



ICAEW KNOW-HOW
TAX FACULTY

FINANCE ACT 2018 SECTION 35 AND SCH 10 SETTLEMENTS: ANTI-AVOIDANCE

Notes on practical points and areas of uncertainty

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TAXguides are published by the Tax Faculty to provide practical guidance to tax practitioners on important developments to tax practice and policy.

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INTRODUCTION

These notes have been prepared by committee members of STEP, ICAEW, the CIOT and the Law Society to highlight practical issues and uncertainties raised by Finance Act 2018 Schedule 10 (Settlements: Anti-avoidance etc.).

The notes have not been agreed by or commented upon by HMRC and no part of these notes should be taken as representing HMRC's views.

The notes are intended to assist professional advisers in considering the issues. They do not constitute advice and are not a substitute for professional consideration of the issues by such a professional adviser in each client's specific context.

OVERVIEW

FINANCE ACT 2018 SCHEDULE 10

In broad terms the effect of the legislation introduced by Schedule 10 is as follows:

- A UK resident settlor is taxed on gains which might otherwise be attributed to a close family member under the capital gains tax beneficiary charges (FA 2018 schedule 10 inserting TCGA 1992 sections 87G/H). **See Section A of these notes.**
- Income tax or CGT is imposed in certain cases on UK residents who receive a gift within three years of the donor receiving a capital distribution or benefit from a non-UK resident trust. This is the so-called 'onward gift' rule. **See Section B of these notes.**
- The income tax settlements code is extended to tax benefits received by certain settlors and close family members. Benefits are matched with untaxed protected foreign source income (PFSI) in the trust. (FA 2018 Schedule 10 inserting ITTOIA 2005 sections 643A-H). **See Section C of these notes.**
- The matching of trust gains with capital payments received by a non-UK resident beneficiary is ended. (FA 2018 Schedule 10 inserting new TCGA 1992 section 87D et seq.) **See Section D of these notes.**

Section A: Taxing a UK resident settlor on gains which might otherwise be attributed to a close family member under the capital gains tax beneficiary charges (FA 2018 schedule 10 inserting TCGA 1992 sections 87G/H).

Definition of “beneficiary”

Section 87G(1) TCGA 1992 refers to “beneficiary”. It is considered the definition of ‘beneficiary’ in TCGA 1992 section 97(8) applies and means section 87G includes any close family member who receives a capital payment and not only named beneficiaries or members of a specified class.

Informing the settlor

Section 87H TCGA 1992 assumes that the settlor will be aware of a payment being made to a close family member and also of the amount of the consequent liability. There is a risk of inadvertent non compliance by settlors who are unaware of their liability arising as a result of this provision.

It is therefore recommended that trustees inform a UK resident settlor when a payment is made to a close family member, and give details of the amount of the payment, the identity of the recipient and the amount of the matched trust gains.

Settlements code

There is a similar “close family member rule” for the transfer of assets benefits charge and also for the new settlements code benefits charge (see section C below). The close family member rule for the transfer of assets code was however included in Finance (No 2) Act 2017 and so is not dealt with here. It is considered that the settlements code close family member rule is, in practice, only likely to apply in fairly unusual circumstances and has not therefore been dealt with in this note.

Section B: The Onward Gift Rule

Multiple gifts – three year rule

The onward gift rule applies both where the original beneficiary (“A”) makes a gift to a UK resident (“B”) and where A makes a gift to a non-UK resident or a remittance basis user (“C”) and that person makes a gift to B.

The natural reading of the CGT rule is that all the gifts in the series have to be within three years of the original payment for the rule to be engaged.

This is supported by section 871(3)(b) and it is therefore considered to be the correct interpretation albeit that it makes section 871(2)(b)(i) unnecessary.

There is no doubt about the three year time limit in relation to the onward gift rule which applies for the purposes of the transfer of assets benefits charge. In this legislation the possibility of multiple gifts is dealt with in a different way. It is made clear (see section 733B(4)) that all gifts have to be made within three years of the original distribution to the first donor.

Arrangements

The onward gift rules refer to “arrangements” which exist at the time of receipt of the original payment by the original recipient. It should be noted that the term “arrangements” is likely to be interpreted widely (see *Snell v HMRC* [2006] EWHC 3350 (Ch) paragraph 28).

Intention

The onward gift rules also apply if instead of there being arrangements there is an “intention” as regards the passing on of the original payment. It is not stated whose intention is relevant in this context, that is, whether the intention must be held by the trustees or by original recipient. It is considered that it is sufficient for anybody involved to have the necessary intention. If, for example, the recipient of the benefit intended to pass it on to somebody else but the trustees did not know of this intention, the onward gift rules would still apply.

