

Capital taxes

This group of factsheets cover taxes on the disposal, generally by way of sale, of capital assets and the taxes due on death.

1. Capital gains tax

A capital gain arises when certain capital assets are sold at a profit. We consider the taxation of gains and outline the reliefs available.

2. Capital gains tax and the family home

We consider whether any tax is due on the sale of the family home and the availability of principal private residence and other reliefs.

3. Land and Building Transaction Tax

Land and Buildings Transaction Tax (LBTT) is payable by the purchaser in a land transaction which occurs in Scotland. This factsheet summarises the rates of LBTT which apply.

4. Land Transaction Tax

Land Transaction Tax (LTT) is payable by the purchaser in a land transaction which occurs in Wales. This factsheet considers the key principles and requirements.

5. Stamp Duty Land Tax

We look at the key areas to consider for the purchaser in a land transaction, whether this is buying a house or creating a lease or assigning a lease, a purchaser is required to pay Stamp Duty Land Tax (SDLT).

6. Trusts

We consider the basic principles of Trusts, looking at what they are, along with a range of anti-avoidance measures aimed at preventing exploitation of potential tax benefits.

1. Capital gains tax

We consider the taxation of capital gains and outline the reliefs available. If you live in the Nottinghamshire area we, at Franklyn & Co, can provide taxation advice to ensure that maximum opportunity is taken of the reliefs available for capital gains tax.

A capital gain arises when certain capital (or 'chargeable') assets are sold at a profit. The gain is the sale proceeds (net of selling costs) less the purchase price (including acquisition costs).

What are the main features of the current system?

- Capital gains tax (CGT) is charged at the rate of 10% on gains (including any held over gains coming into charge) where net total taxable gains and income is below the income tax basic rate band threshold. Gains or any parts of gains above the basic rate band are charged at 20% with a few exceptions which are considered in the 'Exceptions to the CGT rates section' below.
- Business asset disposal relief (formerly known as Entrepreneurs' Relief) or Investors' Relief (IR) may be available on certain business disposals.

Business asset disposal relief (BADR)

BADR may be available for certain business disposals and has the effect of charging the first £1 million of gains qualifying for the relief at an effective rate of 10%.

The relief is available to individuals on the disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership
- shares in an individual's 'personal company'
- assets used by a business or a company which has ceased within the last three years.

Where an individual makes a qualifying business disposal, relief may also be available on an 'associated disposal'. An 'associated disposal' is a disposal of an asset:

- used in a qualifying company or group of companies of the individual; or
- used in a partnership, where the individual is a partner.

Restrictions on obtaining the relief on an 'associated disposal' are likely to apply in certain specific situations. This includes the common situation where a property is in personal ownership but is used in an unquoted company or partnership trade in return for a rent. Under BADR the availability of relief is restricted where rent is paid.

Ownership period of two years

Ownership conditions apply throughout the period up to the date of disposal. For disposals on or after 6 April 2019, the necessary qualifying period of ownership is two years.

The 5% rule for company shareholders

To qualify for BADR, the company needs to be an individual's 'personal company' where the individual must:

- be a company employee or office holder

- hold at least 5% of the company's ordinary share capital and
- be able to exercise at least 5% of the voting rights.

For disposals on or after 29 October 2018, they must also satisfy one of the following tests:

- a distribution test – an individual is entitled to at least 5% of the company's profit available for distribution to equity holders and 5% of the assets available for distribution to equity holders in a winding up; or
- a proceeds test – an individual is entitled to at least 5% of the proceeds in the event of a disposal of the whole of the ordinary share capital of the company.

Dilution

From 6 April 2019 those shareholders whose holding in their company is reduced below the normal 5% qualifying level as a result of raising funds for commercial purposes by means of an issue of new shares may still obtain BADR. An election can be made which allows shareholders to crystallise a gain on their shares before the dilution occurs. This would be achieved by treating the shareholding as having been sold and immediately re-purchased at the prevailing market value. The election will have to be made in their tax return for the year in which the dilution takes place. The shareholder may also elect to defer the accrued gain until their shares are actually disposed of.

