland'.

If you require:

- further clarification about the above
- a particular country is not shown on the list

you should contact HMRC Trusts & Estates.

Income - discretionary income payment

Non-resident trustees may make a discretionary payment out of trust income to a beneficiary. It is treated as untaxed income of a beneficiary who is resident in the UK. It does not matter that the trustees have suffered tax on the trust income. The payment is not treated as made up from the separate sources of income arising to the trustees. The beneficiary shows the income on the foreign pages. The beneficiary can claim relief, under Extra Statutory Concession B18, for some of the tax suffered by the trustees.

If an income distribution is made on or after 6 April 2006, and part or all of the distribution has already been charged to tax in the UK on the settlor of trust, then include the amount charged on the Trust supplementary page and not on the 'Foreign' supplementary page.

Extra-Statutory Concession B18 ('ESC B18')

This concession allows credit for some of the tax suffered by the trustees. The amount of credit available will depend on the precise facts of the case. It is a stand-alone claim and does not affect how the beneficiary completes their Self Assessment tax return. Credit can also be available where the discretionary income payment from the trustees is taxable as employment income. The beneficiary must claim within five years and ten months of the end of the tax year in which the payment was made.

The concession only applies if:

- The trustees have made trust returns, giving details of all sources of trust income and payments made to beneficiaries. Those returns must be for each and every year for which they are required.
- They have paid all tax due, and any interest, surcharges and penalties arising.
- They keep available for inspection by HMRC any relevant tax certificates.

If the conditions are not satisfied, no relief is due.

Beneficiary claims relief

The beneficiary should contact [HMRC Trusts & Estates] about claiming relief under ESC B18. HMRC Trusts & Estates will give whatever advice is required.

The beneficiary should also advise their tax office that they wish to claim relief. The beneficiary's tax office will then contact HMRC Trusts & Estates, to check if any relief is due. If relief is due, HMRC Trusts & Estates will calculate the amount. They will then tell the beneficiary's tax office:

- The amount of credit available.
- The revised notional income from the trust. This is for the purposes of the claim only. It must not be used in the Self Assessment computation.

The beneficiary's tax office manually recalculates the Self Assessment liability. In this computation it replaces the trust income with:

- the credit due under the concession
- the revised notional figure

The beneficiary's tax office will deal with any tax overpaid.

HMRC Trusts & Estates will give general advice about ESC B18. HMRC Trusts & Estates cannot let a beneficiary have a copy of the calculation of the relief due under ESC B18. This is because the calculation may contain details of total trust income and tax, and any distributions to other beneficiaries. The trustees may not wish the beneficiary to have this information.

Payment to relevant child (including stepchild) of settlor

Payments to a relevant child of settlor, can be treated as the settlor's income for all tax purposes. 'Relevant child' means a minor child who is unmarried or not in a civil partnership. The payments must be out of income or, if not, there must be sufficient retained or accumulated income. In the latter case, the settlor's liability is restricted to the lesser of the payment and the amount of retained or accumulated income.

Payments from non-resident trustees are returned as untaxed income.

Relief under Extra Statutory Concession A93

The settlor can claim relief, under Extra Statutory Concession A93. The concession allows credit for some of the tax suffered by the trustees.

Payments to or for the benefit of the settlor's minor unmarried child can be treated as the settlor's income for all tax purposes. If the payments are from non-resident trustees they are deemed to be untaxed income.

The settlor can claim relief under ESC A93. The concession allows credit for some of the tax suffered by the trustees. It is a stand-alone claim and does not affect the Self Assessment liability. The settlor must claim within five years and ten months of the end of the year that the child received the payment.

The concession only applies if:

- The trustees have sent tax returns to HMRC, giving details of all sources of trust income and payments made to beneficiaries. Those tax returns must be for each and every year for which they are required.
- The trustees have paid all tax due, and any interest, surcharges and penalties arising.
- The trustees keep available for inspection by HMRC any relevant tax certificates.

If the conditions are not satisfied, no relief is due.