Intention – rebuttable presumption

The onward gift rules include a rebuttable presumption that the necessary intention exists where the onward gift happens within three years of the original trust distribution.

Proving a negative is notoriously difficult and will depend upon the facts. As indicated above the intention must be as respects the passing on, directly or indirectly, of the original payment. The issue of fact is therefore what intention the trustees and/or the original recipient have as respects the passing on of the distribution. It should be noted the term “passing on” is not defined.

The appendix to this note contains some examples where it is considered the presumptive intention is rebutted as well as an example of what might constitute “passing on”.

Indirect gifts

The onward gift rules refer to the original beneficiary making the onward gift “indirectly”. It is unclear in what situations is it contemplated that a gift is made “indirectly”. Given that there are specific provisions in the onward gift rules catering specifically for a series of gifts, it is considered unlikely that the concept of an indirect gift is intended to include a series of gifts.

It is considered the decision of the Upper Tribunal in *Bowring v HMRC* [2016] STC 816 is in point. This case established that a payment is received “indirectly” where it is received through an intermediary.

Alternatively, an indirect gift could be one which is not made directly to the subsequent recipient but, as a result of which, the subsequent recipient receives a benefit. For example, if the original beneficiary makes a gift to a company which is wholly owned by a UK resident individual, the gift might well be seen as an indirect gift to the UK resident individual.

The treatment of intermediate recipients

Paragraph 10 of the explanatory notes to schedule 10 states that “where there is a series of payments via non-residents, the intermediary payments are ignored”. It should however be made clear that the gift to the intermediate recipient may have other UK tax consequences including (but not limited to) inheritance tax. For example, if the property which is the subject of the gift is situated in the UK and the intermediate recipient dies within seven years of making the gift, there could be a charge to UK inheritance tax.

The onward recipient’s knowledge

It should be recognised that the legislation can apply even if the onward recipient has no knowledge of the arrangements that existed at the time of the original distribution or even where he or she is unaware there was a trust distribution at all.

Ideally, therefore, a UK resident in receipt of a gift from a non-UK resident or a remittance basis user should make reasonable enquiries to determine whether he or she is caught by the legislation. If in doubt, he or she should take professional advice as to whether any gift or benefit which he or she receives is taxable.

This is particularly important bearing in mind the extension of offshore time limits for assessing non-deliberate under-declaration of income tax, capital gains tax and inheritance tax liabilities arising from offshore matters or transfers from the current four or six-year periods to twelve years in Finance Act 2019.

Transfers on death

For the purposes of the onward gift rules a gift is not restricted to a gift during lifetime; the rules are capable of applying where a distribution from an offshore trust is made to a non-UK resident individual who dies and leaves assets under his or her will (or via intestacy or even forced heirship) to a UK resident.

There must however be a specific intention at the time of the distribution to pass some or all of the trust distribution on to a UK resident either during lifetime or on death. A general intention for an individual’s estate (whatever that may consist of) to be received on the individual’s death by one or more beneficiaries who are UK resident would not be sufficient.

Divorce

It is considered that the onward gift rules will not apply where a distribution is made to a beneficiary in order for that beneficiary to fund a divorce settlement. This is because a divorce settlement is not a “gift” if made pursuant to a court order and therefore any distribution to fund a divorce settlement is outside the scope of these provisions.

Multiple gifts - trusts as intermediate recipients

The application of the onward gift rules where a distribution is made from an offshore trust and the recipient uses the proceeds of the distribution to establish a new trust which then confers a benefit on a UK resident give rise to a number of complex issues.

This is largely due to the fact that the legislation does not deal specifically with the situation where a trust makes a distribution to A, A uses the funds to establish a new trust and the new trust then makes a distribution to a UK resident beneficiary, B. Read literally, the onward gift rules are capable of applying in these circumstances as long as the distribution to B is made within three years of the original payment to A. However, reading the legislation in this way gives rise to some odd results, not least the fact that, if the trustees are UK resident, they could themselves be liable for tax as a result of the gift by A to the new trust.

There are arguments both for and against the application of the onward gift rules where there is a gift to a new settlement which then makes a distribution to a UK resident beneficiary. Caution should be exercised in these circumstances and it is recommended that specialist advice is taken.