Careful planning will be required with BADR but if you would like to discuss BADR in detail and how it might affect your business, please do get in touch.

Investors' Relief (IR)

IR is aimed at external investors (other than certain employees or officers of the company) in unlisted trading companies. To qualify for the 10% CGT rate under 'investors' relief' the following conditions need to be met:

- shares must be newly issued and subscribed for by the individual for new consideration
- be in an unlisted trading company, or an unlisted holding company of a trading group
- have been issued by the company on or after 17 March 2016 and have been held for a period of three years from 6 April 2016
- have been held continuously for a period of three years before disposal.

An individual's qualifying gains for IR are subject to a lifetime cap of £10 million.

Share identification rules

All shares of the same class in the same company are treated as forming a single asset, regardless of when they were originally acquired. However, 'same day' transactions are matched and there are '30 day' anti-avoidance rules.

CGT annual exemption

Every tax year each individual is allowed to make gains up to the annual exemption without paying any CGT. The annual exemption for 2024/25 is £3,000 (£6,000 in 2023/24). Consideration should be given to ensuring both spouses/civil partners utilise this facility.

Exceptions to the CGT rates

The rates of CGT are generally 10% and 20%. However 18% and 24% rates apply for carried interest and for chargeable gains on residential property that does not qualify for private residence relief.

Other more complex areas

Capital gains can arise in many other situations. Some of these, such as gains on Enterprise Investment Scheme and Venture Capital Trust shares, and deferred gains on share for share or share for loan note exchanges, can be complex. Please talk to us before making any decisions.

Other reliefs which you may be entitled to

And finally, many existing reliefs continue to be available, such as:

- private residence relief;
- business asset rollover relief, which enables the gain on a business asset to be deferred until a point in the future;
- business asset gift relief, which allows the gain on business assets that are given away to be held over until the assets are disposed of by the donee; and
- any unused allowable losses from previous years, which can be brought forward in order to re

2. Capital gains tax and the family home

A valuable relief exists on the sale of the family home but in certain situations careful planning is required to ensure that the relief is obtained. If you live in the Nottinghamshire area we, at Franklyn & Co, can provide taxation advice to ensure that maximum opportunity is taken of principal private residence relief.

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime. The relief is well known: CGT exemption whatever the level of the capital gain on the sale of any property that has been your main residence. In this factsheet we look at the operation of the relief and consider factors that may cause it to be restricted.

Several important basic points

Only a property occupied as a residence can qualify for the exemption. An investment property in which you have never lived would not qualify.

The term 'residence' can include outbuildings separate from the main property, but this is a difficult area. Please talk to us if this is likely to be relevant to you.

'Occupying' as a residence requires a degree of permanence so that living in a property for say, just two weeks with a view to benefiting from the exemption is unlikely to work.

The exemption includes land that is for 'occupation and enjoyment with the residence as its garden or grounds up to the permitted area'. The permitted area is half a hectare including the site of the property which equates to about 1.25 acres in old money! Larger gardens and grounds may qualify but only if they are appropriate to the size and character of the property and are required for the reasonable enjoyment of it. This can be a difficult test. In a court case the exemption was not given on land of 7.5 hectares attached to a property. The owner said he needed that land to enjoy the property because he was keen on horses and riding. The courts decided that the owner's subjective liking for horses was irrelevant and, applying an objective test, the land was not needed for the reasonable enjoyment of the property.

Selling land separately

What if you want to sell off some of your garden for someone else to build on? Will the exemption apply? In simple terms it will if you continue to own the property with the rest of the garden and the total original area was within the half a hectare limit.

Where the total area exceeds half a hectare and some is sold then you would have to show that the part sold was needed for the reasonable enjoyment of the property and this can clearly be difficult if you were prepared to sell it off.

What if on the other hand you sell your house and part of the garden and then at a later date sell the rest of the garden off separately, say for development? Then you will not get the benefit of the exemption on the second sale because the land is no longer part of your main residence at the point of sale.