Settlor claims relief

The settlor notifies HMRC that they wish to claim relief under ESC A93. If relief is due, HMRC Trusts & Estates will calculate the amount. They will then tell the settlor's tax office:

- The amount of the credit.
- The revised notional income from the trust. This is for the purposes of the claim only. It must not be used in the Self Assessment computation.
- The settlor's tax office manually re-calculates the Self Assessment liability.
  In this computation it replaces the trust income with:
- the credit due under the concession
- the revised notional figure

The settlor's tax office will deal with any tax overpaid.

HMRC Trusts & Estates will give general advice about ESC A93. HMRC Trusts & Estates cannot let a claimant have a copy of their calculation of the relief due under ESC A93. This is because the calculation may contain details of total trust income and tax, and any distributions to other beneficiaries. The trustees may not wish the claimant to have this information.

Settlor retains interest in trust

Guidance can be found at TSEM4200.

Helpsheet HS270 shows whether income is to be treated as the settlor's.

Where settlor returns settlement income

If the settlor retains an interest in a settlement, the settlement income may be treated as the settlor's for all tax purposes. Settlors should follow the instructions in the SA107 (Notes) under the heading 'Income chargeable on settlors' when making their Self Assessment.

Transfer of assets abroad

This guidance offers a broad outline on how HMRC will apply the rules. But the rules are complex and the way in which they apply in a particular case will depend on all the facts of that case.

Section 720 onwards Income Tax Act 2007

Sections 720-751 Income Tax Act 2007 are anti-avoidance provisions designed to counter the effect of certain transactions involving transfers of assets abroad and other associated operations (relevant transactions).

Key Features - Sections 720 & 727 Income Tax Act 2007

Sections 720 & 727 may apply where individuals transfer assets abroad in such a way that they are able to enjoy the income from the assets in a way that would otherwise be non-taxable.

Sections 720 & 727 impose an Income Tax charge on an individual who is resident in the UK for tax years from 6 April 2013 or were ordinarily resident in an earlier year of charge where the following conditions are met:

- the individual has the power in the tax year to enjoy income of a person abroad, and that income would be chargeable to Income Tax if it were the individual's and received by the individual in the UK
- the individual receives or is entitled to receive in the relevant year, any capital sum whether before or after the relevant transfer, or in an earlier tax year had received any capital sum, whether before or after the relevant transfer, and the payment of that sum is, or in the case of entitlement, would be, in any way connected with any relevant transaction
- income has become the income of a person abroad as a result of a relevant transfer, one or more associated operations; or a relevant transfer and one or more associated operations

Income of the person abroad is treated as arising to the UK resident individual in a tax year for the purpose of charging Income Tax for that year.

Key Features - Section 731 Income Tax Act 2007

Section 731 extends the Income Tax charge to non-transferors. It applies where there are relevant transactions and individuals other than the transferor receive a benefit.

Section 731 imposes an Income Tax charge on an individual who is ordinarily resident in the UK in the years to 6 April 2013 or who is resident in the UK in a tax year from 6 April 2013, where the following conditions are satisfied:

- a relevant transfer occurs
- an individual resident in the UK receives a benefit (which includes a payment of any kind)
- the benefit is provided out of assets which are available for the purpose as a result of the transfer, or one or more associated operations
- the individual is not liable to Income Tax under Section 720 or 727 by reference to the transfer
- the individual is not otherwise liable to Income Tax on the amount or value of the benefit

Section 731 charges the amount or value of the benefit received to the extent that it is matched by the available relevant income. This means any income which arises to a person abroad and which, as a result of the transfer or associated operation, can be used directly or indirectly for providing a benefit for the individual.

To find the amount, if any, of the income treated as arising to the individual for any tax year under these provisions, the six step formula in Section 733 is applied.

Exemption from Sections 720, 727 and 731 Income Tax Act 2007

Sections 736 to 742A Income Tax Act 2007 provide that sections 720, 727 and 731 will not apply if the individual satisfies an officer of HMRC that Condition A is met, or if that Condition is not met, that Condition B is met.

Where all relevant transactions took place on or after 5 December 2005:

Condition A

- It would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.