Capital gains tax – Schedule 4C gains

Where the original beneficiary A, is a remittance basis user and the payment is matched to gains in a Schedule 4C pool, the effect of section 87J(5) is that the capital gains tax onward gift rule has no effect.

For the purposes of section 87J, the whole of the payment to A is the taxed part of a matched amount (see section 87J(5)). Even though A has not paid tax on the distribution, the onward gift rule does not apply as section 87K only has any effect if the original distribution is not a “matched amount” (that is matched to the TCGA 1992, s 87 pool) or if there is an untaxed part of the “matched amount”.

Subsequent recipient a remittance basis user

The capital gains tax onward gift rule applies in an odd way where the subsequent recipient is a remittance basis user.

Where the payment to the original beneficiary is not matched against gains the subsequent recipient is treated under section 87K as having received a capital payment. The effect of section 87M(1) and (2) is that the subsequent recipient is not taxable on that capital payment, even if it is remitted to the UK. The only consequence is that the subsequent recipient is treated as having received a capital payment for the purposes of the conduit rules and would therefore be within the scope of the conduit rules if he or she makes a further onward gift.

The position is slightly different where the subsequent recipient is treated as if chargeable gains had accrued to him or her (as a result of the payment to the original beneficiary being matched against gains but not having been taxed). In these circumstances the effect of section 87M(3) and (4) is that the subsequent recipient is taxable if the onward payment is remitted in the year of receipt but is not taxed if it is remitted to the UK in a subsequent year. Instead, the subsequent recipient is again treated as having received a capital payment for the purposes of the rules and so will be within the scope of the onward gift rules if a further onward payment is made.

Whether or not a subsequent recipient who is a remittance basis user is taxable therefore depends on whether he or she is treated as receiving a capital payment or whether he or she is treated as if chargeable gains have accrued to them. In the former case, he or she will not be taxable but will be capable of making a further gift within the scope of the onward gift rules. In the latter case, he or she will be taxable to the extent that the onward payment is remitted in the year it is received but not if it is remitted in a later year.

The position is similar under the transfer of assets benefits charge. If the onward gift is not remitted to the UK in the charging year, the subsequent recipient is not taxable even if he or she remits the onward payment in a later year. The subsequent recipient is however, in these circumstances, treated as the recipient of a benefit for the purposes of the onward gift rule and so any further gift he or she makes may be taxable on the ultimate recipient.

Where the original beneficiary is a remittance basis user, remittance by the subsequent recipient only leads to him being taxed if the subsequent recipient is a relevant person (as defined by ITA 2007, s 809M(2)).

Protected foreign source income

The transfer of assets onward gift rules can only apply if the original benefit is matched against “protected foreign source income”. This requires the income to have arisen after 5 April 2017 at a time when the settlor is UK resident.

The effect of section 733B(1)(b) and section 735A ITA 2007 is that benefits are matched against the oldest income in the trust. For trusts which were in existence before 2017, this is likely to mean that the onward gift rules will not apply for the foreseeable future as benefits will be matched against income which arose before 6 April 2017 and which is not therefore protected foreign source income.

Income distributions

The question as to whether or not a distribution of income can be subject to the onward gift rules is not always straightforward.

As far as capital gains tax is concerned, the onward gift rule only applies if there is a “capital payment”. An income distribution is not a capital payment (see section 97(1)(a) TCGA 1992) and so it is clear that an income distribution cannot fall within the capital gains tax onward gift rule whether the recipient is resident in the UK or is non-UK resident.

The threshold condition for the transfer of assets benefits charge is however different. For the purposes of these provisions, the question is whether the recipient of the distribution is “liable to income tax” on the distribution (see section 732 (1)(e) ITA 2007).

If the recipient of the income distribution is resident in the UK, he or she is liable to income tax on the distribution. This is the case even if the recipient pays tax on the remittance basis and does not remit the distribution to the UK (and therefore has not paid any tax). Such an individual is still “liable” to tax, albeit on the remittance basis.

Where the recipient of the distribution is UK resident, the income tax onward gift rules cannot therefore apply. However, if the recipient of the income distribution is non-UK resident, he or she is not liable to income tax on the distribution and so the income tax onward gift rules are capable of applying.

There is a similar onward gift rule for the new settlements code benefits charge (see section C below). However, as the transfer of assets rules take precedence over the settlements code benefits charge, this provision will not apply in very many cases. For the sake of simplicity, it is not therefore dealt with in this note but the points are similar to those made above in relation to the transfer of assets rules.

Section C: Settlements code benefits charge for settlor or close family member (ITTOIA 2005 sections 643A-H).