More than one residence

It is increasingly common for people to own more than one residence. However an individual can only benefit from the CGT exemption on one property at a time. In the case of a married couple (or civil partnership), there can only be one main residence for both. Where an individual has two (or more) residences then an election can be made to choose which should be the one to benefit from the CGT exemption on sale. Note that the property need not be in the UK to benefit although there are additional restrictions from April 2015 detailed below. Also foreign tax implications may need to be brought into the equation.

The election must normally be made within two years of the change in the number of residences and the potential consequences of failure to elect are shown in the case study that follows.

Furthermore the case study demonstrates the beneficial rule that allows CGT exemption for the last nine months of ownership of a property that has at some time been the main residence. Where the owner of the property is in long term care or a disabled person, and meets the necessary conditions, they benefit from a CGT exemption for the last 36 months of ownership.

Can you claim PRR relief on your property?

A person's residence may not be eligible for Private Residence relief (PRR) for a tax year unless either:

- the person making the disposal was resident in the same country as the property for that tax year; or
- the person spent at least 90 midnights in that property.

The rules apply to both a UK resident disposing of a residence in another country and a non-resident disposing of a UK residence.

New reporting and payment requirement

It is important to note that from 6 April 2020 those liable to CGT on a residential property disposal must send a new standalone online return to HMRC and make a payment on account of the tax due within 60 days of completion of the sale. These requirements do not apply if the gains are covered by PRR.

Business use

More and more people work from home these days. Does working from home affect the CGT exemption on sale? The answer is simple - it may do!

Rather more helpfully the basic rule is that the exemption will be denied to the extent that part of your home is used exclusively for business purposes. In many cases of course the business use is not exclusive, your office doubling as a spare bedroom for guests for example, in which case there is not a problem.

Where there is exclusive business use then part of the gain on sale will be chargeable rather than exempt. However, it may well be that you plan to acquire a further property, also with part for business use, in which case the business use element of the gain can be deferred by 'rolling over' the gain against the cost of the new property.

Residential letting

Prior to 6 April 2020 letting relief gave up to £40,000 (£80,000 for a couple who jointly own the property) to someone letting part or all of a property which was their main residence or was their former main residence at some point in their period of ownership. However under the revised rules letting relief is only available where the owner and tenant share occupancy throughout the period of the let.

Periods of absence

Certain other periods of absence from your main residence may also qualify for CGT relief if say you have to leave your property to go and work elsewhere in the UK or abroad. The availability of the exemption depends on your circumstances and length of period of absence. Please talk to us if this is relevant for you. We would be delighted to set out the rules as they apply to your particular situation.

Trusts

The exemption is also available where a property is owned by trustees and occupied by one of the beneficiaries as their main residence.

Until December 2003 it was possible to transfer a property you owned but which was not eligible for CGT main residence relief into a trust for say the benefit of your adult children. Any gain could be deferred using the gift relief provisions. One of your children could then live in the property as their main residence and on sale the exemption would have covered the entire gain.

HMRC decided that this technique was being used as a mechanism to avoid CGT and so blocked the possibility of combining gift relief with the main residence exemption in these circumstances.

3. Land and Building Transaction Tax

Land and Buildings Transaction Tax (LBTT) is payable on the acquisition of a chargeable interest of land or buildings in Scotland. It replaces UK Stamp Duty Land Tax (SDLT) for transactions in Scotland from April 2015. At Franklyn & Co, we can provide guidance on LBTT in the Nottinghamshire area.

Who pays the tax?

LBTT is payable by the purchaser in a land transaction occurring in Scotland. Stamp Duty Land Tax (SDLT) applies to land transactions in England and Northern Ireland and Land Transaction Tax (LTT) applies in Wales.

What is a land transaction?

A transaction will trigger liability if it involves the acquisition of an interest in land. This includes a simple conveyance of land such as buying a house, creating a lease or assigning a lease.

When is the tax payable?

