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Notes on TRUST AND ESTATE CAPITAL GAINS

Filling in the Trust and Estate Capital Gains Pages

Gather together the material you need, such as:

- contracts for the purchase or sale of assets
- invoices for allowable expenditure
- copies of any valuations obtained.

Fill in the Capital Gains Pages if:

- the trust or estate disposed of chargeable assets in the year to 5 April 2010 worth more than £40,400, **or**
- the total chargeable gains (before the deduction of any losses) were more than the annual exempt amount (see page TCN4), **or**
- you want to claim an allowable loss, or make any other Capital Gains claim or election for the year.

In working out whether the assets you disposed of were worth **more than £40,400**, ignore exempt assets (see page TCN6) and any asset that the trustees are deemed to dispose of without a chargeable gain on the termination of a life interest in possession on the death of the person entitled to that interest (see page TCN7), but include any residence which is not exempt or is only part exempt (see page TCN13).

In working out your **total chargeable gains** you should include gains from all assets apart from exempt assets.

If you have to fill in the Capital Gains Pages you must include all your capital losses for the year which are to be claimed as allowable losses. If you do not have to fill in the Capital Gains Pages you can still complete them **if you want to claim a capital loss** arising in this year. If you do not do this you have to claim any losses arising in this year by 5 April 2014 for them to be available to set against future gains (see page TCN10). **If you want to make any other claim or election** for this year, you should also do this by completing the Capital Gains Pages (see section 5 on pages TCN13 and TCN14).

The following notes, and the helpsheets, cannot describe all the possible circumstances in which you may have to pay Capital Gains Tax. In more complex cases you may need to obtain professional advice or access the Capital Gains Tax Manual at www.hmrc.gov.uk

The notes are divided into six sections:

- **Section 1** (pages TCN2 to TCN5) explains how to fill in the Trust and Estate Capital Gains Pages.
- **Section 2** (page TCN6) provides a simple guide to Capital Gains Tax.
- **Sections 3 to 6** (pages TCN6 to TCN15) provide more detailed guidance.

Notes relevant only to personal representatives are highlighted in green.

Disposals by trusts/settlements with separate funds

Where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another, all the income and chargeable gains of the settlement must be included in a single tax return for self assessment unless a sub-fund election is in force.

Section 1 – General: filling in Pages TC1 to TC8

Before you start completing the Trust and Estate Capital Gains Pages you may find it useful to familiarise yourself with the requirements of the Pages by reading these notes.

If this is the first time you have filled in the Trust and Estate Capital Gains Pages, the notes on pages TCN3 to TCN5 will help you to understand what information you need to provide. We do not go into all the possible detail here, so we may sometimes refer you to helpsheets. If you want more information, please phone us or go to www.hmrc.gov.uk

You must always fill in Pages TC1 to TC4. If your transactions involved assets other than listed shares or other securities (a definition for the purposes of the Trust and Estate Capital Gains

Pages is given below), you must also provide the further information requested on Page TC5 (for transactions in other shares or securities), Page TC6 (for transactions in land or property) or Page TC7 (for all other transactions excluding transactions in listed shares or other securities). You can also use Page TC8 if there is insufficient space in column G on Page TC1 for any additional information you wish to provide.

We ask for more information in respect of the transactions involving assets other than listed shares or other securities as these are often more complex and require greater review. For example, you may be claiming various tax reliefs which reduce your chargeable gains, or you may have used an estimate or valuation within your computation and we may need to check the accuracy of the estimate or valuation with our specialist valuers (see page TCN12). Again, if we need further information to clarify any of your transactions, we will write to you.

If you think that you will need more than one copy of Page TC1 (together with Pages TC5 to TC7, as appropriate) to give details of all your disposals, take photocopies before making any entries. Please put your name and tax reference on each photocopy. If you use photocopies of the Pages please ignore the numbered boxes on all but the final sheet. On the final sheet make sure the entries in the boxes reflect the **totals** of all the transactions covered by the photocopy pages. Alternatively you may send computer-generated schedules to replace Pages TC1 to TC4 (together with Pages TC5 to TC7, as appropriate), **provided they follow the form of the paper copy of these Pages**.

In some situations, if you receive an amount in respect of an asset which is small compared to the value of that asset, the receipt may not be treated as a disposal. You will find more details on where this may apply, and how to fill in Page TC1 in these cases, under the heading 'Small receipts' on page TCN7.

You are not required to submit any calculations or other supporting documents unless specified with your Trust and Estate Tax Return. If you want to provide more information to show how you have calculated your figures you are welcome to do so. Please give the details on Page TC8 and tick box 5.23 if you have enclosed a computation. **If you provide calculations you must still complete Page TC1 (together with Pages TC5 to TC7 as appropriate).**

Definition of listed shares or other securities for the Trust and Estate Capital Gains Pages

For the purpose of completing the Trust and Estate Capital Gains Pages only, 'listed shares or other securities' are shares or securities of a company:

- which were either listed on a recognised stock exchange **throughout** the period you owned them – ignoring any period when the listing or quotation was temporarily suspended. Please see www.hmrc.gov.uk for more details
- that was a UK open-ended investment company **throughout** the period you owned them
- including units in a unit trust that was an authorised unit trust **throughout** your period of ownership.

Any shares or securities not within the 'listed shares and securities' definition above are to be treated as 'unlisted'.

A list of recognised stock exchanges is at www.hmrc.gov.uk or ask us.

Filling in Page TC1

Fill in Page TC1 to give details about the trust or estate's disposals in the year ended 5 April 2010. **If any of the transactions you are recording on Page TC1 involve assets other than listed shares or other securities you must also give, where appropriate, the additional information requested on Pages TC5 to TC7.** If, however, the information requested on Pages TC5 to TC7 has already been supplied in a claim to gifts hold-over relief (see

Notes on TRUST AND ESTATE CAPITAL GAINS

Helpsheet 295 *Relief for gifts and similar transactions*) or as a result of a post transaction valuation check request (see page TCN12) it need not be repeated again.

The information provided helps determine whether we need to ask you any more detailed questions about your Trust and Estate Tax Return. Fully completed Pages will help us to avoid making unnecessary enquiries.

Column A

In this column, enter details of each asset you have disposed of. For example, if you have disposed of land or property, unlisted shares or securities or assets other than listed shares or other securities, simply give a brief one-line description of the asset. You should then cross reference each entry to the additional information requested on, as appropriate, Page TC5, TC6 or TC7.

If you have disposed of listed shares or other securities, enter on Page TC1 (or if there is insufficient space, use Page TC8) the name of the company or unit trust, the type of shares or securities you have disposed of and how many shares or securities you have disposed of. No further information is requested on this return for these transactions.

We have split the list on Page TC1 into two. You should use the top half, rows 1 to 6, for recording details of disposals which give a gain and the bottom half, rows 7 and 8, for recording details of disposals which give a loss.

If you have made any chargeable gains or allowable losses in 2009–10 without making a disposal, you should also include details of these gains and losses in the list. This could occur, for example, because a deferred gain is treated as made in 2009–10 (see the section on gains of earlier years on page TCN8) or a loan to a trader has become irrecoverable. You must also state the nature of the event causing the gain to become chargeable and the particular gain which is now becoming chargeable.

Column AA

Enter in each row of this column the identifying letter (Q, U, L or O) which corresponds to the asset(s) identified in each of the rows. Please make an entry for every transaction (both gain or loss transactions) in column A.

For transactions in:

- listed shares or other securities, as defined on page TCN2, enter **Q**
- other shares or securities, enter **U**
- land and property, enter **L**
- other assets (for example, goodwill), enter **O**.

Record in column AA as 'U' shares or securities that were acquired as a result of a share exchange, or other company reorganisation (see page TCN8), where the shares or securities you originally held did not count as 'Q' throughout the period you held them.

Do not forget to give the additional information requested in respect of each individual transaction on:

- Page TC5 for transactions in other shares or securities (**U**)
- Page TC6 for land and property (**L**)
- Page TC7 for other assets (**O**).

If however the information requested on Pages TC5 to TC7 has already been supplied in a claim to gifts hold-over relief (see Helpsheet 295 *Relief for gifts and similar transactions*) or as a result of a post transaction valuation check request (see page TCN12), it need not be repeated.

Column B

Tick the box in this column on any row where you have used an estimate or valuation in calculating the gain or loss. (You should include details of any valuations you have used on Pages TC5 to TC7 – see the note on page TCN12.) For example, valuations

need to be used where an asset you have disposed of was:

- acquired from, or disposed of to, a connected person (see page TCN12), **or**
- held by you at 31 March 1982, **or**
- acquired as a legatee.