Benefits received by settlor/ close family member whilst non-UK resident

There is nothing in section 643B which prevents a benefit from being taken into account if it is received by the settlor or a close family member whilst the recipient is non-UK resident. Such benefits will therefore be part of the “untaxed benefits total”.

However, the effect of section 643A(1)(b) is that, where the beneficiary is non-UK resident, there can only be a tax charge if the settlor is UK resident and is not UK domiciled or born in the UK with a UK domicile of origin.

Having said this, where a settlor or a close family member receives a benefit whilst non-UK resident but then becomes UK resident without tax having been paid on the benefit, tax may be payable at that stage (or in a subsequent year of UK residence) if there is “available protected income” which can be matched against the benefit.

Distribution of income a “benefit”

If the recipient of an income distribution is UK resident (even if a remittance basis user), the distribution is not a benefit as it will fall within paragraph (a) of step 3 in section 643B(1) as a benefit on which the individual is liable to income tax otherwise than under section 643A.

On the other hand, if the recipient is not UK resident, an income distribution will be a benefit as a non-UK resident is not liable to UK tax on an income distribution from a non-resident settlement.

So, for example, if an income distribution is made to a non-resident close family member, income may be treated as arising to that close family member which can then be taxed on the settlor if the settlor is UK resident.

PFSI paid out to a beneficiary

The definition of protected foreign source income (PFSI) in section 643C only includes PFSI which can be used directly or indirectly to provide benefits to the individual in question. Therefore, if the income has been genuinely paid away to another beneficiary, it is no longer available to provide benefits to the individual and so a tax charge cannot arise by reference to that income.

Section D: Capital payments to non-residents (see section 87D – 87F TCGA 1992)

As explained in the Overview on page 2, FA 2018 Sch 10 made changes to TCGA 1992 s 87 et al (non-UK resident settlements: attribution of gains to beneficiaries) by inserting new ss 87D to 87P. The close family member attribution rules (s87G to s 87H) and onward gift provisions (ss 87I to 87M) have been considered already within this note.

The previous regime

Prior to 2018/19 a capital payment to a non-UK resident was not disregarded for the purposes of TCGA 1992, s 87. As such, where a capital payment was made to a non-UK resident and not matched to trust gains in tax years when the individual was non-UK resident it was available for matching should the individual come to the UK and trust gains be realised.

Pre FA 2018 example

Jacque has never been UK resident. An offshore trust make a £1 million capital distribution to him in 2013/14 (no other capital payments were made in the tax year). There were no gains within the trust to match the capital distribution to. Jacque became UK resident in 2014/15. The trust realised gains of £10 million in this tax year. £5 million of these were matched to 2014/15 capital payments and £1 million to the capital distribution made to Jacque when he was not UK resident. Since matching takes place when he is UK resident he has to pay tax on the gain (subject to the availability of the remittance basis).

The new regime

The basic rule is that capital payments provided to non-UK resident beneficiaries are disregarded for the purposes of TCGA 1992 s 87 and s 87A.

This means that:

- Trust gains available to match to capital payments made to UK residents will be higher as there will be no deduction from the s 87 pool for capital payments to non-residents.
- Provided that the individual is not caught by the temporary non-resident anti-avoidance legislation (new TCGA 1992 s 87E), gains will not be attributed to the capital payment and taxed on the individual if he becomes UK resident at a future date.

There are exceptions to the basic rule where:

- the temporary non-resident anti-avoidance provisions apply (see new TCGA 1992 s 87E);
- the trust ends in the tax year that the capital payments are made (see new TCGA 1992 s 87F); or
- the trust has a UK resident settlor and the non-UK resident recipient of the capital payment is a close family member of the settlor (in this case the rule in new TCGA 1992 s 87G will mean that the capital payment is deemed to be received by the UK resident settlor).

Note that the commencement provisions (Finance Act 2018, Sch 10, para 12(b)) mean that the analysis is the same where the unmatched capital payment was made before 6 April 2018, the individual subsequently becomes UK resident and the capital payment is (or would, but for the changes, be) matched after 5 April 2018. Example 6 provides a comprehensive example.

Contrast to the income tax changes

The changes to TCGA 1992, s 87 contrast to the changes to the income tax provisions. Under the pre 2017/18 transferor of assets abroad legislation a foreign domiciled settlor was taxable under the transferor charge on UK and foreign income and this meant that pre arrival income was not subject to UK tax. In addition, the transferor charge did not apply to non-residents and so benefits received by a non-settlor beneficiary whilst non-UK resident could not be taxable even after becoming UK resident.