The tax has to be paid when a contract has been substantially performed. In cases where the purchaser takes possession of the property on completion, that will be the date. However, if the purchaser effectively takes possession before completion - known as 'resting on contract' - that will be regarded as triggering the tax.

Residential rates of LBTT

The rates of LBTT which apply from 1 April 2021 are set out in the following table:

Residential property
£0 - £145,000
£145,001 - £250,000
£250,001 - £325,000
£325,001 - £750,000
£750,001 and over

The rates apply to the portion of the total value which falls within each band.

First-time buyer relief

A LBTT relief applies for first-time buyers of properties up to £175,000. The relief raises the zero tax threshold for first-time buyers from £145,000 to £175,000. First-time buyers purchasing a property above £175,000 also benefit from the relief on the portion of the price below the threshold. All first-time buyers will benefit from a relief of up to £600.

Higher rates for additional residential properties

Higher rates of LBTT are charged on purchases of additional residential properties (above £40,000), such as buy to let properties and second homes.

The main target of the higher rates is purchases of buy to let properties or second homes. However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not be a buy to let or a second home. The 18 month rules set out below will help to remove some transactions from the additional rates (or allow a refund). The 18 month timeframe is to be extended to 36 months following a consultation. The Scottish government has published its response stating that it will amend the relevant legislation but no time frames have been confirmed as yet. Care will be needed if an individual already owns, or partly owns, a property and transacts to purchase another property without having disposed of the first property.

The higher rates are 6% above those shown in the table above. The higher rates potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties.

Some further detail:

- Purchasers will have 18 months (to be extended to 36 months) to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence.
- Purchasers will also have 18 months (to be extended to 36 months) between selling a main residence and replacing it with another main residence without having to pay the higher rates, if they also own another property which is not their main residence.
- A small share in a property which has been inherited within the 18 months prior to a transaction will not be considered as an additional property when applying the higher rates.
- There will be no exemption from the higher rates for significant investors.
- LBTT includes an 18 month period rather than 36 months which applies for Stamp Duty Land Tax (SDLT) but the proposed extension to 36 months will align the two timeframes.

Non-residential rates of LBTT

Non-residential	Band
£0 - £150,000	0
£150,001 - £250,000	1
£250,001 - over	5

The Scottish government has LBTT calculators which work out the amount of LBTT payable. The calculators can be found at www.revenue.scot/land-buildings-transaction-tax/tax-calculators.

4. Land Transaction Tax

Land Transaction Tax is payable by the purchaser in a land transaction which occurs in Wales. At Franklyn & Co, we can provide guidance on Land Transaction Tax in the Nottinghamshire area.

Land Transaction Tax (LTT) is payable by the purchaser of property in Wales.

Who pays the tax?

LTT is payable by the purchaser of residential or non-residential property in a land transaction occurring in Wales. Stamp Duty Land Tax (SDLT) is payable on land transactions in England and Northern Ireland and Land and Buildings Transaction Tax (LBTT) on land transactions in Scotland.

What is a land transaction?

A transaction will trigger liability to LTT if it involves the acquisition of an interest in land. This will include a simple conveyance of land, such as buying a house, creating a lease or assigning a lease.

LTT is operated by the Welsh Revenue Authority (WRA), and individuals who are liable to the tax must complete and submit an LTT return (see later).

When is the tax payable?

Individuals must send an LTT return and pay the tax due to the WRA within 30 days of the day after completion (or other effective date of the transaction). Penalties and interest may be charged if you fail to file your LTT return or pay the necessary tax within the 30 days after the day of completion.

In some circumstances, the transaction is not notifiable and the acquirer is not required to send a LTT return or pay LTT. These include both exempt transactions and exceptions:

- no money has exchanged hands (exempt)
- a property is left to you and you are not required to make a payment for the transfer of the property (exempt)
- property ownership is transferred to you as a result of a divorce or the dissolution of a civil partnership (exempt)
- freehold property has been purchased for less than £40,000 (exception)
- a new or assigned lease of seven years or more is purchased, and the premium is less than £40,000 and the annual rent is less than £1,000 (exception)
- a lease assignment or surrender, where the original term was:
 - less than seven years and the amount you pay is less than the residential or non-residential LTT zero rate threshold.
 - more than seven years and the amount you pay is less than £40,000 (exceptions).