Column C

If you dispose of an asset that you owned at 31 March 1982, gains and losses are calculated by reference to their value on that date. The historical cost is ignored. In column C enter the date you acquired the asset, or 31 March 1982, whichever is later.

Column D

Enter in column D the date of disposal for each asset that gave rise to a chargeable gain or loss. If, for example, the date of disposal was 3 June 2009, you should show the date in the appropriate row of column D as '03/06/09'.

Pages TCN7 and TCN10 explain when a disposal for Capital Gains Tax purposes occurs and on what date your disposal will be treated as having occurred.

Column E

Enter in column E the total proceeds you have received or will receive from each disposal. Page TCN10 explains what to include in disposal proceeds. If you think the amount received is small (see 'Small receipts' on page TCN7) include details of the disposal in column E but do not include the gain or loss in the total you enter in boxes 5.1 and 5.2 on Page TC2. There is no column F.

Column G

Where the disposal or gain on any row is affected by a Capital Gains Tax claim or election, or a relief is due, you should give details in column G. For claims to relief you should also state the amount of your claim. For example, you may have claimed rollover relief, exemption under the terms of a Double Taxation Agreement, or Entrepreneurs' Relief. Section 5 on pages TCN13 and TCN14 describes the common reliefs. If you have insufficient space, use Page TC8 to give any additional information.

A claim to Entrepreneurs' Relief must be made jointly with the qualifying beneficiary. If you claim Entrepreneurs' Relief you should also tick box 5.22 on Page TC4. The amount of the relief claimed should be included in Column G and the amount of chargeable gains on which the relief is claimed in the box below box 5.22. See Helpsheet 275 *Entrepreneurs' Relief* for more information. The helpsheet also includes an optional form that can be used to claim the relief.

If you make a claim to:

- Gifts hold-over relief (for claim form see Helpsheet 295 *Relief for gifts and similar transactions*), **or**
- Enterprise Investment Scheme deferral relief (the claim form EIS3 is attached to the EIS3 certificate you receive from the company – for information see also Helpsheet 297 *Enterprise Investment Scheme and Capital Gains Tax*)

you must also attach the official claim form.

For claims to Business asset rollover relief, an optional claim form, which sets out all of the information required, can be found attached to the Helpsheet 290 *Business asset rollover relief*. If you do not use the claim form you must still provide all of the information requested.

Notes on TRUST AND ESTATE CAPITAL GAINS

Column H

Use column H to record the net amount of any gain or loss after all reliefs have been deducted.

For example, you have a chargeable gain of £50,000. In column G you give details of a claim for Enterprise Investment Scheme deferral relief of £30,000. In column H you should enter only the net gain of £20,000.

Filling in Page TC2

Now total your gains and losses in the boxes provided on Page TC1 and copy the totals to boxes 5.1 and 5.2 on Page TC2. You must complete the whole of Page TC2:

- if you have gains at box 5.1 greater than the trust or estate's annual exempt amount (see box 5.10 and 'Annual exempt amount' on this page) and no losses available, **or**
- if gains after deducting losses of the year (and where applicable losses brought forward from earlier years) are greater than the trust or estate's annual exempt amount.

There are restrictions on the use of clogged losses. Clogged losses are losses that arise on the disposal of assets to connected persons or where losses are transferred to you after 15 June 1999 by trustees when you become absolutely entitled to settled property. These losses can only be set against gains of certain types (see page TCN9).

Income losses set against gains, box 5.5

This box will not apply to many trusts or estates. In box 5.5 enter the amount of any allowable trading losses, losses from furnished holiday lettings or post-cessation expenditure that you wish to set against chargeable gains.

You should enter the lower of:

- the total losses you can claim, and
- the amount required to reduce the figure of gain, after capital losses of the year have been set off, to nil.

Helpsheet 227 *Losses* has more information.

Losses brought forward and used in year, box 5.6

If you have losses brought forward from earlier years you can use these losses to reduce the total gains of the year to the annual exempt amount. The amount of losses used should be entered in box 5.6. There are restrictions on the use of clogged losses. See page TCN9.

If you have losses brought forward from the tax year 1996–97, and later years, these should be used before losses for earlier tax years. This is because the rules for claiming losses changed in 1996–97. Any losses used in box 5.6 should also be entered in boxes 5.16A and 5.17B on Page TC3.

Total taxable gains, box 5.6A

You are now in position to work out your total taxable gains for the year. It is the total of box 5.1 minus boxes 5.2, 5.5 and 5.6. Enter this amount in box 5.6A. Please note that some box numbers, for example box 5.3, have not been used. Personal representatives should ignore boxes 5.8 and 5.9.

Claim to special Capital Gains Tax treatment where a vulnerable beneficiary election has effect – amount of relief claimed, box 5.6E

In box 5.6E enter the amount of the relief against Capital Gains Tax you are claiming in respect of a settlement for the vulnerable beneficiary. You can make a claim only if you made a valid election. See the notes on boxes 8.17 and 8.18 on page 12 of the Trust and Estate Return Guide. A tick in box 8.18 applies the special treatment to both Income Tax and Capital Gains Tax. If you have claimed relief in box 5.6E you must also claim Income Tax relief if the trust has any income that is subject to the special treatment. Relief claimed

against Income Tax should be made in box 10.1B of the Trust and Estate Return. For further information go to www.hmrc.gov.uk or contact us.

Trustees only, boxes 5.8 and 5.9

If this trust was made after 6 June 1978, enter in box 5.8 the number of trusts made by the settlor of this trust which were in existence at some time during the year to 5 April 2010. Otherwise leave the box blank.

If you are entitled to the annual exempt amount relating to a trust for the benefit of a disabled person, tick box 5.9. Go to box 5.10.

Annual exempt amount, box 5.10

You may not have to pay tax on the first part of the gains made in a year. This part is referred to as your annual exempt amount.

Trustees

You do not pay tax on the first part of any gains made in the year. The amount of gains free of tax depends on the nature of the trust.

- 1 Trustees of certain trusts for the benefit of persons who are mentally handicapped or in receipt of certain specified allowances do not pay tax on the first £10,100 of gains made in the year. If two or more trusts qualifying for relief have been made by the same settlor after 9 March 1981, the amount for each trust is £10,100 divided by the number of such trusts, but subject to a minimum amount of £1,010.
- 2 Trustees of other trusts, if they were made before 7 June 1978, do not pay tax on the first £5,050 of gains made in the year.
- 3 Trustees of some other trusts, if they were made after 6 June 1978, also do not pay tax on the first £5,050 of gains made in the year. But if two or more such trusts have been made by the same settlor the amount for each trust is £5,050 divided by the number of such trusts, but subject to a minimum amount of £1,010.
- 4 Where an election has been made for a sub-fund to be treated as a 'sub-fund settlement', it is treated for all purposes of Income Tax and Capital Gains Tax as a separate trust with one exception. For the purposes of the annual exempt amount you compute the amount that would be due to the trustees of the 'principal settlement' if the election had not been made. This is then divided by the number of trusts consisting in the principal settlement and the sub-fund settlements to give the annual exempt amount for each of them.

Further information is given in Helpsheet 294 *Trusts and Capital Gains Tax*.

Personal representatives

Personal representatives do not pay tax on the first £10,100 of gains made in:

- the year in which the deceased died, **or**
- either of the next two years.

Personal representatives must pay tax on all the gains made in subsequent years in the administration period.

If you have received a capital payment or benefit (for example, the writing off of a loan) from a non-resident, dual resident or immigrating trust, then Capital Gains Tax may be due. You should contact HMRC Residency for advice on **0845 070 0040**.

Please note that where a person acquires an asset from personal representatives as a legatee (including a residuary legatee) the personal representatives have no chargeable gain or allowable loss on that disposal and the legatee is treated as if they had acquired the asset at the same time and at the same cost or market value as the personal representatives did. Further information is in Helpsheet 282 *Death, personal representatives and legatees*.

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In box 5.10 enter the annual exempt amount you are entitled to. If the amount in box 5.10 is greater than, or equal to, the figure in box 5.6A, you should leave box 5.11 blank.

Taxable gains for 2009–10 box 5.11

Deduct the annual exempt amount in box 5.10 from the total taxable gains in box 5.6A and enter the net amount in box 5.11. The figure in this box is the net amount of chargeable gains on which you must pay Capital Gains Tax for 2009–10. The amount of the tax payable will be reduced by any relief claimed in box 5.6E.

Page TC2 summary boxes

The bottom half of Page TC2 has a number of summary boxes that we ask you to complete after you have completed Page TC1 and boxes 5.1 to 5.11 on Page TC2.