The changes, however, mean that pre UK resident foreign income can now be taxed on settlors who receive benefits after they become UK resident. In addition, benefits received by a settlor or a close family member whilst non-UK resident can be taxed if matched against PFSI whilst the beneficiary is UK resident.

APPENDIX – EXAMPLES

Section B: The Onward Gift Rule: Intention – rebuttable presumption

Example 1 The Unicorn Trust

The Unicorn Trust distributed £1.5 million to Sabrina (a non UK resident) in January 2017. There was no intention that Sabrina would use the funds to benefit anyone other than herself. Sabrina invests the funds with Phoenix Investment Managers.

On 19 May 2019 her daughter Steffi learns that she is pregnant with triplets. Steffi is UK resident. Steffi needs a larger house and cannot finance it herself. Sabrina liquidates the entire portfolio that was originally funded using the £1.5 million trust distribution and gifts all the funds to Steffi on 26 May 2019.

Sabrina always knew that Steffi would want children one day and she also knew that she would always help her daughter financially if Steffi needed assistance. However, when the trust distribution was made there were no plans to use these funds for Steffi (the Phoenix Investment Managers investment portfolio just happened to be the property Sabrina was happiest to liquidate when Steffi needed assistance).

It is suggested that the presumption of intention would in this case be rebutted.

Example 2 The Pegasus Trust

The Pegasus Trust distributed £50,000 to Louis on 24 July 2018. Louis was non UK resident. He had intended to make a gift to his UK resident and domiciled half-sister Marie to help her finance her postgraduate studies. However, Marie obtained a significant grant which meant that with her own funds she did not need the gift. Louis invested the funds with Phoenix Investment Managers.

On 1 January 2020 Louis found out that his UK resident and domiciled half-brother had cancer and his only chance of recovery was a very expensive treatment not available on the NHS. His half-brother had could not meet the full costs from his own resources. Louis liquidates the investment portfolio with Phoenix Investment Managers and other investments he has and gifts all the proceeds to his half-brother.

Since the gift that is actually made was not intended when the original trust distribution was made it is suggested that it should be accepted that in this scenario the presumption of intention is rebutted.

Example 3 The Peanuts Trust

The Peanuts Trust distributed £2 million to Lucy (a non UK resident) on 29 August 2018.

Lucy had two adult children (both non UK resident) and she had promised to provide them with funding for their first home. She had done so for her eldest child (her son Jared) gifting \$2.25 million for a flat in New York. She had yet to do so for her daughter Katrina as Katrina was not sure where she wanted to settle down and had been happy living with her mother. Lucy expected the situation to change and intended to use the £2 million from the trust to finance the gift.

At the time of the original trust distribution Katrina had never been to the UK and had no plans at the time to live here.

As such, whilst Lucy had an intention to pass the original trust distribution payment to Katrina she had no intention to pass the payment to a UK resident.

Unexpectedly in February 2019 Katrina received an offer from her firm to come to the UK on a three year secondment. It would provide good experience so she took it up. She met her future husband and decided to settle in London. On 15 July 2020 Lucy gifted Katrina £2.5 million (£2 million tracing back to the original trust distribution) for the acquisition of a London property.

Since there was no intention to make a gift to a UK resident when the original trust distribution was made, it is suggested that the presumption of intention is rebutted.

Example 4 Mr Amblem

Mr Amblem is UK resident but non-UK domiciled and independently wealthy. In January 2017 he receives a capital distribution from an offshore trust. In September 2018 his son wishes to move house and Mr Amblem wishes to assist him. Mr Amblem has a number of sources of funds that can be used for this purpose but decides, following financial advice obtained at the time he is considering the gift, to use the funds distributed by the trust.

Whilst Mr Amblem has always intended to support his family, on the basis that there was no intention at the time the capital distribution was received from the trust to make any onward gift from these particular funds, it is suggested that the presumption of intention is rebutted.

Example 5 “passing on”

The trustees of a settlement, established for primarily IHT planning reasons, de-envelope a valuable UK residential property and bring the settlement to an end by distributing the assets to the non UK resident and domiciled settlor. There is no income in the structure.

The settlement is brought to an end because the initial advice to envelope and settle is no longer considered appropriate, as a result of Finance (No 2) Act 2017 Schedule 10 (IHT on Overseas Property Representing UK Residential Property). At the time of the distribution of the UK property the settlor planned to retain the property and use it as a base when in the UK.