What if my property straddles the England-Wales border?

For cross-border cases, a home buyer will only be required to pay SDLT on the English part of the transaction and LTT to the WRA for the Welsh part of the transaction.

LTT rates

Non-residential rates have been applicable since 22 December 2020:

Non-residential (£)	Band
0 - 225,000	0
225,001 - 250,000	1
250,001 - 1,000,000	5
Over 1,000,000	6

The residential rates have applied from 10 October 2022:

Residential (£)	Band
0 - 225,000	0
225,001 - 400,000	6
400,001 - 750,000	7.5
750,001 - 1,500,000	10
Over 1,500,000	12

The higher rates for the purchase of a second or subsequent residential property or residential properties purchased by companies/non-natural persons from 22 December 2020 are:

Residential (£)	Band
0 - 180,000	4
180,001 - 250,000	7
250,001 - 400,000	9

Residential (£)	B
400,001 - 750,000	1
750,001 - 1,500,000	1
1,500,000 and above	1

First-time buyers

Unlike SDLT and LBTT, LTT does not provide any relief for first-time homebuyers in Wales.

5. Stamp Duty Land Tax

Stamp Duty Land Tax is payable by the purchaser in a land transaction which includes a simple conveyance of land such as buying a house but also creating a lease or assigning a lease. If you are considering property investment or acquiring a lease on a commercial property in the Nottinghamshire area we, at Franklyn & Co, can help you to make property acquisitions in a tax efficient manner.

Who pays the tax?

SDLT is payable by the purchaser in a land transaction occurring in England and Northern Ireland. For land transactions occurring in Scotland, Land & Buildings Transaction Tax (LBTT) applies and in Wales land transactions are chargeable to Land Transaction Tax (LTT).

What is a land transaction?

A transaction will trigger liability if it involves the acquisition of an interest in land. This will include a simple conveyance of land such as buying a house, creating a lease or assigning a lease.

What is the tax charged on?

Tax is chargeable on the consideration. This will usually be the actual cash that passes on the sale. However the definition is very wide and is intended to catch all sorts of situations where value might be given other than in cash: for example, if the purchaser agrees to do certain work on the property.

When is the tax payable?

The tax has to be paid when a contract has been substantially performed. In cases where the purchaser takes possession of the property on completion, that will be the date. However, if the purchaser effectively takes possession before completion - known as 'resting on contract' - that will be regarded as triggering the tax.

How much tax is payable on residential property?

Each SDLT rate is payable on the portion of the property value which falls within each band.

SDLT rates

The current rates are as follows:

Residential property Purchase price of property
£0 - £250,000
£250,001 - £925,000
£925,001 - £1,500,000

Residential property

Purchase price of property

£1,500,001 and above

First-time buyer relief

First-time buyers may be eligible for first-time buyer relief on purchases of residential property up to £625,000. The rates apply to the portion of the total value which falls within each band.

Each SDLT rate is payable on the portion of the property value which falls within each band. The rates and thresholds (from 23 September 2022) are:

Property value	Band
£0 - £425,000	0
£425,001 - £625,000	5

No relief can be claimed if the property is over £625,000 and the normal SDLT rates will apply to the full amount of consideration.

Additional residential properties

Higher rates of SDLT are charged on purchases of additional residential properties (above £40,000).

The main target of the higher rates is purchases of buy to let properties or second homes. However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not be a buy to let or a second home. The 36-month rule set out below helps to remove some transactions from the additional rates (or allow a refund).

The higher rates are three percentage points above the SDLT rates shown in the table above. The higher rates potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties.