Filling in Page TC3

Capital losses

boxes 5.12 to 5.15

These boxes summarise the losses you have made this year and the various ways in which they have been used. Any remaining losses are carried forward to use against gains of later years.

boxes 5.16 to 5.17

These boxes summarise the allowable losses which you have claimed and the amount of unused losses to be carried forward to use against gains of later years.

boxes 5.17A and 5.17B

These boxes summarise the losses you have made in earlier years that have not yet been used against chargeable gains.

boxes 5.18 and 5.18A

These boxes summarise your losses to carry forward.

Clogged losses

Clogged losses are losses that can only be set against gains of certain types (see page TCN9). You must keep these losses separate from your other losses and ensure that they are allowed at the appropriate time. **Do not merge at any time the clogged losses into your main loss record at Page TC3.**

Filling in Page TC4

Personal representatives should ignore Page TC4.

This part of the Trust and Estate Tax Return provides us with further information about:

- the chargeable gains of trustees
- assets which have vested in beneficiaries.

box 5.19

Tick this box if any person holding an interest in possession in the settled property has died during the year.

Enter in the spaces provided:

- the name and address of the person who has died
- the date on which they died.

box 5.20

Tick this box if any beneficiary has become absolutely entitled to any part of the settled property during the year.

Enter in the spaces provided:

- the name and address of each such beneficiary
- the date on which each such beneficiary became absolutely entitled
- the nature of each such asset
- the value of each such asset
- the amount of any loss transferred to each such beneficiary.

box 5.20A

The total of losses transferred to beneficiaries during the year in box 5.14 must equal the total of losses entered in box 5.20A on Page TC4.

box 5.21

Tick this box if the trustees have ceased to be resident in the UK in this year or have become dual resident.

Enter in the spaces provided:

- a description of the assets held when the trustees ceased to be resident or became dual resident
- the date on which the change occurred
- the amount of chargeable gain arising as a result of the change.

box 5.22

Tick this box if you have claimed Entrepreneurs' Relief and enter the amount of gains on which the relief is claimed in the space provided below box 5.22, not the amount of relief claimed, which is entered in column G.

box 5.23

Tick this box if you have enclosed a Capital Gains computation.

Filling in Pages TC5 to TC7

If the transactions you have entered on Page TC1 relate to asset disposals involving:

- other shares or securities (recorded in column AA as 'U'), or
- land and property (recorded in column AA as 'L'), or
- other assets, other than listed shares or securities, (recorded in column AA as 'O')

you must provide additional information in respect of each individual transaction on Page TC5, TC6 or TC7.

Each page has space to give details of two transactions. If you have more than two transactions of each type, please photocopy the page before completion and send in all completed pages with your Capital Gains Pages. If, however, the information requested on Pages TC5 to TC7 has already been supplied in a claim to gifts hold-over relief (see *Helpsheet 295 Relief for gifts and similar transactions*) or as a result of a post transaction valuation check request (see page TCN12) it need not be repeated again.

This information will help with our review of the Trust and Estate Tax Return and may allow us to conclude that no enquiry is necessary. Occasionally we will need extra information. We will write and ask you for this if the need arises. If you are unsure at any point as to what information you need to provide, we or your tax adviser will be able to help.

Filling in Page TC8

If you are asked to give additional information to support any entry on Page TC1, or just need more space, please use this page.

Notes on TRUST AND ESTATE CAPITAL GAINS

Section 2 – A simple guide to Capital Gains Tax

At its simplest, Capital Gains Tax is a tax to be paid if a gain is made from selling something.

The trust or estate, for example, may hold shares directly in major UK companies. If any of these shares are sold, you will have to consider whether the trust or estate has to pay Capital Gains Tax. This simple guide is to help you answer that question. For disposals of shares, this guide deals only with the case in which the trust or estate bought shares listed on the Stock Exchange in one lot after 31 March 1982 through a broker, and where the trust or estate sold the shares in the same way. In any other case, or if you are in any doubt, you should read the notes in Sections 3 to 5.

You must work out the gain using the rules for Capital Gains Tax. We call this gain the chargeable gain. You must pay Capital Gains Tax if the net chargeable gains for 2009–10, after deducting any allowable losses, exceed the annual exempt amount. Section 1 beginning on page TCN2 shows how to fill in the Trust and Estate Capital Gains Pages.

So how do you start? Here is a simple example. Let us say that on 1 March 2001, 3,000 shares in a company were bought for £2.50 each. The broker charged a fee of £100. On 5 August 2009 the shares were sold for £8 each. The broker charged a fee of £200.

The gain is:

| | |
|--|----------------------|
| Sale price | £24,000 |
| minus broker's fee | <u>£200</u> |
| Net disposal proceeds | £23,800 |
| Cost | £7,500 |
| plus broker's fee (including stamp duty) | <u>£100</u> |
| | £7,600 <u>£7,600</u> |
| Net gain | £16,200 |

Compare this gain with the annual exempt amount to see if there is any Capital Gains Tax to pay.

Losses that have been made from sales or other disposals in the year must be deducted from the gains to decide whether the total gains are greater than the annual exempt amount. You can also deduct losses that have been made on sales or disposals in earlier years if they have not yet been deducted from gains made in earlier years. See Section 4 on 'Calculating gains and losses' for more information.

Section 3 – An introduction to Capital Gains Tax

Remember these Notes are a simplified summary of the Capital Gains Tax law as it applies in some common cases. If you are in any doubt about whether you have Capital Gains Tax to pay, ask us or your tax adviser or see our helpsheets and manuals at www.hmrc.gov.uk

What is a chargeable gain?

A chargeable gain is made when something that the trustees or personal representatives own (an asset):

- is wholly or partly disposed of (or treated as disposed of), **and**
- its value has increased since acquisition, or since 31 March 1982 if that is later, **or**
- its value at the date of disposal is greater than the reduced value for which you are deemed to have acquired the asset because of an earlier relief (for example, gifts hold-over relief).

You do not pay tax on the price you receive for the asset, but only on the increase in its value during the period you have owned it. If it has lost value in that time, you deduct that loss from any gains you make on other assets in the same year or later.

You may also be treated as making a gain in other circumstances, for example, where:

- a gain on an earlier disposal of an asset half it has lost value in that time, you deduct that loss from any gains you make on other assets in the same year or later been deferred, and a particular event, for example, the disposal of another asset, or the lapse of time, has ended the deferral period, **or**
- the value of an asset has had its value decreased by a transfer of rights or by any other means that would not by itself be regarded as a disposal, **or**
- you dispose of a wasting asset, which has not diminished in value as quickly as was expected (see Helpsheet 293 *Chattels and Capital Gains Tax*), **or**
- you derive a capital sum from your ownership of an asset, **or**
- you recover money for which you have had some relief under the capital gains rules. Ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 296 *Debts and Capital Gains Tax*.

Section 4 helps you work out gains and losses.

Who pays Capital Gains Tax?

- Trustees

If the trustees are resident in the United Kingdom all gains made by the trustees after deducting allowable losses are chargeable to Capital Gains Tax. If you think you may be non-resident please complete the supplementary pages for Trust and Estate Non-Residence and see the notes for those pages.

- Personal representatives

Personal representatives are chargeable to Capital Gains Tax on all gains after deducting allowable losses if the deceased was resident or ordinarily resident in the United Kingdom when he or she died. If the deceased was neither resident nor ordinarily resident in the United Kingdom, personal representatives are only chargeable to Capital Gains Tax on gains made from the assets of any branch or agency in the United Kingdom through which they are trading.

Assets

Any form of property, wherever it is situated, may be an asset for Capital Gains Tax. The most common assets include:

- stocks, shares and units in unit trusts
- land and property
- business assets, such as goodwill.

Some assets are exempt from Capital Gains Tax. Common exempted assets are listed on page TCN7.

The capital gains rules for shares apply generally to units in a unit trust but with some modifications. For more information ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 284 *Shares and Capital Gains Tax*.

The gains made on some assets may be wholly or partly relieved from tax. See the explanation of the common reliefs beginning on page TCN13 of these notes.

Exempt assets

You do not pay Capital Gains Tax on disposals of the following assets:

- private cars
- Savings Certificates, Premium and British Savings Bonds
- UK Government stock (gilts) and certain corporate bonds
- life assurance policies and deferred annuity contracts unless at

Notes on TRUST AND ESTATE CAPITAL GAINS

- any time acquired for actual consideration
- personal effects and goods worth £6,000 or less when you dispose of them
- shares issued after 18 March 1986 where relief has been given under the Business Expansion Scheme and not withdrawn.

