

OFFSHORE SETTLEMENTS



Opportunity to rebase for Capital Gains Tax

Trustees of offshore settlements with UK resident beneficiaries will shortly need to decide whether a rebasing election for capital gains tax is required. If capital payments were made from the trust in 2008/9 the deadline for making the election could be as soon as 31 January 2010.

There were extensive changes to the taxation of UK resident non-domiciliaries introduced with effect from 6 April 2008. Capital gains realised by Trustees of offshore settlements from this date can now potentially become chargeable to UK tax if they are matched to capital payments made to UK resident non-domiciled beneficiaries. Previously beneficiaries domiciled outside the UK were protected.

Alongside that legislation Trustees have the option to make an election

to rebase for capital gains purposes all assets held within the settlement to their market value on 6 April 2008. This will have the effect of sheltering non-UK domiciliaries from UK tax on all unrealised gains to that date. The election applies to all assets in the settlement, including assets held in underlying companies and those subject to the offshore income gain regime, regardless of whether the asset is standing at an unrealised gain or loss. The election is irrevocable and there is only one opportunity to decide whether to make it.

The deadline for making the election is 31 January following the tax year in which the Trustees first make a capital payment to a UK resident beneficiary. If a capital payment was made in the year ended 5 April 2009 then the deadline is 31 January 2010. A capital payment is widely defined and also includes benefits such as loans or property provided at below market rates. The election deadline

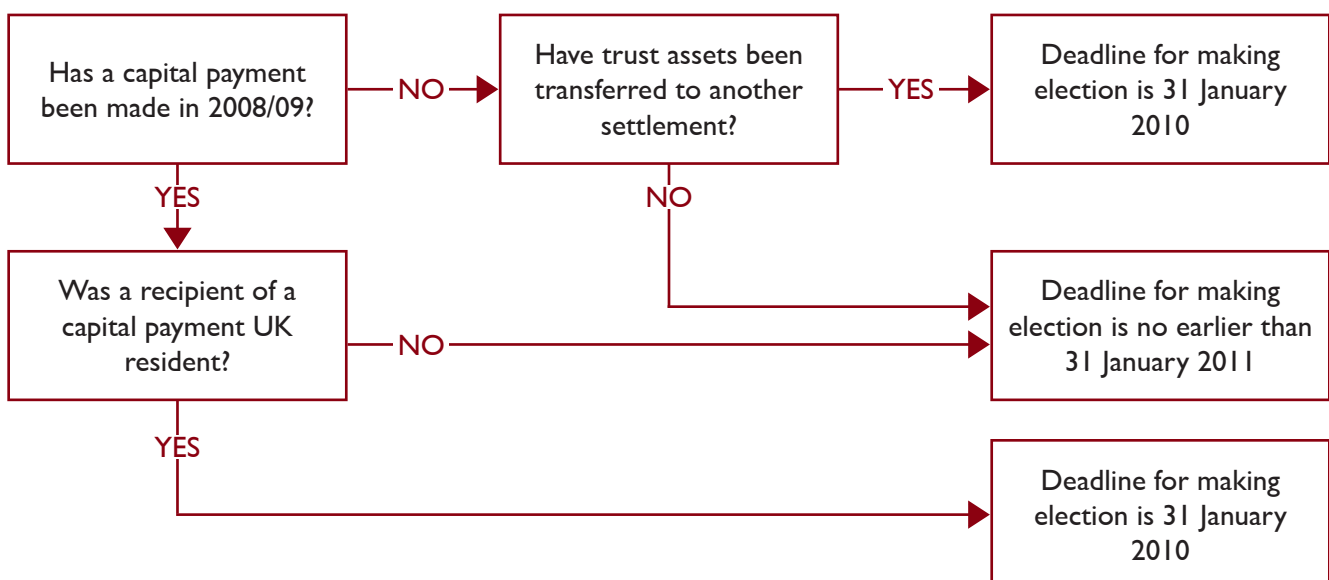
of 31 January 2010 could therefore be applicable to Trustees who directly or indirectly own property which is occupied by a UK resident beneficiary at less than market rates.

The deadline for making the election remains even if:

- The capital payment was made offshore and was never remitted to the UK
- The beneficiary in receipt of a capital payment is a remittance basis user
- The capital payment does not give rise to a UK tax liability

What questions should be asked when considering whether to make an election?

The Trustees should consider the following questions when deciding whether an election is required although the flowchart is only a guide and specific advice must be taken:



Effects of making the election

If the election is made, any capital payments to UK resident non-domiciliaries which are matched to gains realised after 6 April 2008 will be computed using the rebased 6 April 2008 market value. The election, therefore, cannot increase the capital gain that is chargeable on the beneficiary.

The effect of the rebasing is only applicable to capital payments made to non-domiciliaries: gains matched to capital payments made to UK resident beneficiaries who are UK domiciliaries do not benefit from the rebasing.

The election can only be made by the Trustees and must disclose information including the date the settlement was created and the names and addresses of all Trustees.

Considerations for Trustees

The following should be considered by those Trustees who may potentially have made capital payments to UK resident beneficiaries:

- Whether the trust assets were standing at gains or losses at 6 April 2008. Detailed calculations following UK capital gains tax rules are likely to be required, especially where some trust assets are standing at a gain and others at a loss.

- Valuations of assets at 6 April 2008 will need to be ascertained and formal valuations should be sought for assets such as property or unquoted shares.

- Whether capital payments are likely to be made to UK resident non-domiciled beneficiaries and whether these payments may be remitted to the UK.

Any potential future tax saving should be weighed against the increased cost of compliance with HMRC regulations following the election. Although as the legislation now stands it will not be obligatory for trustees to provide further details to HMRC, the Revenue will have details of trusts which in many cases were not previously known to them.

Summary

All Trustees who have made capital payments to beneficiaries who are

UK resident in the year ended 5 April 2009 and wish to make the rebasing election must do so before 31 January 2010.

The case for making the election is not clear cut and a decision should only be taken following discussions between the Trustees, settlors, beneficiaries and their professional advisers.

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