Some further detail:

- Purchasers will have 36 months to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence
- Purchasers will also have 36 months between selling a main residence and replacing it with another main residence without having to pay the higher rates
- A small share in a property which has been inherited within the 36 months prior to a transaction will not be considered as an additional property when applying the higher rates
- There will be no exemption from the higher rates for significant investors.

More than one dwelling

There is a relief (Multiple Dwellings Relief (MDR)) available for purchasers of residential property who acquire interests in more than one dwelling at the same time. Where MDR is claimed the rate of SDLT is determined not by the aggregate consideration but instead by the mean consideration (ie by the aggregate consideration divided by the number of dwellings) subject to a minimum rate of 1% on the total. As announced in the Spring Budget 2024, MDR will be abolished from 1 June 2024.

SDLT surcharge on non-UK residents

There is a 2% SDLT surcharge on non-UK residents (and certain UK resident companies that are controlled by non-UK residents) purchasing residential property in England and Northern Ireland.

What about non-residential and mixed property?

The rates for non-residential and mixed property are set out in the table below.

The SDLT rates are payable on the portion of the property value which falls within each band.

Non-residential and mixed
£0 - £150,000
£150,001 - £250,000
£250,001 and over

Are there any exemptions?

Yes. There are a number of situations in which the transfer of land will not be caught for SDLT.

No SDLT will be payable and no return will be due. These include:

- the value of the freehold is less than £40,000
- a licence to occupy
- a gift of land
- transfers of land in a divorce or on death
- transfer of land to a charity
- transfers of land within a group of companies where an SDLT group relief claim is made.

How does the tax work on leases?

The SDLT payable on the purchase of a lease depends on whether the lease is new or existing (an assigned lease).

Where a new lease is purchased. The SDLT payable will be calculated on the value of the premium (upfront lump payment). If anything more than a nominal rent is payable, SDLT will also be payable on the net present value (NPV) of the rent over the term of the lease. The

premium and the NPV are treated as two separate amounts. If the calculated value of either exceeds £250,000 for residential property and £150,000 for non-residential, the excess is charged SDLT at the normal rates.

An SDLT return will be due where the premium is £40,000 or more, even if no SDLT is due, unless the term of the lease is less than seven years.

If an existing lease is purchased, SDLT is calculated in the same way as the purchase of a freehold property. The amount of the premium is the consideration subject to SDLT and is also calculated in the same way as the purchase of a freehold property.

The government has SDLT calculators which work out the amount of SDLT payable. The calculators can be found at www.gov.uk/stamp-duty-land-tax-calculators.

How do I tell HMRC about a liability?

The purchaser must complete an SDLT1 return and this must be submitted to the relevant HMRC office within 14 days of the transaction's effective date. Solicitors and conveyancers can submit the return online on your behalf. Otherwise, a paper return must be used. Payment must be made at the same time. A late return triggers an automatic penalty of £100, and late payment of the tax will mean a charge to interest.

What will HMRC do then?

A certificate will be sent to the purchaser to show that they have paid the tax. This certificate is required to change the details of the property ownership at the Land Registry. The fact that HMRC has given the purchaser a certificate does not mean the SDLT calculations are agreed. HMRC has nine months in which to decide whether or not to enquire into the return and challenge the figures.

6. Trusts

Trusts are separate persons for UK tax purposes and have specific rules for all the main taxes. There are also a range of anti-avoidance measures aimed at preventing exploitation of potential tax benefits. If you live in the Nottinghamshire area we, at Franklyn & Co, can provide taxation advice to help you utilise trusts as part of an overall tax planning strategy for you and your family.

What are trusts?

Trusts are a long established mechanism which allow individuals to benefit from the assets whilst others (the trustees) have the legal ownership and day to day control over the assets. A trust can be extremely flexible and have an existence totally independent of the person who established it and those who benefit from it.

A person who transfers property into a trust is called a settlor (or truster in Scotland). Persons who enjoy income or capital from a trust are called beneficiaries. Though not very common with English trusts, it is possible for the settlor to appoint a protector, an independent person who oversees the administration of the trust.