If your only disposals are of these types of assets and you have no chargeable gains, you do not need to complete the Trust and Estate Capital Gains Tax Pages.

Gains from the disposal of personal effects or goods, each of which was worth £6,000 or less when you disposed of them, are exempt. You may be able to use any loss that you make on such a disposal. This is dealt with in more detail in Helpsheet 293 *Chattels and Capital Gains Tax*, available from the SA Orderline or go to www.hmrc.gov.uk

■ Disposals

Capital Gains Tax is payable on gains from the disposal of assets. A disposal will occur when:

- you sell, **or**
- you give away, **or**
- you exchange an asset, **or**
- you receive a capital sum from your ownership of an asset, **or**
- the value of an asset you own has been reduced to increase the value of an asset owned by some other person.

A capital sum is a sum that is not part of your taxable income.

You can claim to be treated as making a disposal if an asset you own has become of negligible value. This may enable you to claim a loss that you can deduct from your gains.

If you dispose of only part of an asset, you can only use part of the cost in calculating your gain. Part disposals are explained more fully on page TCN12.

Any disposal made by your nominee, or by a person who is a bare trustee in relation to assets to which you are absolutely entitled, will be treated as your disposal.

Some disposals do not result in a charge to Capital Gains Tax.

For example:

- where a person with an interest in possession dies and assets pass absolutely to a beneficiary, and the interest was in existence before 22 March 2006. Other cases depend on the Inheritance Tax treatment; please see Helpsheet 294 *Trusts and Capital Gains Tax*, **or**
- where shares are disposed of in exchange for other shares – see the notes on 'Share reorganisations, company reconstructions and takeovers' on page TCN8.

If the trust or estate is a member of a partnership, there are special rules dealing with the disposal or acquisition you make when there is a change in the share of partnership assets. If you need advice ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 288 *Partnerships and Capital Gains Tax*.

■ Small receipts

In some situations, an amount received in respect of an asset, which would otherwise be treated as a part disposal of the asset, may not be treated as a disposal at all if the amount is small compared to the value of the asset. This applies where amounts are received:

- as a capital distribution in respect of shares. This includes amounts received where rights to further shares which are allotted to you are sold nil paid, **or**
- as compensation, or under an insurance policy, for damage or injury to the asset, **or**
- for giving up or agreeing not to exercise rights, **or**
- for use or exploitation of the asset, **or**
- in some cases where there is a compulsory acquisition of land.

Where the receipt is not treated as a disposal, and in some cases a claim may be required, the amount will be deducted from the expenditure available to set against any later disposal of the asset. If the amount of the receipt exceeds the available expenditure, a gain may still arise on receipt. Ask us or your tax adviser or go to www.hmrc.gov.uk for further details.

If you received cash on an exchange of shares for qualifying corporate bonds, or on a conversion of securities, any gain arising on the cash element may also be deferred if the amount is small compared to the value of the shares. Again, you should ask us or your tax adviser or go to www.hmrc.gov.uk for further details.

What is small?

If in the situations described above and on the previous page the amount you receive:

- does not exceed £3,000, **or**
- does not exceed 5% of the value of the asset in respect of which it is paid, **and**
- the amount you receive is less than the allowable cost of the asset,

then you do not need to enter the amount as a disposal on Page TC1.

If the amount exceeds these limits, but you think that it should be regarded, in the circumstances, as small you should:

- enter the gain or loss on the list of disposals on Page TC1, **and**
- explain why you think the amount should be treated as small on Page TC8,

but **do not** include the gain or loss in the totals for column E on Page TC1 or boxes 5.1 and 5.2 on Page TC2. We may ask for further details in these cases.

■ Trustees: occasions of deemed disposals

Trustees are treated as making a disposal where:

- a person including other trustees becomes absolutely entitled to settled property
- a person with an interest in possession which he or she held before 22 March 2006 dies, and the assets remain in trust subsequently. Other cases depend on the Inheritance Tax treatment; please see Helpsheet 294 *Trusts and Capital Gains Tax*
- the trustees cease to be resident in the UK
- an interest in the settlement is disposed of for a consideration and at some time during a defined period the settlement is one of which the settlor has an interest or contains property which has come from such a settlement.

In each of these circumstances the trustees are treated as disposing of and reacquiring some or all of the property of the trust at the market value of the property. Market value is explained on page TCN11. In the first case mentioned above the trustees acquire the property as bare trustees for that person.

Trustees are chargeable to Capital Gains Tax as a result of each such deemed disposal unless it results from the termination of certain kinds of life interest in possession on the death of the person entitled to that interest. In such a case no chargeable gain arises unless there was a held-over gain on the disposal of that asset to the trustees.

When a beneficiary becomes absolutely entitled to property as against the trustees and there is a loss on that disposal, then so far as that loss cannot be set against gains arising on the same occasion, or gains on previous disposals by the trustees in the same tax year, the loss is transferred to the beneficiary and can be used only against gains which they have on that same asset, or any asset derived from that asset.

If you need more information about any of these deemed disposals, please ask us or your tax adviser or see Helpsheet 294 *Trusts and Capital Gains Tax*.

Notes on TRUST AND ESTATE CAPITAL GAINS

■ Building society mergers, conversions and takeovers

If you have:

- received cash as a result of a merger of two or more societies, **or**
- received cash, or been issued with shares, or received both cash and shares, as a result of either
 - a conversion of a building society to a company, **or**
 - a takeover of a building society by a company,

there may be liability to either Income Tax or Capital Gains Tax. The building society may be able to tell you whether there is any tax liability. If not, you should ask us or your tax adviser or go to www.hmrc.gov.uk

If you have received cash which is liable to Capital Gains Tax (which is likely if you received it following a conversion or takeover of a building society), then you should include details in the list on Page TC1.

If you need more detailed guidance on how to calculate the gain, you should ask us or your tax adviser or go to www.hmrc.gov.uk

If you have received shares, then you will only need to provide details of any gain you make when you dispose of the shares or authorise someone to dispose of them on your behalf.

Exceptionally, if you are treated as acquiring the right to cash or shares on the death of a member of the society, or on the death of a person with an interest in possession, the value of the right at that time is taken into account in the computation of any gain from the subsequent receipt of cash or the sale of shares.

■ Share reorganisations, company reconstructions and takeovers

If shares you held in a company have changed because the company has reorganised its share capital, or if you have exchanged shares in a company for other shares or securities as part of a company reconstruction or takeover, you may be treated as if you had not made any disposal of the shares you held originally. Instead the chargeable gain or allowable loss in respect of the original shares will arise when you make a disposal of the new shares or securities. There are two main exceptions to this general approach where you may be treated as having made a disposal on which there is a chargeable gain or allowable loss:

- if you receive anything else in addition to the new shares or securities, such as a sum of money, **or**
- if a company reconstruction or takeover is not carried out for commercial reasons, or is made in order to avoid tax. Companies can apply in advance to us for clearance from these anti-avoidance rules. The clearance will only be valid if the takeover or reconstruction is carried out in accordance with the clearance application.

If you think the trust or estate has obtained shares or securities as part of a company reconstruction or takeover, or you need advice about the anti-avoidance rules, ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 285 *Share reorganisations, company takeovers and Capital Gains Tax*.

If you have exchanged shares or securities for a right to receive an unknown number of shares or securities in the future, the right may be treated as if it were a security so that the company reconstruction rules apply to the exchange of the original shares or securities for the right, see Helpsheet 285 *Share reorganisations, company takeovers and Capital Gains Tax*.

An election for such a right conferred in 2009–10 not to be treated as a security, should be made by giving details in column G on Page TC1. The time limit for making such an election for 2009–10 is 31 January 2012.

■ Other taxable gains

In certain circumstances you may have to pay Capital Gains Tax on gains made by a non-resident company in which the trustees have an interest, in particular where the trustees or persons connected with them have a 10% participation in the non-resident company. If you think you may have to pay Capital Gains Tax on gains made by any such company, you should ask us or your tax adviser or go to www.hmrc.gov.uk for further information.

■ Gains of earlier years

Some gains that were made before 2009–10 may be taxable this year. For example, where:

- rollover relief was claimed on the purchase of a wasting asset, see Helpsheet 290 *Business asset rollover relief*, **or**
- a life tenant has died and you hold assets on which there has been a hold-over claim for the transfer to the settlement, see Helpsheet 295 *Relief for gifts and similar transactions*, **or**
- a gain has been deferred as a result of a share reorganisation in which you have been issued with qualifying corporate bonds, see Helpsheet 285 *Share reorganisations, company takeovers and Capital Gains Tax*.

You must include these gains in the Trust and Estate Capital Gains Pages.

