

Rashid & Co

CHARTERED CERTIFIED ACCOUNTANTS

WHAT LTD CO'S NEED TO KNOW ABOUT

Capital Taxes

ABOUT US

Rashid & Co

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Rashid & Co was established in 2021 and today, we continue to build on our enviable reputation for providing excellent advice and first-class service to our business and personal clients alike.

We have many clients in the local community and service businesses, small and large, across many sectors including nursery schools, beauty salons, hospitality industry, financial services, real estate and retailers.

As well as accountancy and tax skills, our principal has individual specialisms which enable us to provide clients with a first class tailored service.

With our wealth of experience, we pride ourselves on delivering an unparalleled service to all clients, whatever their size or sector.

In addition to traditional accounting and tax services we also provide advice on how to improve and develop your business. Whether you need an integrated business strategy, access to corporate finance or specialist tax advice we are here to help you achieve your goals.

INTRODUCTION

Running a limited company comes with a lot of financial responsibility — and capital taxes are one of the areas that can catch even the most diligent directors off guard.

Whether you're selling a business asset, distributing profits, or planning your exit strategy, understanding how capital taxes work could save you thousands of pounds and protect the value you've worked so hard to build.

This guide is here to cut through the complexity. No jargon, no confusion — just clear, practical information about the capital taxes that matter most to limited companies in the UK.

What Are Capital Taxes?

Capital taxes are charged on gains or transfers of value — typically when an asset increases in value and is then sold, gifted, or passed on. Unlike income tax or VAT, which apply to regular trading activity, capital taxes tend to apply at key moments: growth, change, and transition.

For limited companies and their owners, these moments can be significant. Getting ahead of them — rather than reacting to them — is what separates financially savvy directors from those who receive an unexpected tax bill.

Why Capital Tax Planning Matters

Here's the reality: capital taxes aren't something to think about when you're already in the middle of a transaction. By then, the options are limited.

The companies that manage capital taxes most effectively are the ones that plan ahead — reviewing their position regularly, structuring transactions thoughtfully, and taking advantage of the reliefs and allowances available to them. That's where the right advice makes all the difference.

What This Guide Covers

In the pages that follow, you'll find a deeper breakdown of each of these capital taxes — how they're calculated, when they apply, what reliefs are available, and the key planning opportunities you shouldn't miss.

Whether you're at the early stages of building your company, approaching a major transaction, or thinking about your exit, this guide will give you the knowledge you need to make informed decisions — and know when to ask the right questions.



CAPITAL GAINS TAX

A capital gain arises when certain capital assets are sold at a profit. The gain is the sale proceeds (net of selling costs) less the purchase price (including acquisition costs).

WHAT ARE THE MAIN FEATURES OF THE CURRENT SYSTEM?

- Capital gains tax (CGT) is charged at the rate of 18% on gains (including any held over gains coming into charge) where net total taxable gains and income is below the income tax basic rate band threshold. This rate was 10% for disposals made before 30 October 2024. Gains or any parts of gains above the basic rate band are charged at 24% (20% for disposals before 30 October 2024) with a few exceptions which are considered in the 'Exceptions to the CGT rates section' below.
- Business asset disposal relief (formerly known as Entrepreneurs' Relief) or Investors' Relief (IR) may be available on certain business disposals.

BUSINESS ASSET DISPOSAL RELIEF (BADR)

BADR may be available for certain business disposals and has the effect of charging the first £1 million of gains qualifying for the relief at an effective rate of 14% for 2025/26. This rate increases to 18% for 2026/27.

The relief is available to individuals on the disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership
- shares in an individual's 'personal company'
- assets used by a business or a company which has ceased within the last three years.

BUSINESS ASSET DISPOSAL RELIEF (BADR) CONTINUED

Where an individual makes a qualifying business disposal, relief may also be available on an 'associated disposal'. An 'associated disposal' is a disposal of an asset:

- used in a qualifying company or group of companies of the individual; or
- used in a partnership, where the individual is a partner.

Restrictions on obtaining the relief on an 'associated disposal' are likely to apply in certain specific situations. This includes the common situation where a property is in personal ownership but is used in an unquoted company or partnership trade in return for a rent. Under BADR the availability of relief is restricted where rent is paid.

OWNERSHIP PERIOD OF TWO YEARS

Ownership conditions apply throughout the period up to the date of disposal. For disposals on or after 6 April 2019, the necessary qualifying period of ownership is two years.

THE 5% RULE FOR COMPANY SHAREHOLDERS

To qualify for BADR, the company needs to be an individual's 'personal company' where the individual must:

- be a company employee or office holder
- hold at least 5% of the company's ordinary share capital and
- be able to exercise at least 5% of the voting rights.