Trusts are separate persons for UK tax purposes and have specific rules for all the main taxes. There are also a range of anti-avoidance measures aimed at preventing exploitation of potential tax benefits.

Trust Registration Service

The Trust Registration Service ('TRS') requires all trusts and 'complex estates' (broadly those with a value of more than £2.5m or involving a capital sale with proceeds of more than £500,000) to be registered centrally. In addition to this the trust must update the register every year when there has been a taxable event. The most common instance of this will be the submission of annual income tax returns to be completed by 31 January following the relevant tax year; the TRS register must be updated by the same deadline. However, it is not just the imposition of annual income tax liabilities which necessitates an annual TRS update, any liability of any tax (including IHT and SDLT) will require the TRS to be updated.

Taxable trusts are now required to provide additional data to confirm if:

- the trust is, or is not, an express Trust
- a non-UK trust has a business relationship in the UK
- the trust has purchased any UK land or property
- the trust has a controlling interest in a non-European Economic Area (EEA) company (and if so, provide company details).

They will also have to supply additional data about the individuals involved in the trust.

Information must also be provided about:

- country of residence
- country of nationality
- whether the person has mental capacity at the time of registration.

Non-taxable trusts

HMRC has also started to allow non-taxable trusts to register and make changes to their trust details. Use of the service is only currently available on a limited basis to allow for service development and enhancement, so will only be accessible to those who have been invited to use the service.

The TRS is available via www.gov.uk/trusts-taxes/trustees-tax-responsibilities

Types of trusts

There are two basic types of trust in regular use for individual beneficiaries:

- life interest trusts (sometimes referred to as interest in possession trusts and in Scotland known as life renter trusts)
- discretionary trusts.

Life interest trusts

A life interest trust has the following features:

- a nominated beneficiary (the life tenant or life renter in Scotland) has an interest in the income from the assets in the trust or has the use of trust assets. This right may be for life or some shorter period (perhaps to a certain age)
- the capital may pass onto another beneficiary or beneficiaries.

A typical example is where a widow is left the income for life and on her death the capital passes to the children.

Discretionary trusts

A discretionary trust has the following features:

- no beneficiary is entitled to the income as of right
- the settlor gives the trustees discretion to pay the income to one, some or all of a nominated class of possible beneficiaries
- income can be retained by the trustees
- capital can be gifted to nominated individuals or to a class of beneficiaries at the discretion of the trustees.

Inheritance tax consequences

Importance of 22 March 2006

Major changes were made in the IHT regime for trusts with effect from 22 March 2006. The old distinction between the tax treatment of discretionary and life interest trusts was swept away. The approach now is to identify trusts which fall in the so-called 'relevant property' regime and those which do not.

Relevant property trusts

Trusts which fall in the relevant property regime are:

- all discretionary trusts whenever created

- all life interest trusts created in the settlor's lifetime after 22 March 2006
- any life interest trust created before 22 March 2006 where a beneficiary changes after 6 October 2008. A key exception exists where a change occurs after 6 October 2008 on the death of a life tenant but the new life tenant is their spouse.

If a relevant property trust is set up in the settlor's lifetime, this may give rise to an immediate charge to inheritance tax at the lifetime rate of 20%. If the value of the gift (and certain earlier gifts) is below £325,000 or is covered by an IHT relief then no tax is payable. Trusts set up under a will attract the normal inheritance tax charge at the death rate of 40% (after reliefs and the nil rate band where available).

Relevant property trusts are charged to tax every ten years (known as the periodic charge) at a maximum rate of 6% of the value of the assets on each tenth anniversary of the setting up of the trust. A fair prorate charge of less than 6% (and often much lower) is also made if assets are appointed out of the trust known as an 'exit charge'.

Benefits of a relevant property trust

Whilst the inheritance tax charges do not look attractive, the relevant property trust has a significant benefit in that no tax charge will arise when a beneficiary dies because the assets in the trust do not form part of a beneficiary's estate for IHT purposes. There can be significant long-term IHT advantages in using such trusts.