Section 4 – Calculating gains and losses

Remember, these Notes are a simplified summary of the Capital Gains Tax rules, as they apply in some common cases. If you are in any doubt about your liability you should obtain professional advice, ask us, see our helpsheets or go to www.hmrc.gov.uk

■ How do you calculate gains and losses?

To calculate the gain you have made on the disposal of an asset, deduct the allowable costs from the proceeds you receive from the disposal.

There are examples on the following pages to show you how to work out your gain or loss.

If the trust or estate has disposed of shares or securities there are special rules for identifying the assets involved and working out the gain or loss. See Helpsheet 284 *Shares and Capital Gains Tax*, available from the SA Orderline or go to www.hmrc.gov.uk

■ A simple calculation

At its simplest, a calculation of a chargeable gain will use the format:

| | | |
|---------------|------------------------------|--------------------------|
| | | <i>See notes on page</i> |
| | Disposal proceeds | TCN10 |
| <i>minus</i> | Cost of acquisition | TCN11 |
| | Enhancement costs | TCN11 |
| | Incidental acquisition costs | TCN11 |
| | Incidental disposal costs | TCN11 |
| <i>equals</i> | Chargeable gain | TCN6 |

This simple calculation will not work if:

- the disposal is a part disposal, see page TCN12, **or**
- a relief is due, see page TCN13, **or**
- you have losses to set against the chargeable gain, see below.

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You can also be treated as having made a loss when:

- certain loans you have made to persons who are trading cannot be recovered, **or**
- you have had to make payments as a result of guarantees you have given for loans to persons who are trading.

In each case you must make a claim. Helpsheet 296 *Debts and Capital Gains Tax*, explains how to make a claim.

■ How is a loss allowed?

The total allowable losses of 2009–10 are deducted from the total chargeable gains of the year. If the allowable losses are greater than the chargeable gains, the excess is carried forward to be set against gains in future years.

You only use enough losses of years before 2009–10 to reduce the chargeable gains to the level of the annual exempt amount. Losses from 1996–97 and later years must be used in priority to any other losses you may have from 1995–96 and earlier years. Allowable losses must be set against the gains for the year in which they arose **before** you carry them forward to later years.

■ Clogged losses

Clogged losses are losses that can only be set against gains of certain types. These are:

- losses on disposals to connected persons, see page TCN12. These losses can only be set against gains on disposals to the same connected person. Subject to that restriction all the normal rules relating to those losses apply
- losses transferred to you by trustees when you become absolutely entitled to settled property, but only where the transfer occurred after 15 June 1999. In this case the losses can only be set against gains arising on the disposal of the same asset, (or an asset derived from that asset). In this situation the losses are set against those gains in priority to any other losses whether of the same year or brought forward and are treated as if they were losses of the current year
- losses where the trustees have received property subject to a gifts hold-over claim (see Helpsheet 295 *Relief for gifts and similar transactions*) and the person who transferred the property in question, or any person connected with them, acquired an interest, or has arranged to acquire an interest, and consideration is payable in connection with that acquisition. In this situation your allowable losses cannot be set against any gain on the disposal of that property.

In order to keep these losses separate and ensure that they are allowed at the appropriate time, if you have any clogged losses of the year, or clogged losses of any earlier year, please make a copy of Page TC3 for each clogged loss. This copy is referred to here as a shadow Page TC3.

Do not merge the clogged losses into your main Page TC3 loss record at any time. You should keep a copy of any shadow Page TC3 at least until the clogged losses have been fully used. Do not send copies of shadow Pages unless we ask you to.

■ Completion of Page TC1

If you complete Page TC1 and have a clogged loss, write the word 'clogged' alongside the description in column A and put an explanation in the 'Additional information' box on Page TC8. Include the full amount of the clogged loss in the figure in box 5.2 but divide this total loss between box 5.12 on the loss record on Page TC3 and any shadow Page TC3, as required.

If you set clogged losses against gains give the amounts and an explanation on Page TC8. Enter the use of any actual and clogged losses on the loss record on Page TC3 and any shadow Page TC3, as required.

If any clogged losses are set against gains, tick the appropriate 'Yes' box on Page TC2.

■ Carry back of losses

You can claim or elect to carry back allowable losses to deduct from gains of years before 2009–10 in two cases. You may claim to carry back allowable losses made on expiry or termination of a mineral lease against gains made from mineral royalties. You may also be able to elect to carry back allowable losses arising on a disposal of a right to deferred unascertainable consideration. If you are making a claim or election on the tax return to set such losses against earlier years' gains, you should enter the amount of the loss in box 5.14 and also enter details of your claim or election in column G on Page TC1 and put an explanation in the 'Additional information' box on Page TC8.

■ Do you have to claim a loss?

A loss made in 1996–97 or later years has to be claimed. These losses are not allowable losses until you have given notice of the amount of the loss to us. You do not have any choice about the order in which allowable losses are used. They must be deducted from gains in the order set out in the notes above.

Losses for 1995–96 and earlier years cannot be claimed.

The accumulated amount of such losses should be entered in box 5.17A. If you are using some of these losses against gains of 2009–10 the amounts being used should be entered in the boxes for allowable losses brought forward in box 5.6 on Page TC2. Such losses will form part of this tax return and we may make enquiries into them.

There is no time limit before which these earlier losses must be used.

■ How to claim for a loss

The rules for completing returns mean that many losses will have to be included in the Trust and Estate Tax Return Capital Gains pages (see 'Capital Gains' on page 9 of the Trust and Estate Tax Return Guide) for the year in which they are made. In 2009–10, if the total worth of all the assets disposed of was more than £40,400 or the trust or estate has made chargeable gains of more than the annual exempt amount, you must include all allowable losses you want to claim for the year in the losses section on Page TC1 of the Trust and Estate Capital Gains Pages. By giving the details requested on Page TC1 we will treat the entries as your claim to allowable losses. If you discover a loss that should have been claimed on the Trust and Estate Tax Return but you have already sent the return to us, you should, if the time for amending your return:

- has not yet passed – write to us giving details of the loss and ask for the Trust and Estate Tax Return to be amended
- has already passed but you are still in time to make a claim, see the next section below – send a separate notice of the amount of the loss to us.

If the loss is one that you do not need to claim right away see the next section, 'Is there a time limit for claiming losses?' for details of when the loss should be claimed.

■ Is there a time limit for claiming losses?

Allowable losses for 1996–97 and later years have to be claimed. This applies whether the losses are used in that time period or not. The latest date for claiming losses made in 2009–10 is 5 April 2014.

If losses brought forward have been claimed in the Trust and Estate Tax Return for the year they were made, or by a separate claim, they will still have to be included in a later year's tax return when they are used.

There is no time limit for claiming losses for 1995–96 and earlier years which can be carried forward indefinitely until there are gains against which they can be set (see 'Do you have to claim a loss?' aside).

Notes on TRUST AND ESTATE CAPITAL GAINS

What is the date of disposal (or acquisition)?

You will have to consider the date an asset was disposed of (or acquired) to decide if any disposal occurred in 2009–10.

If the disposal (or acquisition) is by way of a contract, the date of disposal (or acquisition) is usually the date of the contract.

In a small number of cases the contract may be conditional. This will be so if one or more conditions have to be met before the contract becomes binding. In these cases the date of disposal (or acquisition) is the date on which the last of the conditions is met.

In the situation where a beneficiary becomes absolutely entitled to settled property as against the trustee, the date of disposal (or acquisition) is the date of absolute entitlement.

In other cases where there is not a contract the date of disposal (or acquisition) will usually be the date when ownership of the asset is effectively transferred.

There are exceptions. For example, in most of the cases where you get a capital sum from ownership of an asset, the date of disposal is the date you receive the capital sum.

Example 2

As trustee or personal representative you sell a piece of land under an unconditional contract dated 2 April 2010.

The land was conveyed to the purchaser on 2 May 2010.

The disposal, for the purpose of working out the gain or loss, is treated as taking place on 2 April 2010.

The disposal is in the tax year ending on 5 April 2010 and you should include any gain or loss in the Trust and Estate Tax Return for this year.

What are your disposal proceeds?

In most cases your calculation should begin with the total amount of disposal proceeds you will receive. This may include:

- cash payable now or in the future, **or**
- the value of any asset received in exchange for the asset you have disposed of, **or**
- the value of a right to receive future payments.

The disposal proceeds should include cash, or anything that can be turned into cash. Do not include anything that is taxable as income.

If disposal proceeds include any amount taken into account as a balancing charge in calculating income, ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 293 *Chattels and Capital Gains Tax*.

