



PRACTICE NOTE

PN 160/09

Date: 23 October 2009

THE TAXATION OF TRUSTS IN THE ISLE OF MAN— ADDITIONAL GUIDANCE

Introduction

1. This Practice Note should be read in conjunction with PN 141/07 – The Taxation of Trusts in the Isle of Man - which sets out the Assessor's view of when trustees and beneficiaries of trusts may be subject to Isle of Man income tax.
2. Additional guidance is now given on:
 - tax return filing requirements
 - trustee remuneration as a deductible expense for income tax purposes, and
 - the tax position of purpose trusts.

Filing Requirements

3. Trustees are obliged by law to inform the Assessor when there is, or may be, an Isle of Man income tax liability.

Isle of Man Resident Exclusion Clause

4. The Assessor will adopt a 'look through' approach as set out in section 9 of PN 141/07 in relation to a trust if:-
 - a) the primary or supplementary trust deed has a clause which specifically excludes any Isle of Man resident from becoming a beneficiary;
 - b) that clause has not been revoked; and
 - c) the trust has no Isle of Man source income other than from certain sources (see paragraph 20 regarding withholding tax).

A trust that meets all the above criteria will be what is hereinafter referred to as a 'non-liable trust'.

5. If a trust satisfies the criteria in paragraph 4, the Assessor does not require notification that the trust has been created. However, trustees who wish to have written confirmation in

respect of the taxation position of a particular trust should submit a copy of the trust deed and a completed trust questionnaire (see Appendix 1) to the Assessor.

6. Annual tax returns will not be required from a non-liable trust. Where the trustees have sought written confirmation from the Assessor, they will be contacted on a four-yearly basis to confirm that the circumstances of the trust remain as in paragraph 4 above.
7. If a primary or supplementary trust deed has a clause which specifically excludes any Isle of Man resident from becoming a beneficiary, but that trust receives income from taxable sources in the Island (e.g. rental income from a property in the Isle of Man or profits from a business carried on in the Isle of Man) there is a liability to Isle of Man income tax. Although the tax treatment of trustees and beneficiaries is explained in detail in paragraph 9 of PN 141/07, there is an obligation on the trustees to submit a completed trust questionnaire and a copy of the relevant trust accounts, showing worldwide income received and expenses incurred. These should be received by the Assessor by 6 October in the year following the year of assessment in which the income was received. The Assessor will notify the trustees of what is required of them on an ongoing basis.

No Isle of Man Resident Exclusion Clause

8. The Assessor will also treat a trust as a non-liable trust where the trust deed does not have a clause which specifically excludes any Isle of Man resident from becoming a beneficiary, if:-
 - a) the trust has no Isle of Man resident beneficiaries; and
 - b) the trust has no income from taxable sources in the Island.
9. If, in any year of assessment there is an Isle of Man resident beneficiary who may have moved to the Island or been added as a beneficiary, the trustees must supply a copy of the trust deed, a completed trust questionnaire and a copy of the trust accounts for that year. These should be received by the Assessor by 6 October in the year following the year of assessment in which the beneficiary was added.
10. Should a trust based on a deed which does not have a clause specifically excluding any Isle of Man resident from becoming a beneficiary receive income from taxable sources in the Island, the trustees are required to notify the Assessor as soon as possible but not later than the normal return form submission date of 6 October following the year of assessment in which the income is received.
11. Where the trustees are required to give notice to the Assessor under paragraphs 9 or 10, the Assessor will require a tax return to be filed annually showing the worldwide income of the trust and any expenses incurred, accompanied by a tax computation and full details of any distributions made. The taxation position of the trustees and the beneficiaries is dealt with in paragraph 9 of PN 141/07.

General

12. It is the trustees' obligation to inform the Assessor when there have been any changes which affect or may affect a trustee's tax position. Such changes include:
 - when a trust ends;
 - when trust interests or assets vest;
 - a change in the Isle of Man residence status of a beneficiary; and
 - the commencement or cessation of an income source in the Isle of Man.

13. If there is a change in trustees, the Assessor should be notified as soon as possible by the retiring or new trustees and a copy of the deed of retirement and appointment should be submitted. There is no obligation to inform the Assessor when changes under this paragraph or under paragraph 12 occur to a trust which is non-liaible both before and after the change.

Trustee Management Expenses

14. Trustee remuneration is deductible from the income of the trust by virtue of Section 27 of the Income Tax Act 1970, which provides:

"Where a settlor or testator under any instrument creating a trust has directed remuneration to a trustee out of the income of the trust, or where the trustee or the beneficiary of the trust proves to the satisfaction of the Assessor that the trustee at the time of accepting the trust contracted for remuneration for his services as trustee out of the income of the trust, the beneficiary shall be entitled to a deduction of such remuneration from such income up to an amount not exceeding five per centum of the annual income of the trust."