Trusts which are not relevant property

Within this group are:

- life interest trusts created before 22 March 2006 where the pre-2006 beneficiaries remain in place or were changed before 6 October 2008 or where a second spouse has taken over the life interest on the death of the first spouse
- the trust was created after 22 March 2006 under the terms of a will and gives an immediate interest (cannot be replaced by another) in the income to a beneficiary and the trust is neither a bereaved minor's nor a disabled person's trust; or
- the trust is created in the settlor's lifetime or on death for a disabled person.

For pre-22 March 2006, lifetime transfers into a life interest trust, the gift would have been a potentially exempt transfer (PET) and no inheritance tax would have been payable if the settlor survived for seven years. Transfers into a trust on death would be chargeable unless the life tenant was the spouse of the settlor. There is no periodic charge on such trusts. There will be a charge when the life tenant dies because the value of the assets in the trust in which they have an interest has to be included in the value of their own 'settled estate' for IHT purposes.

Capital gains tax consequences

If assets are transferred to trustees, this is considered a disposal for capital gains tax purposes at market value but in many situations any capital gain arising can be deferred and passed on to the trustees.

Gains made by trustees on the disposal of trust assets are chargeable at 20%. There is an exception for residential property gains which are charged at 24%.

Where assets leave the trust on transfer to a beneficiary who becomes legally entitled to them, there will be a CGT charge by reference to the then market value. Again it may be possible to defer that charge.

Income tax consequences

Life interest trusts are taxed on their income at 7.5% on dividends and 20% on other income. Discretionary trusts pay tax at 38.1% (dividends) and 45% (other income).

Income paid to life interest beneficiaries has an appropriate tax credit available with the effect that the beneficiaries are treated as if they receive the income as the owners of the assets.

If income is distributed at trustee discretion from discretionary trusts, the beneficiaries will receive the income net of 45% tax. They are generally able to obtain refunds of any overpaid tax and if they pay tax at 45%, they will get credit for the tax paid. Refund exceptions may apply in certain settlor trust situations.

Could I use a trust?

Trusts can be used in a variety of situations both to save tax and also to achieve other benefits for the family. Particular benefits are as follows:

- If you transfer assets into a trust in your lifetime you can remove the assets from your estate but could act as trustee so that you retain control over the assets (always remembering that they must be used for the beneficiaries).
- A transfer of family company shares into a trust in lifetime (or on death) can be a way of ensuring that the valuable business property relief is utilised.
- By putting assets into a trust you can give the beneficiary the income from the asset without actually giving them the asset which could be important if the beneficiary is likely to spend the capital or the capital could be at risk from predators such as a divorced spouse.
- Trusts (particularly discretionary trusts) can give great flexibility in directing benefit for different members of the family without incurring significant tax charges.
- If you want to make some IHT transfers in your lifetime but are not sure who you would like to benefit from them, a transfer to a discretionary trust can enable you to reduce your estate and leave the trustees to decide how to make the transfers in later years. It also means that the assets transferred do not now hit the estates of the beneficiaries.

Trust Registration Service

This is an important recent digital administration development, which came about due to Money Laundering Regulations which require countries to have a national register of certain information to fight against money laundering and terrorist financing.

Since 2020, The Trust Registration Service ('TRS') requires all UK non - taxable 'express' trusts (and certain additional non-UK trusts - not considered further here) to register. An express trust is one which is created deliberately by an individual in writing for specific purposes rather than being created by an act of law which is a non express trust. Common examples include but are not restricted to interest in possession and discretionary trusts. Non express trusts include

trusts established by a Court or by legislation and provided there is no tax liability are not required to register.

The deadline for registration of new trusts or where changes determine that a trust needs to register is 90 days from creation. Trusts on the register have to be updated whenever there are certain changes, such as a change in the lead trustee. These changes will also have a 90 day action deadline.

HMRC have published a manual to assist taxpayers - the [Trust Registration Service Manual - HMRC internal manual - GOV.UK](#)