For disposals on or after 29 October 2018, they must also satisfy one of the following tests:

- a distribution test – an individual is entitled to at least 5% of the company's profit available for distribution to equity holders and 5% of the assets available for distribution to equity holders in a winding up; or
- a proceeds test – an individual is entitled to at least 5% of the proceeds in the event of a disposal of the whole of the ordinary share capital of the company.

DILUTION

From 6 April 2019 those shareholders whose holding in their company is reduced below the normal 5% qualifying level as a result of raising funds for commercial purposes by means of an issue of new shares may still obtain BADR. An election can be made which allows shareholders to crystallise a gain on their shares before the dilution occurs. This would be achieved by treating the shareholding as having been sold and immediately re-purchased at the prevailing market value. The election will have to be made in their tax return for the year in which the dilution takes place. The shareholder may also elect to defer the accrued gain until their shares are actually disposed of. Careful planning will be required with BADR but if you would like to discuss BADR in detail and how it might affect your business, please do get in touch.

INVESTORS' RELIEF (IR)

IR is aimed at external investors (other than certain employees or officers of the company) in unlisted trading companies. To qualify for the 14% CGT rate under 'investors' relief', increasing to 18% in 2026/27) the following conditions need to be met:

- shares must be newly issued and subscribed for by the individual for new consideration
- be in an unlisted trading company, or an unlisted holding company of a trading group
- have been issued by the company on or after 17 March 2016 and have been held for a period of three years from 6 April 2016
- have been held continuously for a period of three years before disposal.

An individual's qualifying gains for IR are subject to a lifetime cap of £1 million (reduced from £10 million for qualifying disposals made on or after 30 October 2024).

SHARE IDENTIFICATION RULES

All shares of the same class in the same company are treated as forming a single asset, regardless of when they were originally acquired. However, 'same day' transactions are matched and there are '30 day' anti-avoidance rules.

SHARE IDENTIFICATION RULES CONTINUED...

Example

On 15 April 2025 Jeff sold 2000 shares in A plc from his holding of 4,000 shares which he had acquired as follows:

- 1,000 in January 1990
- 1,500 in March 2001
- 1,500 in July 2005

Due to significant stock market changes, he decided to purchase 500 shares on 30 April 2025 in the same company.

The disposal of 2,000 shares will be matched firstly with the later transaction of 500 shares as it is within the following 30 days and then with 1,500/4,000 (1,000+1,500+1,500) of the single asset pool on an average cost basis.

CGT ANNUAL EXEMPTION

Every tax year each individual is allowed to make gains up to the annual exemption without paying any CGT. The annual exemption for 2025/26 and 2026/27 is £3,000. Consideration should be given to ensuring both spouses/civil partners utilise this facility.

OTHER MORE COMPLEX AREAS

Capital gains can arise in many other situations. Some of these, such as gains on Enterprise Investment Scheme and Venture Capital Trust shares, and deferred gains on share for share or share for loan note exchanges, can be complex. Please talk to us before making any decisions.

OTHER RELIEFS WHICH YOU MAY BE ENTITLED TO

And finally, many existing reliefs continue to be available, such as:

- private residence relief;
- business asset rollover relief, which enables the gain on a business asset to be deferred until a point in the future;
- business asset gift relief, which allows the gain on business assets that are given away to be held over until the assets are disposed of by the donee; and
- any unused allowable losses from previous years, which can be brought forward in order to reduce any gains.



CAPITAL GAINS TAX AND THE FAMILY HOME

A valuable relief exists on the sale of the family home but in certain situations careful planning is required to ensure that the relief is obtained.

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime. The relief is well known: CGT exemption whatever the level of the capital gain on the sale of any property that has been your main residence. In this factsheet we look at the operation of the relief and consider factors that may cause it to be restricted.

IMPORTANT POINTS TO CONSIDER

Only a property occupied as a residence can qualify for the exemption. An investment property in which you have never lived would not qualify.

The term 'residence' can include outbuildings separate from the main property, but this is a difficult area. Please talk to us if this is likely to be relevant to you.

'Occupying' as a residence requires a degree of permanence so that living in a property for say, just two weeks with a view to benefiting from the exemption is unlikely to work.

The exemption includes land that is for 'occupation and enjoyment with the residence as its garden or grounds up to the permitted area'. The permitted area is half a hectare including the site of the property which equates to about 1.25 acres in old money! Larger gardens and grounds may qualify but only if they are appropriate to the size and character of the property and are required for the reasonable enjoyment of it. This can be a difficult test. In a court case the exemption was not given on land of 7.5 hectares attached to a property. The owner said he needed that land to enjoy the property because he was keen on horses and riding. The courts decided that the owner's subjective liking for horses was irrelevant and, applying an objective test, the land was not needed for the reasonable enjoyment of the property.