List the total disposal proceeds of each of your disposals on Page TC1 of the Trust and Estate Capital Gains Pages.

Example 3

As trustee or personal representative you exchange a painting the trust or estate owns, which is worth £30,000, for a painting that you consider to be worth £33,000. Your calculation of the gain or loss on the first painting should begin with £33,000, the value of the painting received.

The distinction between future payments and the right to receive future payments is important when you do not receive all of the money to which you are entitled straightaway.

If the total amount to which the trust or estate is entitled is known or can be calculated, include the full amount you are due to receive.

No allowance can be made for the possibility that the whole sum may not be paid. However, if it becomes clear later on that you will never receive some part of the total amount originally due, the calculation of the gain can be adjusted.

If you will receive the total amount due in instalments over a period exceeding 18 months, you may not have to pay the tax which is due on the gain in one sum. Ask us for details.

Example 4

As trustee or personal representative you sell shares in a company in December 2009 for £50,000 together with a sum equal to 10% of the profits made by the company in the year ended 30 June 2009. You should begin your calculation by bringing in the £50,000 and the sum equal to the percentage of profits to which you are entitled. Accounts can be prepared and the sum can be calculated.

If some part of the amount to which you are entitled cannot yet be calculated when you make the disposal because of an unknown factor, you should bring in the value of the right to that future sum.

When you receive the amount to which you are entitled, you will make a further gain or loss on the disposal of that right.

Example 5

As trustee or personal representative you sell land for £40,000 and you will also be entitled to receive 50% of any increase in the value of the land, if the purchaser is able to obtain planning permission for a housing development. When you make the disposal you cannot know whether planning permission will be obtained or what effect that will have on the value of the land. So you do not know how much you will finally get. You should begin your calculation by bringing in the £40,000 together with your estimate of the value of your right to further money.

In some circumstances, the amount that you are to receive should be replaced in your calculation by the market value of the asset you have disposed of. The phrase 'market value' is explained on page TCN11. Market value will apply where the disposal is, for example:

- to a connected person, **or**
- otherwise than by a bargain made at arm's length, for example, a gift (unless the no gain/no loss rules apply), **or**
- wholly or partly for consideration that cannot be valued, **or**
- a deemed disposal on the occasion of a beneficiary becoming absolutely entitled as against the trustees.

The phrase 'connected person' is explained on page TCN12.

Example 6

As trustee or personal representative you transfer a piece of land worth £10,000 to the deceased's former spouse or civil partner for their undertaking to give up all claims against you. The consideration given cannot be valued. You should begin your calculation by bringing in disposal proceeds of £10,000.

A disposal which is otherwise than by way of a bargain made at arm's length is most often one where one party intends in that transaction to confer a gratuitous benefit on the other.

Example 7

As personal representative you sell land worth £40,000 to the deceased's sister for £25,000 in accordance with the instructions in the will. You should begin your calculation on the disposal of the land by bringing in disposal proceeds of £40,000.

Notes on TRUST AND ESTATE CAPITAL GAINS

What expenses can you deduct?

In working out a gain the expenses you can deduct fall into four categories. These are:

- acquisition costs
- enhancement costs
- incidental costs of acquisition and disposal
- expenditure on establishing, preserving or defending your title to the asset.

These phrases are explained in the following notes.

Expenses you deduct must be expenditure on the asset disposed of. These must not be expenses which you can claim against income.

Expenditure which has been taken into account in a claim to capital allowances can be deducted. You cannot claim for the cost of normal maintenance and repairs, or payments of interest or alternative finance payments. An alternative finance payment is the charge made by your finance provider over and above the original cost of the asset in the alternative finance arrangement.

The expenses you can deduct may be reduced if the asset you have sold is a wasting asset. This phrase is explained on page TCN12.

If you have only made a part disposal of an asset you can only deduct part of the expenditure on that asset. See page TCN12 for more details about part disposals.

What acquisition costs can you deduct?

You can deduct any amount you gave wholly and exclusively for the acquisition of the asset. If the asset was bought using an alternative finance arrangement the acquisition cost is the original cost of the asset under the arrangement, and does not include any alternative finance payments. In certain circumstances the amount you gave may be replaced by the **market value** of the asset when you acquired it. The phrase **market value** is explained in more detail in the next column.

Market value will apply where you acquired the asset, for example:

- from a connected person, **or**
- otherwise than by a bargain made at arm's length, for example a gift (unless the no gain/no loss rules apply), **or**
- wholly for a consideration that cannot be valued, **or**
- you owned the asset before 31 March 1982.

If you owned the asset at 31 March 1982, the gain or loss should be calculated based on the value at 31 March 1982.

Personal representatives and trustees of a will trust are treated as if they had acquired the assets of the deceased which make up the estate for a sum equal to the market value of those assets at the date on which the deceased died. Assets acquired by the personal representatives during the administration are subject to the rules described in the three paragraphs above.

If the asset is not one acquired but one the deceased created (for example, a copyright or the goodwill of a business), deduct any capital expenditure incurred wholly and exclusively in creating the asset.

What enhancement costs can you deduct?

You can deduct any amount you spent wholly and exclusively for the purpose of enhancing the value of the asset. Also, only expenditure which is still reflected in the state or nature of the asset at the date of sale is still allowable.

Example 8

As trustee you arranged for an extension to be built onto a trust property that you let but demolished before sale. The cost of that extension cannot be deducted because it is no longer reflected in the state of the asset at the date of sale. The costs of demolition may be allowable.

What incidental costs can be deducted?

You can deduct any expenditure incurred wholly and exclusively on the acquisition or disposal of the asset, and which is either:

- fees, commission or remuneration paid for professional advice, **or**
- the costs of transfer or conveyance, **or**
- stamp duty or stamp duty land tax.

Advertising costs, to find a buyer or a seller, can be deducted and so can the costs of any valuations or apportionments you obtain to work out the gain or loss on a disposal.

You cannot deduct any subsequent costs incurred if we disagree with your valuation.

When trustees transfer property to a person who is absolutely entitled to it, that person may deduct:

- any costs of transfer they incur, **and**
- any costs of transfer incurred by the trustees

as allowable expenditure in calculating any gain or loss on a subsequent disposal of the property, provided the expenditure is not already taken into account in computing the trustees' gain or loss on their disposal.

What is expenditure on establishing, preserving or defending your title to an asset?

You can deduct expenditure you have incurred wholly and exclusively in establishing, preserving or defending your title to an asset, or your rights over an asset. This may include, for example, the legal costs of a dispute with a neighbouring landowner whose fence encroaches on trust or estate land.

The costs incurred by the personal representatives in establishing their title to the assets of the estate may be deducted as set out in Statement of Practice 2/04, available at www.hmrc.gov.uk/practitioners/sop.pdf

What is meant by market value?

In some cases the price paid when you obtained the asset, or the price you received when you disposed of it, is replaced by the market value of the asset in working out your gain or loss. For example, if you owned the asset at 31 March 1982 the price paid for the asset will be replaced in the calculation by the market value of the asset at 31 March 1982.

The market value is the price an asset might reasonably have been expected to fetch on the open market at the date of that acquisition or disposal.

There is a special rule which applies if you have disposed of assets by a series of linked disposals to connected persons so that the value of the assets transferred, taken separately, is less than their combined value. The value of each separate asset is replaced in your calculation by a proportion of the total market value of all the assets in the series. You can exclude from the series any disposals that took place more than six years before the last disposal in the series.

Example 9

The trust owns the freehold interest in a piece of land. That interest is worth £100,000. Four years later as trustee you grant the settlor's brother a lease over that land. The lease is worth £20,000. You then sell him the freehold interest for its market value of £60,000. You have only realised a total of £80,000 (the freehold and the lease) in disposing of land worth £100,000. Because this was a series of transactions you must replace the £20,000 you got from the grant of the lease by £25,000 ($\frac{£20,000}{£80,000} \times £100,000$) in working out your gain. You must replace the £60,000 you got for the freehold interest by £75,000 ($\frac{£60,000}{£80,000} \times £100,000$) in working out the gain on that disposal.

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In the case of shares or securities quoted on the Stock Exchange Daily Official List (SEDOL) the market value is calculated in a special way. For those assets the market value is the lower of:

- a figure one-quarter up from the lower of the two prices in the quotation for the relevant day, **and**
- the figure halfway between the highest and the lowest prices of recorded bargains for that day.

Estimates and valuations

If you have used any estimated figures to work out your gains and losses, tick the appropriate box in column B on Page TC1 of the Trust and Estate Capital Gains Pages. Describe which figures you estimated and why you had to use estimates in the appropriate boxes on Pages TC5 to TC7.

