

TRUST TAXATION

EMMA CHAMBERLAIN and
CHRIS WHITEHOUSE

SWEET & MAXWELL

 THOMSON REUTERS

CONTENTS

PART I: GENERAL

1. THE TRUST

Anatomy of a trust	1.01
Trustees' powers	1.09
The settlor	1.14
The trustees	1.15
Sham trusts	1.18
Taxation issues	1.20
<i>Hastings-Bass</i> and-mi stake	1.22
Accumulation and perpetuity issues	1.39

2. CATEGORISATION OF FOREIGN ENTITIES AND TRUSTS

Introduction	2.01
Foundations	2.09
Establishments	2.18
US Grantor trusts	2.19
Usufructs	2.29
Delaware LLCs	2.29

3. RESIDENCE AND DOMICILE STATUS OF INDIVIDUALS

Introduction	3.01
The current statutory rules	3.07
Problems in determining residence status under current case law	3.16
HMRC practice and judicial review	3.38
Ordinary residence	3.54
Practical points for those wishing to become non-UK resident	3.63
The proposed statutory residence test	3.67
Domicile	3.87

"4. RESIDENCE OF TRUSTEES AND COMPANIES

Trustee residence	4.01
Exporting UK trusts	4.13
Importing a trust	4.40
Corporate residence	4.43

Other restrictions on set-off of UK resident trust losses	21.26
Offshore trusts and losses	21.28
Losses of offshore trusts within s.86	21.34
Losses in an underlying offshore company	21.38

* t

PART IV: INHERITANCE TAX

22. INHERITANCE TAX, RESERVATION OF BENEFIT AND PRE-OWNED ASSETS INCOME TAX—AN INTRODUCTION	
Potentially exempt transfers (PETs)	22.02
Gifts from companies	22.06
The charge on death	22.08
Reservation of benefit	22.10
<i>Ingram and Eversden</i>	22.17
Application of the reservation of benefit provisions generally	22.21
Avoiding the reservation of benefit rules	22.30
Impact of the pre-owned assets charge	22.38
23. THE 2006 IHT RULES—AN OVERVIEW	
Background to the changes	23.02
The IHT treatment of settlements set up on and after March 22, 2006	23.08
Exceptional cases: new settlements which are not taxed under the relevant property regime	23.12
Will drafting options	23.19
Existing settlements	23.25
Comments and conclusions	23.31
24. IHT DEFINITIONS AND CLASSIFICATIONS	
Meaning of "settlement" and related terms	24.01
When is there a disposition creating a settlement?	24.11
Who is the settlor?	24.18
Additions by the settlor including loans to trusts and the implications of borrowing by interest in possession trusts	24.26
Classification of settlements	24.35
25. CREATION OF SETTLEMENTS	
Background	25.01
Charge to tax in respect of settlements created on or after March 22, 2006	25.02
Reservation of benefit on setting up a trust	25.06
Impact of the pre-owned assets charge	25.10
The importance of the 2006 changes	25.11
26. THE TAX TREATMENT OF QUALIFYING AND NON-QUALIFYING INTERESTS IN POSSESSION AND REVERSIONARY INTERESTS INCLUDING VALUATION ISSUES, LEASES, RELIEFS, MELVILLE SCHEMES AND SALES	
Background	26.01

36. TRUSTS FOR VULNERABLE AND DISABLED BENEFICIARIES

Background matters	J	-	36.01
Income tax rules	•	•	36.06
CGT treatment			36.22
Inheritance tax: disabled trusts under s.89	•	•	36.30
THT: "disabled persons' trusts" after March 21, 2006			36-42
Dispositions for the maintenance of family including a dependent relative			36.56

37. REVERTER TO SETTLOR TRUSTS

Tax treatment of a reverter to settlor trust before the FA 2006 changes			37.02
The IHT position from March 22, 2006			37.19
The POA position from December 5, 2005			37.28
Comments and conclusions			37.34

38. TAX EFFICIENT WILL DRAFTING

Use of IHT nil rate band before October 9, 2007			38.02
The transferable nil rate band			38.08
Impact on drafting of IHT efficient-wills	•		38.17
• The Nil Rate Band Discretionary Trust			38.24
BPR/APR and nil rate gifts			38.46
Dealing with residue with surviving spouse	•	**	38.49
Dealing with residue—no surviving spouse		*	38.56
Wills for cohabitees			38.57
Proposed changes for charitable legacies			38.59

39. DEEDS OF VARIATION, DISCLAIMERS AND OTHER POST-DEATH REARRANGEMENTS

Variations: inheritance tax treatment	•		39.04
Variations: CGT treatment			39.33
Variations: income tax			39.41
Variations: impact of the POA charge			39.44
Variations: stamp duty and SDLT			39.45
Disclaimers		<	39.47
Section 144: discretionary will trusts			39.55

40. CAPITAL TAX ISSUES FOR PERSONAL REPRESENTATIVES

General			40.01
Valuation of assets at death	•		40.07
CGT losses of the deceased		-	40.12
Sales by PRs			40.13
Losses of the PRs			40.19
Transfers to legatees			40.20

41. PILOT TRUSTS

What is a pilot trust?			41.02
Related settlements			41.04
The attraction of pilot trusts			41.06

