



Trusts and Capital Gains Tax

The benefits and flexibility delivered by Trusts make them a highly attractive option for clients across the globe. Trusts provide a flexible method for the protection and distribution of personal, family and institutional assets. Although Trusts are used in a wide variety of situations, the use of a Trust as described below is an example of a more specific application, in this case, for UK Capital Gains Tax planning.

Background

As a general principle, UK resident individuals are subject to Capital Gains Tax on their worldwide assets. The UK Capital Gains Tax position is, however, more favourable for those individuals with UK non-domiciled status.

Individuals who are UK non-domiciled are subject to UK Capital Gains Tax on gains arising in the UK. A UK non-domiciled individual may also be subject to Capital Gains Tax on their worldwide assets on an arising basis if they opt not to be taxed on a remittance basis, as outlined below.

The Finance Act 2008 introduced the Remittance Basis Charge (RBC). From 6 April 2008, if a non-domiciled individual has been resident in the UK for 7 or more out of the last 9 years, they are able to claim RBC for any foreign income and gains they may have realised (the charge currently being £30,000 per annum with a £50,000 charge being introduced for individuals resident for 12 years or more). The result of an RBC election is that foreign gains are taxed only upon remittance to the UK. The scope of remittance is wide and care needs to be taken to ensure that unintentional remittances are avoided.

If a UK non-domiciled individual establishes a trust, however, assets held within the Trust are not subject to UK Capital Gains Tax on an arising basis (even UK source gains).

Features of a Trust for Capital Gains Tax

The Trust would ordinarily be a Guernsey Trust formed under the provisions of The Trusts (Guernsey) Law, 2007. It would be established with UK non-resident trustees provided by Ardel.

The gains made by the Trust are outside the scope of UK Capital Gains Tax unless or until such time as the trustees provide benefits to UK beneficiaries.

HMRC guidance states "The rules state beneficiaries are charged in respect of gains realised by the trustees. This is in proportion to capital payments they receive directly or indirectly from the trust. Amounts of 'trust gains', are attributed to each beneficiary who receives a capital payment. The gains are not necessarily chargeable on all beneficiaries. To be chargeable, a beneficiary must be resident or ordinarily resident in the UK and for years up to and including 2007-08 domiciled in the UK" (and following 6th April 2008 subject to RBC).

The creation of a Trust therefore avoids the requirement to pay the annual RBC of up to £50,000, a particular advantage where regular UK and foreign gains are being realised or assets settled with the potential for significant growth in future value.

It should be highlighted that trust assets are not subject to the arising basis whether the gains have been made in the UK or overseas.

Advantages

- Capital Gains Tax planning
- Deferral vehicle for Capital Gains Tax purposes
- Roll-up of investments
- No liability to Capital Gains Tax until UK resident beneficiary receives a capital payment 'matched' to a gain
- Allows tax efficient and effective distribution to UK non-resident beneficiaries
- Inheritance Tax Planning opportunities

For further information contact

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Please note Ardel Trust Company (Guernsey) Limited are not tax advisors and it is essential for all interested parties to consult their own professional advisors on all tax and legal matters in connection with the establishment of such an arrangement. We would be delighted to make introductions to professionals familiar with the establishment of Trust arrangements to assist and provide the necessary professional tax and legal support.

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