



## 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 in 2007. These definitions have applied from 2007/08.

#### **TRUSTEES**

**(S 475 & 476 ITA 2007 for Income Tax; S 69 TCGA 1992 for Capital Gains Tax)**

##### Trustees all non-UK resident

The trust is treated as not UK resident for both Income Tax and Capital Gains Tax. However a non-resident trustee is treated as UK resident at any time when he is acting as trustee in the course of a business that he carries on in the UK through a branch or agency or permanent establishment there.

##### Trustees all UK resident

The trust is treated as resident in the UK for both Income Tax and Capital Gains Tax irrespective of the residence and domicile 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 is treated as UK resident for Income Tax and Capital Gains Tax if the settlor was resident or domiciled in the UK at the relevant time when the assets were settled. The trust is treated as not UK resident for Income Tax and Capital Gains Tax if the settlor was not UK resident or domiciled at the relevant time when the assets were settled.

#### **PERSONAL REPRESENTATIVES (PRs) (Executors of Estates)**

##### **UK INCOME TAX**

##### PRs all UK resident

If all the PRs are UK resident in their personal capacity, the estate income is liable to UK Income Tax. This means that all the estate income, no matter where it arises, is liable to UK income tax regardless of the country of residence or domicile of the deceased. However the notes to complete the Self Assessment return state that if the deceased was not UK domiciled at the date of death, the UK resident PRs are not taxable on overseas income, and such income need not be returned. Therefore only UK source income is liable to UK tax in the hands of the PRs and foreign income should not be included on the return.



PRs all non-UK resident

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

Mixed residence PRs

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

Where the PRs are of mixed residence, the UK resident PR is treated as non-UK resident if the deceased was not resident or domiciled in the UK at the date of death, and therefore only UK source income is liable to UK tax.

Liability to UK income tax

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

**CAPITAL GAINS TAX**

For CGT purposes, the PRs are treated as having the deceased's residence and domicile at the date of death. Therefore if the deceased was not UK resident, there is 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, then the PRs are 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-UK resident company and the company realises a gain, because the PRs are non-UK resident and are not trustees, they are not treated as if the company gain had accrued to them.

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