You should also include any valuations you have used to work out gains or losses, for example, because the asset was acquired from a connected person or because you held the asset at 31 March 1982. You should tick the appropriate box in column B, whether you have prepared your own estimate of the value of the asset, or have taken professional advice.

We may need to check if the values you have used are accurate. We use specialist valuers to value some assets, mainly unlisted shares, land, goodwill and works of art. You will be able to discuss the values you have used with our valuers. If we cannot agree the valuation after discussion, you can appeal to an independent tribunal. If we do not enquire into a computation, you should not assume that valuations used in that computation are agreed.

Valuations we have already checked

If you have already asked us on form CG34 to check any of the valuations you have used in your calculations, tick the appropriate box on Pages TC5 to TC7 or put a note to that effect on Page TC8. We need to know which valuations have been agreed already and which have not yet been agreed.

Who are connected persons?

If you dispose of an asset to a connected person, or acquired an asset on the disposal by a connected person, the price you pay or receive is replaced by the market value of the asset in working out your gain or loss on the disposal of that asset.

Trustees are connected with:

- any living individual who is a settlor of that trust
- any person who is connected with such an individual
- any company which is connected with that trust.

If you make a loss on the disposal of an asset to a connected person, you can only set that loss against gains you make on disposals to that same connected person.

Personal representatives are not connected to anybody while they are acting in that capacity.

What is a wasting asset?

A wasting asset is an asset that had a predictable life of 50 years or less on the date on which you acquired it. All plant and machinery is treated as a wasting asset.

When you dispose of a wasting asset, the expenses that you can deduct are reduced to take account of the remaining predictable life of the asset.

If you have disposed of a wasting asset, ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 293 *Chattels and Capital Gains Tax*, which explains how to make the calculations.

Is there any adjustment for capital allowances?

You may have claimed capital allowances on the assets you have disposed of. If the disposal produces an allowable loss, the amount of the loss is reduced by restricting the expenses by the net capital allowances. 'Net capital allowances' means total capital allowances less any balancing charges. This restriction can only reduce the loss to zero. It cannot produce a gain.

Example 10

In March 1997 as trustee or personal representative you buy a printing press for £100,000. The printing press is sold in June 2009 for £27,000. The net capital allowances after deducting the balancing charge are £73,000. The loss of £73,000 is reduced to zero by restricting the allowable expenses by the amount of the capital allowances.

What are part disposals?

If you have made a disposal of part of an asset so that part of the asset is retained, there are rules to allocate expenditure between the part sold and the part retained. These are:

- expenditure which relates wholly to the part disposed of is deductible in full
- expenditure which relates wholly to the part retained is not deductible
- a proportion of expenditure which partly relates to the part sold is deductible (the proportion relating to the part retained is not).

The deductible proportion is the following fraction:

$$\frac{\text{Disposal proceeds}}{\text{Disposal proceeds} + \text{Value of part retained}}$$

Example 11

As trustee or personal representative you sell part of an asset for £25,000. The asset cost £30,000 and the part of the asset retained is worth £50,000. You have also incurred expenditure of £5,000 wholly on the part of the asset sold. To work out your gain or loss you can deduct the £5,000 spent on the part sold together with:

$$\frac{\pounds 25,000}{\pounds 25,000 + \pounds 50,000} \times \pounds 30,000 = \pounds 10,000$$

Where the part of the asset sold, particularly in the case of shares and securities, is a recognisable fraction of the asset, the allowable expenditure may be allocated according to that fraction to avoid unnecessary valuation work. The expenditure not allowed this time can be allowed on a later disposal.

What if you disposed of shares or securities?

Shares acquired (or treated as acquired) at any time are treated as a single asset, the share pool, if they are:

- of the same class
- in the same company
- acquired in the same capacity.

The same treatment applies to some securities and similar assets.

If the trust or estate have disposed of shares or securities and similar assets, ask the SA Orderline for Helpsheet 284 *Shares and Capital Gains Tax* or go to www.hmrc.gov.uk

Notes on TRUST AND ESTATE CAPITAL GAINS

Section 5 – Reliefs and elections

Reliefs from Capital Gains Tax are given in different ways to meet different purposes. **Some reliefs are given automatically and so you do not need to make a claim.** You should take account of the amount of any relief that is due, even if it is 'automatic', when you work out gains and losses.

Some reliefs are only given if you claim them. In some cases you can make a claim in the tax return. In others you must make the claim on a separate form which you attach to the tax return. (See Notes on completion of column G on Page TC1.)

You should use the Trust and Estate Capital Gains Pages to make any claims and elections (which determine how gains are to be worked out).

The most common reliefs and elections are introduced briefly below and are dealt with more fully in helpsheets available from the SA Orderline or go to www.hmrc.gov.uk – see the list on page TCN1 of these Notes.

■ Private residence relief

Trustees are entitled to **claim** relief when they dispose of the only home of an individual who is entitled to occupy it under the terms of the settlement. This is provided that, in calculating the amount of the gain arising on the disposal that would be a chargeable gain if the relief did not exist, no account would have to be taken of any gifts hold-over relief obtained under section 260 of the Taxation of Chargeable Gains Act 1992 by any person in respect of any earlier disposal. Special transitional rules that may allow some private residence relief to be claimed by the trustees apply where gifts hold-over relief is obtained in respect of a transfer to the trustees which was made before 10 December 2003.

In most cases personal representatives will not have to pay tax on any gains made when they dispose of a property which is the only home, both before and after the deceased's death, of individuals who are entitled, either absolutely or for life, to 75% or more of the proceeds of the disposal (assuming that none of the proceeds is required to meet any liabilities of the estate). The relief has to be claimed.

The most common exceptions are:

- if the garden or grounds of the home including the site of the house exceed half a hectare (a little less than one and a quarter acres) and some or all of that excess does not qualify for relief
- if part or all of the home has at some time been used for another purpose, for example, let or used for business.

This list is not complete. If you think that you may be entitled to private residence relief on a disposal you have made, ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 283 *Private residence relief*.

■ Other reliefs

Rollover relief allows gains on the disposal of business assets to be deferred if replacement assets are acquired. It can be claimed by trustees or personal representatives who are carrying on a trade. If you want this relief ask the SA Orderline or go to www.hmrc.gov.uk for Helpsheet 290 *Business asset rollover relief*.

Complete the claim form attached to Helpsheet 290. Please attach the claim form to the Trust and Estate Tax Return when you send it back to us. If you are claiming in relation to any disposal, enter 'rollover relief' and the amount claimed in column G on Page TC1 next to that disposal.

Gifts hold-over relief can be claimed in certain circumstances by trustees to defer gains made when assets are transferred otherwise than by way of a bargain made at arm's length. If you want to claim this relief ask the SA Orderline or go to www.hmrc.gov.uk for

Helpsheet 295 *Relief for gifts and similar transactions*. **Claims must be made by completing the claim form attached to Helpsheet 295 or a copy of the form.** Please attach the claim form to the Trust and Estate Tax Return. Write 'gifts hold-over relief' in column G on Page TC1 next to the relevant disposal.

Entrepreneurs' Relief can be claimed by trustees of settlements who dispose of trust property that is either shares in, or securities of, a qualifying beneficiary's personal trading company of which they are an employee or assets used in a qualifying beneficiary's business which ceased to be carried on by the beneficiary within a specified period prior to the disposal. A claim by trustees must be made jointly with the qualifying beneficiary. You may use the form attached to Helpsheet 275 to do this. The relief cannot be claimed simply by making an entry in column G on Page TC1. Further detailed guidance is provided in Helpsheet 275 *Entrepreneurs' Relief*.

Enterprise Investment Scheme Deferral Relief allows gains to be deferred when you subscribe for Enterprise Investment Scheme shares. See Helpsheet 297 *Enterprise Investment Scheme and Capital Gains Tax*. The relief can only be claimed on receipt of an EIS3 certificate from the company invested in. A claim form is attached to the certificate for completion and must be submitted with your tax return to claim the relief. When claiming, write 'Enterprise Investment Scheme deferral relief' in column G on Page TC1 next to the relevant disposal and enter the amount of the relief claimed.

Personal representatives cannot claim Enterprise Investment Scheme deferral relief.

Business incorporation relief is available to both trustees and personal representatives who are carrying on a business. It defers a gain made when a business is transferred to a company in exchange for shares. This relief is given automatically. If you have taken advantage of this relief on any disposal write 'business transfer relief' in column G on Page TC1 next to the relevant disposal and enter the amount of the relief. For transfers on or after 6 April 2002 it is possible to elect out of this relief. Further guidance is given in Helpsheet 276 *Incorporation relief*.