SELLING LAND SEPARATELY

What if you want to sell off some of your garden for someone else to build on? Will the exemption apply? In simple terms it will if you continue to own the property with the rest of the garden and the total original area was within the half a hectare limit.

Where the total area exceeds half a hectare and some is sold then you would have to show that the part sold was needed for the reasonable enjoyment of the property and this can clearly be difficult if you were prepared to sell it off.

What if on the other hand you sell your house and part of the garden and then at a later date sell the rest of the garden off separately, say for development? Then you will not get the benefit of the exemption on the second sale because the land is no longer part of your main residence at the point of sale.

MORE THAN ONE RESIDENCE

It is increasingly common for people to own more than one residence. However an individual can only benefit from the CGT exemption on one property at a time. In the case of a married couple (or civil partnership), there can only be one main residence for both. Where an individual has two (or more) residences then an election can be made to choose which should be the one to benefit from the CGT exemption on sale. Note that the property need not be in the UK to benefit although there are additional restrictions from April 2015 detailed below. Also foreign tax implications may need to be brought into the equation.

The election must normally be made within two years of the change in the number of residences and the potential consequences of failure to elect are shown in the case study that follows.

Furthermore the case study demonstrates the beneficial rule that allows CGT exemption for the last nine months of ownership of a property that has at some time been the main residence. Where the owner of the property is in long term care or a disabled person, and meets the necessary conditions, they benefit from a CGT exemption for the last 36 months of ownership.

CASE STUDY

Wayne, an additional rate taxpayer, acquired a home in 2009 in which he lived full-time. In 2013 he bought a second home and divided his time between the two properties.

- Either property may qualify for the exemption as Wayne spends time at each - ie they both count as 'residences'.
- Choosing which property should benefit is not always easy since it depends on which is the more likely to be sold and which is the more likely to show a significant gain. Some crystal ball gazing may be needed!
- The choice of property needs to be made by election to HMRC within two years of acquiring the second home. Missing this time limit means that HMRC will decide on any future sale which property was, as a question of fact, the main residence.

Wayne elects for the second home to be treated as his main residence for CGT purposes. In June 2025 he sells both properties realising a gain of say £100,000 on the first property and £150,000 on the second property.

The gain on the second property is CGT-free because of the election.

Part of the gain on the first property is exempt, namely that relating to:

- the four years before the second property was acquired (when the first property was the only residence); and
- the last nine months of ownership will qualify, providing the property has been the main residence at some time.

The overall gain on the first property would be time apportioned between the exempt period and the period remaining chargeable.

CAN YOU CLAIM PRR RELIEF ON YOUR PROPERTY?



A person's residence may not be eligible for Private Residence relief (PRR) for a tax year unless either:

- the person making the disposal was resident in the same country as the property for that tax year; or
- the person spent at least 90 midnights in that property.

The rules apply to both a UK resident disposing of a residence in another country and a non-resident disposing of a UK residence.

REPORTING AND PAYMENT REQUIREMENT

Those liable to CGT on a residential property disposal must send a new standalone online return to HMRC and make a payment on account of the tax due within 60 days of completion of the sale. These requirements do not apply if the gains are covered by PRR.

BUSINESS USE

More and more people work from home these days. Does working from home affect the CGT exemption on sale? The answer is simple - it may do!

Rather more helpfully the basic rule is that the exemption will be denied to the extent that part of your home is used exclusively for business purposes. In many cases of course the business use is not exclusive, your office doubling as a spare bedroom for guests for example, in which case there is not a problem.

Where there is exclusive business use then part of the gain on sale will be chargeable rather than exempt. However, it may well be that you plan to acquire a further property, also with part for business use, in which case the business use element of the gain can be deferred by 'rolling over' the gain against the cost of the new property.

RESIDENTIAL LETTING



Prior to 6 April 2020 letting relief gave up to £40,000 (£80,000 for a couple who jointly own the property) to someone letting part or all of a property which was their main residence or was their former main residence at some point in their period of ownership. However under the revised rules letting relief is only available where the owner and tenant share occupancy throughout the period of the let.

PERIODS OF ABSENCE

Certain other periods of absence from your main residence may also qualify for CGT relief if say you have to leave your property to go and work elsewhere in the UK or abroad. The availability of the exemption depends on your circumstances and length of period of absence. Please talk to us if this is relevant for you. We would be delighted to set out the rules as they apply to your particular situation.

TRUSTS

The exemption is also available where a property is owned by trustees and occupied by one of the beneficiaries as their main residence.

Until December 2003 it was possible to transfer a property you owned but which was not eligible for CGT main residence relief into a trust for say the benefit of your adult children. Any gain could be deferred using the gift relief provisions. One of your children could then live in the property as their main residence and on sale the exemption would have covered the entire gain.

HMRC decided that this technique was being used as a mechanism to avoid CGT and so blocked the possibility of combining gift relief with the main residence exemption in these circumstances.