15. Trustee remuneration is frequently not identified in trust accounts and so by long standing practice the Assessor has allowed a general deduction which is often referred to as 'trustee management expenses'. The Assessor will allow a deduction for expenses incurred up to 5% of the trust's gross income, or £500, whichever is the greater.
16. Where a trust receives rental income, expenses allowable under Section 58 of the Income Tax Act 1970 (see PN 51/94 – Assessment of Income arising from Land and Property) can be relieved against that rental income. For the purposes of calculating trustee management expenses, the net rental income figure is used.

Rate of Tax

17. The rate of tax applicable to all non-corporate entities is set out in Statutory Document 225/06, which can be viewed on the Division's website. The tax rate applicable to trusts for the 2009/10 year of assessment is 18%.

Income Distributions to Non-resident Beneficiaries

18. When a trustee of an Isle of Man trust (excluding a non-liaible trust) makes a distribution of trust income to a non-resident beneficiary, the trustee may on receipt of a notice from the Assessor be required to deduct withholding tax at the rate set for non-corporate taxpayers from the distribution and remit this to the Assessor. The tax rate applicable to the income of trusts for the 2009/10 year of assessment is 18%, and is set out in Statutory Document 225/06.
19. Paragraph 9 in PN 141/07 details the taxation treatment of trustees and beneficiaries. However, despite certain distributions from a discretionary trust being treated as if the income accrued to them directly, there is still an obligation on the trustees to deduct withholding tax at source.
20. Withholding tax need not be deducted from an income distribution in the following circumstances:
 - where the distribution is of interest from a bank or building society in the Isle of Man;
 - where the distribution is of dividends received from a company resident in the Isle of Man;

- where a distribution is of income which is derived from business transactions outside the Isle of Man, or from dealings with persons resident outside the Isle of Man, or from the provision of services outside the Isle of Man; and
- where the distribution is of income that has already suffered Isle of Man tax in the hands of the trustees.

21. Non-resident beneficiaries in receipt of income from non-approved Isle of Man sources will need to register with the Income Tax Division and file an annual tax return if they wish to claim a personal allowance. The return must detail all Isle of Man source income. For further details see PN 130/06 – Taxation of Non-resident Individuals.

Purpose Trust

22. A purpose trust cannot be created for the benefit of a particular person or persons. The Assessor accepts that any income received by a purpose trust will not be subject to Isle of Man income tax during the lifetime of the trust.
23. If a person resident in the Isle of Man is or may be the residual beneficiary on the termination of a purpose trust and that person receives a distribution from the trust which includes accumulated income, then the Assessor may charge that person to income tax on the income distribution. Where the Isle of Man resident person is a charity, there will be no charge to income tax.
24. If, in the Assessor’s opinion, a purpose trust is being used to reduce the income tax liability of any person who is resident in the Isle of Man, he may consider the trustees to be liable to income tax.

Avoidance

25. The Assessor will take appropriate action where it appears that any arrangement or arrangements, including those involving trusts, have been entered into with the intention of avoiding taxation in the Isle of Man.

Appendix 1 Trust registration questionnaire

Questionnaire attached.

M Couch
Assessor of Income Tax

This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person’s right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.



**Isle of Man
Government**

Reilhtys Ellan Vannin

The Treasury *Yn Tashtey*

Income Tax Division
Government Office, Douglas
Isle of Man, British Isles
IM1 3TX

Telephone: (01624) 685400
Fax: (01624) 685351
Email: incometax@itd.treasury.gov.im
Website: www.gov.im/incometax

TRUST REGISTRATION QUESTIONNAIRE

Trust

Full title of the trust:	
Name and address of the settlor if they are Isle of Man resident	Name:
	Address:
Date trust established:	

Trustees

Please enter the full name and address of each trustee
State first the trustee to whom return forms should normally be sent.
(If you require additional space, please use a separate sheet and attach it to this form.)

Name:	Name:
Address:	Address:
Name:	Name:
Address:	Address:

Trust Type

Interest in Possession <input type="checkbox"/>	Discretionary <input type="checkbox"/>	Purpose <input type="checkbox"/>
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Trust Income Sources

Does the trust receive any taxable income from Isle of Man sources (eg rental income from a property in the Isle of Man)?

YES NO

If Yes, please provide full details below

Beneficiaries

Are Isle of Man resident persons excluded from benefiting from the trust? YES NO

If No, are any of the beneficiaries resident in the Isle of Man for income tax purposes? YES NO

If Yes, please supply the full names and addresses of any Isle of Man resident beneficiaries below
(If you require additional space, please use a separate sheet and attach it to this form.)

Name:	Name:
Address:	Address:
Name:	Name:
Address:	Address:

Any Other Information

Please provide any other information which you think is relevant

Professional Agent Acting

Please enter contact details of any professional agent acting

Name:

Address:

Signature of trustee:

Full name (*in capitals*):

Date:

This questionnaire should be completed after reading PN 141/07 and PN 160/09.