Condition B

- All the relevant transactions were genuine commercial transactions
- It would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation

The decision on what the purposes of the relevant transfer and associated operations are is to be drawn from all the circumstances of the case.

Where all relevant transactions took place before 5 December 2005:

Condition A

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

Condition B

The transfer and any associated operations were genuine commercial transactions and were not designed for the purpose of avoiding liability to taxation

For transaction which took place after 5 April 2013 an additional exemption was introduced for genuine exemptions. In broad terms the two conditions which must be met for this exemption to apply are that:

- were the individual to be liable to tax under the provisions that individual's liability to tax would, in contravention of a relevant treaty provision, constitute an unjustified and disproportionate restriction on a freedom protected under an EU Treaty
- the individual satisfies an officer of HMRC that viewed objectively, the transaction is a genuine transaction having regard to the arrangements under which it was effected and any other relevant circumstances

Individuals not domiciled in the UK

Individuals who are resident but not domiciled in the UK may be liable under Section 720, 727 or 731. However the legislation restricts the liability of a non-domiciled individual in relation to any income and benefits received outside the UK.

No duplication of charge

Section 743 Income Tax Act 2007 provides that no amount of income shall be taken into account more than once in charging tax under the provisions of sections 720, 727 and 731.

Where more than one person can be potentially charged Income Tax under sections 720, 727 and 731, HMRC will seek to agree a 'just and reasonable' division of liability.

Power to obtain information

Section 748 Income Tax Act 2007 gives an officer of HMRC extensive formal powers to obtain information. The officer may, by notice in writing, require any person to supply such particulars as they think necessary for the purposes of the legislation. Penalties can be imposed under S98 TMA 1970 for failure to comply.

Returning income charged under S720, 727 or 731 Income Tax Act 2007

Income chargeable under Sections 720, 727 and 731 goes on the Foreign Pages of the Self Assessment tax return. See SA106 (Notes) under the heading 'Income received by overseas trusts, companies and other entities'.

See Helpsheet 262 for further details.

Examples involving non-resident trusts

These are not exclusively trust charging provisions. The legislation can apply to tax income in any type of foreign structure. However the following sections give very simple examples of situations in which the legislation could apply in the context of non-resident trusts.

Example of Section 720 Income Tax Act 2007

- A UK resident individual, John, is the settlor of a non-resident trust. The trustees use the trust capital to subscribe for the entire issued share capital of a non-UK company. The company invests its capital in an offshore bank account. The company receives investment income (bank interest) but pays no dividends.
- John has power to enjoy the income of the company because the trustees could cause the company to pay a dividend. The trustees could then use their discretion to pay income to John.
- It is established that the arrangements described above were effected with a view to avoiding UK taxation and the arrangements not engage an EU Treaty freedom. If John had invested directly in the offshore bank account, he would have been liable to tax on the interest received.
- Section 720 deems all the income of the company to be John's.

Example of Section 731 Income Tax Act 2007

- A UK resident individual, James, sets up a non-resident trust solely for the benefit of his daughter, Sarah. He settles cash in the trust and the trustees' offshore investments result in significant non-UK source investment income, which is undistributed.
- It is established that James created the settlement with a view to avoiding UK tax and the arrangements do not engage an EU Treaty freedom.

- The trustees buy a house in the UK out of trust capital, and allow Sarah to live in it, rent free.
- Section 731 will tax Sarah on the benefit of her occupation of the house. The value of the benefit would be taxable year by year up to the value of 'the available relevant income' of the trust.

Gains from offshore fund

An offshore fund is a collective investment scheme in the form of:

- a non-resident company
- a foreign unit trust
- any other arrangement which takes effect under the law of a foreign country and creates rights in the nature of co-ownership

An investor in an offshore fund holds a 'material interest'. When that 'material interest' is disposed of it can lead to a gain that is potentially chargeable to Income Tax, called an 'offshore income gain'. For further information see SA106 (Notes) under the heading 'Other overseas income'.

Non-resident trustees are not liable to tax on offshore income gains (Section 761(7) Income and Corporation Taxes Act 1988).

