

M12 TRUSTS – A TRUSTEE’S LIABILITY TO GUERNSEY INCOME TAX (sections 53, 62A – D, 65, 81B and 170)

(See also [R8](#))

This Statement of Practice does not apply if a Guernsey resident individual is the settlor of a trust and they and their spouse have not been irrevocably excluded. In such a case, under section 65, the settlor will be taxable on the income of the trust, which would include the income of any entity underlying the trust (for example a company owned by the trust).

This Statement of Practice also does not apply to a unit trust. In accordance with section 170, the trustees of a unit trust will be treated as if they were an investment company.

Under section 53, a Guernsey resident trustee may have a liability to Guernsey income tax.

Where the whole of the income of a trust is payable to beneficiaries resident outside Guernsey, the liability of the trustees will be restricted to the trust income which arises in Guernsey, apart from Guernsey bank interest. Where one or more of the beneficiaries is resident in Guernsey, the liability of the trustees will be restricted to the income to which the resident beneficiaries are entitled, plus any Guernsey income (which would include income arising from unit trusts domiciled in Guernsey), apart from Guernsey bank interest, of the non-resident beneficiaries.

Where the trustees have power to accumulate income for the benefit of beneficiaries all of whom are resident outside Guernsey, no assessments will be raised on the trustees in respect of the accumulated income in so far as it does not arise from sources in Guernsey (for this purpose “sources in Guernsey” excludes Guernsey bank interest). If separate funds are set up within the settlement each can be looked at individually, if appropriate, in order to determine the trustees’ liability to tax.

Where one or more Guernsey resident trustees hold an interest in a company, in their capacity as trustees, and no other individual, resident in Guernsey, is a beneficial member of that company within the meaning of section 62D, the Guernsey resident trustees will not have any liability to Guernsey income tax in relation to distributions (including deemed distributions to 31 December 2012) from that company.

Furthermore, where no other Guernsey resident is a beneficial member of that company, within the meaning of section 62D and the trustee is deemed to be the beneficial member by virtue of section 62D(4) the Director will not treat the trustee as the beneficial member under section 62D(4) if he is satisfied that the trustee is acting as a trustee solely in a professional capacity.

Notwithstanding the above, where a minority of the beneficial members (within the meaning of section 62D) are resident in Guernsey, the Director may be prepared to apply the above principles to the distributions applicable to the resident beneficial members, on a case by case basis, so that the Guernsey resident trustees may not have any liability to Guernsey income tax in relation to distributions (including deemed distributions to 31 December 2012) from that company.

Published: 1991

Revised: 1996 / 2000/ 2003 / 03.06.09 / 2011 / 2014 / 23.11.15