However, he also intended to allow his two UK resident adult daughters to occupy the property. He grants them a licence (non-exclusive, so the father can still occupy as before) when both were studying at UK universities. Subsequently one daughter returned home and the other was given an assured shorthold tenancy in the property at a low rent. The licence is gratuitous, non-exclusive and revocable at any time. The tenancy is exclusive and may run on from year to year. Both the licence and the tenancy are granted less than three years after the distribution.

There has to be an arrangement or intention as regards the passing on of the whole or part of original property (i.e. something contained in the bundle of rights that father obtained when he replaced the trustees as the absolute owner of the land) in order for the onward gift rules to apply. The onward gift also has to happen within three years of the original trust distribution to father.

In the case of the licence the father has nothing less than he originally had, namely the same bundle of rights in relation to the same property and this should not, therefore, be seen as coming within the legislation as no part of the original trust distribution has been “passed on”

In the case of the tenancy given to the daughter she is given an interest in the property. The father’s rights have diminished (to what extent depends on the length of the tenancy). As such there has been a “passing-on” of part of the distribution received by the father and the onward gift rules would be engaged.

Example 6 - Unmatched capital payment to non resident pre 6 April 2018 and residence after that date

On 23 August 2016, the Fantasy Offshore Discretionary Settlement made capital payments of £1 million each to four siblings:

- Miss Pegasus a non UK resident foreign domiciliary (who had never been UK resident and would not be UK resident in 2017/18);
- Miss Griffen a UK resident foreign domiciliary;
- Miss Unicorn a UK resident foreign domiciliary; and
- Mr Dragon a UK resident foreign domiciliary.

At no point during its establishment did the trust have any trustee borrowing such that a Sch 4C pool would be brought into existence.

The trustees distribute all of the income of the settlement each year so there is no relevant income for transfer of assets abroad purposes.

Miss Griffen, Miss Unicorn and Mr Dragon remitted the funds to the UK.

There were no gains in the settlement and the capital payments were unmatched as at 6 April 2018.

Miss Pegasus came to the UK on 1 April 2018 and was UK resident in 2018/19. She remitted the £1 million.

In 2018/19 the Fantasy Offshore Settlement sold a number of chargeable assets such that gains of £3.6 million were realised.

Miss Griffen, Miss Unicorn and Mr Dragon all continue to be UK resident for 2018/19. They were foreign domiciled and not deemed UK domiciled

The tax implications for the four siblings

Miss Pegasus

Miss Pegasus was not UK resident when the capital payment was received and her capital payment had not been matched to trust gains as at 6 April 2018. In addition, it is clear from the facts that she is not a temporary non-UK resident. As such, TCGA 1992, s 87D applies to Miss Pegasus as a result of the commencement provisions in Finance Act 2018, Sch 10 (specifically para 12(b)). This means that the £1 million capital payment made when Miss Pegasus was non-UK resident is disregarded. The capital payment cannot be matched to trust gains, even though the gains arise when she is UK resident. This means that:

- Miss Pegasus will not be subject to UK tax on the £1 million; and
- the trust s 87 pool is not reduced as a result of the £1 million capital payment to Miss Pegasus.

The other siblings

Miss Griffen, Miss Unicorn and Mr Dragon:

- were UK resident both when the capital payment was made and when the gains are realised; and
- remitted the entire amounts received so any Remittance Basis claims that they might have made are irrelevant in this context.

The s 87 pool has £3.6 million of gains which is sufficient to match to the three taxable capital payments. As such:

- each of them have £1 million of the £3.6 million of gains attributed (so £3 million attributed in total); and
- £0.6 million of gains remain within the TCGA 1992, s 87 pool to match to future capital payments to UK residents.

Other points to note

The analysis would have been the same as above if all of the siblings were UK domiciled as domicile was not relevant where Miss Pegasus was non UK resident and the UK resident siblings remitted the entire capital payments.

If the three UK resident siblings did not remit any of the £1 million capital payments:

- The position for Miss Pegasus would be unchanged as her £1 million capital payment is disregarded (for the reasons discussed).
- The position for the other siblings would be different if they made the remittance basis claim for 2018/19 as the fact that there were no remittances would mean that no tax was payable. Each of the capital payments would have £1 million of gains attributed and there would be tax payable on any future remittances that trace directly or indirectly to the capital payments.
- Again £3 million of the £3.6 million of trust gains would have been attributed with £0.6 million left in the TCGA 1992, s 87 pool.

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