The amount of an offshore income gain can be attributed to the settlor under Section 720 Income Tax act 2007 or to a beneficiary using the Section 87 TCGA 1992 rules as modified by Section 762(2) Income and Corporation Taxes Act 1988. The settlor or beneficiary shows it on the 'Foreign' pages of their Self Assessment tax return.

Non-Resident Trusts capital gains

Trustees who are not resident for Capital Gains Tax purposes are not generally chargeable to Capital Gains Tax. The trustees' gains may instead be charged on the settlor or beneficiaries.

Beneficiaries of non-resident or dual resident trusts may be chargeable to Capital Gains Tax in respect of gains realised by the trustees. This is known as the 'beneficiary charge'.

The rules are at Sections 87-90 and 96-98 TCGA 1992.

Gains made by certain non-resident companies in which the trustees invest may also be taken into account.

The rules are in Section 13 TCGA 1992.

The trustees compute gains as if they were resident in the UK. Any exemptions and reliefs due to resident trustees are included in this computation. But no annual exempt amount is available. The trustees then add any amount brought forward from earlier years. The result is the 'trust gains' for the year. If there is an overall loss, the trust gains for the year are NIL.

Non-resident trustees can set allowable losses against deemed gains of the same or later tax years. They cannot set them against gains for earlier tax years. Losses cannot be attributed to a beneficiary.

Helpsheet 299 non-resident trusts and capital gains tax

Helpsheet 301 beneficiaries receiving capital payments from non-resident trusts

HMRC Trusts & Estates issues forms 50(FS) to trustees who are not resident in the UK for Capital Gains Tax purposes. The form asks about possible tax liability of the settlor or beneficiaries.

The information provided can be used to reconcile the entries made on an individual's Self Assessment tax return.

Foreign estates – administration periods

HMRC Trusts & Estates will give advice on administration periods if any of the following apply:

- the deceased died not resident in the UK
- the deceased died resident in the UK but was not domiciled
- a personal representative is not resident in the UK
- a beneficiary receives income from a foreign estate

'Baker/Garland' country designation

List of countries		
Country	**State**	**Trust Law**
A		
Argentina	No	Trust Law
Australia		
	New South Wales	Baker
	Queensland	Baker
	South Australia	Baker
	Victoria	Baker
	Western Australia	Baker
B		
Bahamas		Baker
Barbados		Baker
Belgium		No Trust Law
Belize		Baker
C		

Canada		
	British Columbia	Baker
	Nova Scotia	Baker
	Ontario	Baker
	Saskatchewan	Baker
	Quebec	Garland
Cayman Islands		Baker
D		
Denmark		Garland
E		
Egypt		Baker
Estonia		Baker
F		
Fiji		Baker
G		
Ghana		Baker
Gibraltar		Baker
Guernsey		Baker
Guyana		Baker
H		
Hong Kong		Baker
Hungary		Baker
I		
India		Garland
Ireland, Republic of		Baker
Isle of Man		Baker
Italy		No Trust Law
J		
Japan		No Trust Law
Jersey		Baker
K		
Kenya		Baker
L		
Latvia		Baker
Liechtenstein		Garland
Lithuania		Baker
Luxembourg		Baker
M		
Malaysia		Baker
Malawi		Baker
Malta		No Trust Law
Monaco		No Trust Law
Montserrat		Baker
N		

Namibia		Garland
Netherlands		No Trust Law
New Hebrides		Baker
New Zealand		Baker
Nigeria		Baker
Norway		Garland
S		
St Helena		Baker
St Vincent		Baker
Singapore		Baker
South Africa		Garland
South Yemen		Baker
Spain		No Trust Law
Sri Lanka		Baker
Sweden		Garland
T		
Trinidad & Tobago		Baker
U		
Uganda		Baker
USA		
	New York	Garland
	Minnesota	Garland
	Montana	Garland
	North Dakota	Garland
	South Dakota	Garland
	Wisconsin	Garland
	All other states	Baker
Z		
Zambia		Baker
Zimbabwe		Garland