Adding property	41.07
Merging the trusts	41.16
Typical uses of pilot trusts	41.17
Miscellaneous technical points and traps	41.25
42. BARE TRUSTS	
General points	-42.01
Uses	42.04
Taxation of a bare trust	42.06
Deferring absolute entitlement	42.16
43. TRUSTS AND HOUSES: CAPITAL GAINS TAX AND INHERITANCE TAX CONSIDERATIONS	
Capital gains tax—principal private residence relief	43.01
Inheritance tax planning: some general considerations	43.29
• The fate of past schemes	43.37
Current planning options^carve-out schemes including reversionary lease schemes	43.85
Co-ownership/sharing arrangements (including let property)	43.94
Cash gifts	-43.116
Selling the family home	43.126
Foreign domiciliaries and the family home—inheritance tax and capital gains tax considerations	43.137
44. CHATTEL SCHEMES	
• • • Chattel arrangements	44.01
• ' • Foreign domiciliaries and chattel schemes	44.17
45. BUSINESSES: BPR	
Overview	45.01
Relevant business property	45.08
Restrictions on BPR	45.12
• What must be transferred?	45.35
The value of the business	45.37
How the reliefs work for settled property.	45.48
Application of the reservation of benefit rules	45.66
Impact of the pre-owned assets charge	45.73
46. FARMS: AGRICULTURAL PROPERTY RELIEF	
Basics of the relief	46.01
"Agricultural value" and liabilities	46.06
The "character appropriate" test	46.13
' What is a farmhouse?	46.20
When is agricultural property "occupied for the purposes of agriculture"?	46.22
Getting 100 per cent relief on let property	46.24
' ' ' Planning points	46.25
47. LIFE POLICIES AND OTHER INSURANCE PRODUCTS HELD IN TRUST	
Background	47.01

Existing trusts	47.03
Family protection policies	47.13
Loan trusts	47.21
Discounted gift plans (DGPs)	47.23
Flexible reversionary trusts	47.34
The chargeable event legislation	47.39
48. PENSION ARRANGEMENTS	
Background	48.01
Pension trusts and IHT	48.15
Lifetime IHT issues	48.26
ABI Guidance	48.48
49. EMPLOYEE BENEFIT TRUSTS	
Background—general tax treatment before December 9, 2010	49.01
Definition of an EBT	49.16
Exit charges when property ceases to be comprised in an EBT	49.33
Entry charges—general	49.36
Relief for dispositions by a close company	49.44
Relief for dispositions by individuals	49.53
Business and agricultural property relief	49.56
Disguised remuneration—position from December 9, 2010	49.59
50. TRUSTS AND DIVORCE	
Claiming trust assets on a divorce	50.03
Nuptial settlements	50.04
Trusts as a financial resource	50.19
Pre- and post-nuptial agreements	50.24
Inherited and pre-marital wealth	50.34
Anti-alimony and no contest clauses	50.38
Tax position on divorce	50.41
Trusts, and remittance issues for foreign domiciliaries	50.54
51. STAMP DUTY LAND TAX AND STAMP DUTY	
Stamp Duty Land Tax—an overview	51.01
Typical transactions encountered by trustees	51.09
Stamp Duty	51.24
52. PARTNERSHIP STRUCTURES	
Introduction	52.01
Tax treatment of partnerships	52.17
53. OFFSHORE INCOME GAINS	
Introduction	53.01
What is an offshore fund?	53.04
Taxation of offshore non-reporting funds (OIGs)	53.08
Taxation of UK resident trusts	53.14
Non-resident trusts	53.17

54. TAXATION OF NON-RESIDENT COMPANIES

Introduction	54.01
Taxation of an individual owning an interest in an offshore company	» 54.04
Trustees owning non-resident companies	54.24
Summary of tax advantages and disadvantages of incorporation	..54.34

55. CHECKLIST FOR PRIVATE CLIENTS AND TRUSTS: PLANNING IDEAS

Points to consider when first receiving instructions in relation to an existing trust	• ' 55.02
Points to consider when advising foreign domiciliaries (including rental properties)	55.22
Capital gains tax regime for beneficiaries receiving capital payments from offshore trusts	55.33
CGT and offshore trusts generally	55.40
Importing an offshore trust	55.45
Residence—emigration and immigration	55.50
Advantages and disadvantages of holding assets through an offshore holding company	55.64
Tax issues to consider on setting up a settlement	55.65
Making capital distributions to beneficiaries/hold-over relief/absolute entitlement at specified age such as 25-	55.70
Resettlements vs variations	—» 55.82
Business reliefs and use of trusts	55.90
Private residence relief—CGT	55.108
Disposals of beneficial interests in trusts	55.113
Losses	55.118
Lifetime inheritance tax planning—avoiding reservation of benefit	55.119
Death bed planning	55.123
, Minimising charges under the relevant property regime	55.130
Will drafting	* 55.131
Excluding the settlor from settlor-interested trusts—traps to Swatch	55.136

56. DISCLOSURE, COMPLIANCE, REPORTING AND ENFORCEMENT OF TAX LIABILITIES

HMRC's approach to tax schemes	56.01
How DOTAS works in relation to direct taxes other than IHT	56.10
DOTAS and IHT	56.32
Reporting transfers into and out of trusts	56.43
Excepted estates	56.61
Inheritance tax and the penalty regime—liability and reporting	56.65
Jurisdiction and enforcement issues against non-resident trustees	56.82