Unremittable gains. Relief may be claimed by trustees and by personal representatives. If you have disposed of an asset situated outside the UK and you are unable to transfer the gains to the UK because of exchange controls or a shortage of foreign currency in the overseas country, then you can claim that the unremittable gain should not be taxable in 2009–10. You can claim relief by writing 'unremittable gains' in column G on Page TC1 next to the relevant disposal. Enter the amount claimed.

Gains becoming remittable. Where a gain was not taxed in an earlier year because it was unremittable but it can now be remitted to the UK, it is treated as a gain arising in 2009–10. A gain may become remittable if, for example, exchange controls are lifted. Include any gains to which this applies whether or not they are actually remitted to the UK.

Negligible value claims and claims in respect of certain debts that have become irrecoverable, which have the effect of crystallising losses, may be made in column G on Page TC1. Further guidance on such claims is given in, respectively, Helpsheet 286 *Negligible value claims and Income Tax losses on disposals of shares you have subscribed for in qualifying trading companies* and Helpsheet 296 *Debts and Capital Gains Tax*.

Relief for foreign tax paid. If gains chargeable to Capital Gains Tax have also been charged to tax in another country, you may be able to claim relief by way of credit for the foreign tax paid ('foreign tax credit relief'). Foreign tax credit relief is deducted from that part of the Capital Gains Tax liability of the trust or estate that relates to the gain on which the foreign tax has been paid. If you wish to claim foreign tax credit relief, ask the SA Orderline or go to www.hmrc.gov.uk for the Trust and Estate Foreign Pages, if you do not already have them.

Notes on TRUST AND ESTATE CAPITAL GAINS

It will usually be advantageous to claim foreign tax credit relief in respect of foreign tax paid. But this will not be the case where no Capital Gains Tax is chargeable on a particular gain. For example, where the disposal results in a loss, or losses brought forward extinguish any chargeable gains, there may be no UK tax against which the foreign tax can be credited.

If you **do not** wish to claim foreign tax credit relief, deduct the foreign tax paid in calculating the amount of the chargeable gains or allowable losses to be entered in column H on Page TC1. You cannot, however, deduct part of the foreign tax in calculating the gain on disposal and claim credit for the balance.

If you **do** wish to claim foreign tax credit relief, you should obtain the Trust and Estate Foreign Pages and complete Page TF3. If you are calculating the tax you will also need Helpsheet 390 *Trusts and Estates of Deceased Persons: Foreign Tax Credit Relief for Capital Gains* available from the SA Orderline or go to www.hmrc.gov.uk

Relief for Special Withholding Tax. If gains chargeable to Capital Gains Tax have had tax withheld by another country because of the EU Savings Directive, you will be able to set the tax withheld against the UK tax liability.

To claim the Special Withholding Tax, you will need to ask the SA Orderline for the Trust and Estate Foreign Pages of the return and complete page TF3.

Relief for Inheritance Tax on a Gift or Deemed Disposal.

Inheritance Tax is not usually taken into account in calculating liability to Capital Gains Tax. In exceptional circumstances, it may be taken into account when the transferee disposes of the assets. Further guidance is available in Helpsheet 295 *Reliefs for gifts and similar transactions*.

Relief in respect of trusts for vulnerable beneficiaries.

The general guidance at www.hmrc.gov.uk explains how elections are to be made. Claims need to be made each year and apply to both Income Tax and Capital Gains Tax. Enter the amount of relief claimed against Capital Gains Tax in box 5.6E and the amount of relief claimed against Income Tax in box 10.1B of the Trust and Estate Return. The consequence broadly is that the overall liability is calculated by reference to the circumstances of the vulnerable beneficiary.

Section 6 – Worked examples of gains and losses

■ The basic calculation

Example 19

A piece of land which was bought in June 1998 for £20,000 was sold in May 2009 for £100,000. The incidental costs of the acquisition were £1,000 while the incidental costs of the disposal were £5,000. A barn had been built on the land in August 1998 at a cost of £15,000 and it was still there when the land was sold.

| | | | |
|--------------|------------------------------|----------|----------------|
| | Disposal proceeds | £100,000 | |
| <i>minus</i> | Incidental costs of disposal | £5,000 | |
| | Net disposal proceeds | | £95,000 |
| | Cost | £20,000 | |
| <i>plus</i> | Incidental costs | £1,000 | |
| <i>plus</i> | Enhancement expenditure | £15,000 | |
| | Total | £36,000 | £36,000 |
| | Chargeable gain | | £59,000 |

■ Allowable losses

Example 20

An individual died during 2006–07. The estate has the following chargeable gains and allowable losses:

| | 2007–08 | 2008–09 | 2009–10 |
|--------|---------|---------|---------|
| Gains | £10,000 | £16,000 | £25,000 |
| Losses | £25,000 | £5,000 | zero |

The chargeable gains or allowable losses position for each year would be:

| | | |
|----------------|-------------------------|---------|
| 2007–08 | Gain | £10,000 |
| | <i>minus</i> Losses | £10,000 |
| | Losses to carry forward | £15,000 |

Losses of the same year are set off to reduce gains to nil.

| | | |
|----------------|-------------------------------------|---------|
| 2008–09 | Gain | £16,000 |
| | <i>minus</i> Current year losses | £5,000 |
| | <i>minus</i> Losses brought forward | £1,400 |
| | Net gain | £9,600 |
| | <i>minus</i> Annual exempt amount | £9,600 |
| | | zero |

| | | |
|--|-------------------------------|---------|
| | Losses to carry forward | £13,600 |
| | (£15,000 <i>minus</i> £1,400) | |

Losses of the same year are set off in priority to losses brought forward.

Losses brought forward are set off to reduce gains to the annual exempt amount.

| | | |
|----------------|-------------------------------------|---------|
| 2009–10 | Gain | £25,000 |
| | <i>minus</i> Losses brought forward | £13,600 |

| | |
|------------------------|----------------|
| Chargeable gain | £11,400 |
|------------------------|----------------|

■ Asset owned at 31 March 1982

Example 21

An asset cost £250,000 on 1 May 1979 inclusive of incidental costs. It is worth £200,000 at 31 March 1982 and was sold on 15 April 2009 for £1,000,000 net of incidental costs.

| | | |
|------------------------|-----------------|--|
| | Gain | |
| Disposal proceeds | £1,000,000 | |
| <i>minus</i> Cost | £200,000 | |
| Chargeable gain | £800,000 | |

Notes on TRUST AND ESTATE CAPITAL GAINS

■ *A part disposal***Example 22**

A house was bought for letting in December 1987 for £50,000 including incidental costs. In March 1988 it was subdivided into 2 flats at a cost of £5,000. One flat was sold in May 2009 for £120,000. Immediately before the sale a central heating system was installed at a cost of £2,000 in the flat that was sold. The incidental expenses of the disposal were £6,000 and the value of the retained flat was £80,000.

| | | |
|-----------------------------|--|----------------|
| Disposal proceeds | | £120,000 |
| minus Incidental costs | | <u>£6,000</u> |
| Net disposal proceeds | | £114,000 |
| minus Part of cost of house | | |
| £50,000 | $\times \frac{£120,000}{£120,000 + £80,000} =$ | £30,000 |
| minus Subdividing house | | |
| £5,000 | $\times \frac{£120,000}{£120,000 + £80,000} =$ | £3,000 |
| minus Central heating | | <u>£2,000</u> |
| Total costs | £35,000 | <u>£35,000</u> |
| Chargeable gain | | £79,000 |

■ *A disposal of pooled shares***Example 23**

2,000 shares were bought in May 1988 at a cost of £9,000 including incidental costs. In January 1990 there was a rights issue of two shares for each one held as a result of which a further 4,000 shares were bought for £20,000. In June 2009 600 shares were sold for £6,000 net of incidental costs.

| | Number of shares | Pool of Qualifying Expenditure |
|--|------------------|--------------------------------|
| May 1988 A pool is created | 2,000 | £9,000 |
| January 1990 Add the cost of the rights issue shares to the pool | <u>4,000</u> | <u>£20,000</u> |
| New total | 6,000 | £29,000 |
| June 2009 Calculate chargeable gain and reduce the pool by the apportioned amount of cost | <u>(600)</u> | <u>(£2,900)</u> |
| | 5,400 | £26,100 |
| Calculation of chargeable gain | | |
| Disposal proceeds | | £6,000 |
| minus cost | | <u>£2,900</u> |
| Chargeable gain | | £3,100 |

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal. Any subsequent amendments to these notes can be found at www.hmrc.gov.uk