INHERITANCE TAX

Inheritance Tax (IHT) is levied on a person's estate when they die and certain gifts made during an individual's lifetime.

Generally, gifts between spouses are exempt. More detail on this aspect and other specific exemptions is included below. Where an exemption does not apply, most gifts made more than seven years before death will also escape tax. Therefore, if you plan in advance, gifts can be made tax-free and result in a substantial tax saving.

SCOPE OF THE TAX

When a person dies IHT becomes due on their estate. IHT can also fall due on some lifetime gifts but most are ignored providing the donor survives for seven years after the gift.

The rate of tax on death is 40% and 20% on lifetime transfers where chargeable. Currently, the first £325,000 is chargeable to IHT at 0% and this is known as the nil rate band.

RESIDENCE NIL RATE BAND

An additional nil rate band was introduced for deaths on or after 6 April 2017 where an interest in a qualifying residence passes to direct descendants. The amount of relief was initially phased in but is currently £175,000. For many married couples and registered civil partnerships (hereafter referred to as spouses in this factsheet) the relief is effectively doubled as each individual has a main nil rate band and each will also potentially benefit from the residence nil rate band.

The residence nil rate band can only be used in respect of one residential property which does not have to be the main family home but must at some point have been a residence of the deceased. Restrictions apply where estates (before reliefs) are in excess of £2 million.

Where a person died before 6 April 2017, their estate will not have qualified for the relief and if the first spouse has died since then they may not have used the relief. A surviving spouse may be entitled to an increase in the residence nil rate band if the spouse who died earlier has not used, or was not entitled to use, their full residence nil rate band. In fact this often results in a doubling of the residence nil rate band for the surviving spouse.

DOWNSIZING

The residence nil rate band may also be available when a person downsizes or ceases to own a home on or after 8 July 2015 where assets of an equivalent value, up to the value of the residence nil rate band, are passed on death to direct descendants.

CHARITABLE GIVING

A reduced rate of IHT applies where 10% or more of a deceased's net estate (after deducting IHT exemptions, reliefs and the nil rate band) is left to UK charities. In those cases the 40% rate will be reduced to 36%.



INHERITANCE TAX

IHT ON LIFETIME GIFTS

Lifetime gifts fall into one of three categories:

- a transfer to a company or a trust (except a disabled trust) is immediately chargeable
- exempt gifts which will be ignored both when they are made and also on the subsequent death of the donor, eg gifts to charity
- other outright transfers will be potentially exempt transfers (PETs) and IHT is only due if the donor dies within seven years of making the gift. An alternative way of looking at this is that they are potentially chargeable until seven years has passed. The primary example of a PET is a gift to another individual.

IHT ON DEATH

The main IHT charge is likely to arise on death. IHT is charged on the value of the estate treated as beneficially owned by the deceased. This may include certain types of interest in trust property. Furthermore:

- PETs made within seven years become chargeable
- there may be an additional liability because of chargeable transfers (usually lifetime gifts to trusts) made within the previous seven years.



ESTATE PLANNING

Much estate planning involves making lifetime transfers to utilise exemptions and reliefs or to benefit from a lower rate of tax on lifetime transfers.

However, careful consideration needs to be given to other factors. For example a lifetime gift may save IHT but may alternatively create a Capital Gains Tax (CGT) liability. Furthermore the prospect of saving IHT should not be allowed to jeopardise the financial security of those involved.

GIFTS BETWEEN SPOUSES

Gifts between spouses as stated earlier are generally fully exempt, if both are either UK 'long term resident' or both non 'long term resident'. Long term residence is residence of at least 10 years in the UK. Special rules apply where only one spouse is 'long term resident' and it means that the spouse exemption may be restricted. It is recommended that advice is always sought if this applies to ensure reliefs are maximised. It may be desirable to use the spouse exemption to transfer assets to ensure that both spouses can make full use of lifetime exemptions, the nil rate band and PETs.

GIFTS TO INDIVIDUALS DURING THEIR LIFETIME

As these gifts are PETs rather than chargeable transfers when made, no tax at all is due if the donor survives for seven years. Even where a death occurs within seven years IHT may be saved as a result of the lifetime gifts because the charge is based on the value at the date of the gift and does not include any growth on value to date of death.

These rules only apply to outright gifts. Where a benefit is retained, such as the gift of a house in which the donor continues to live rent free, special rules apply and the donor is treated as still owning the asset for IHT. Professional advice should always be taken before considering such actions.

NIL RATE BAND AND SEVEN YEAR CUMULATION

Chargeable transfers (such as lifetime gifts to trusts) covered by the nil rate band can be made without incurring any IHT liability. Once seven years have elapsed between chargeable transfers an earlier transfer is no longer taken into account in determining IHT on subsequent transfers. Therefore every seven years a full nil rate band will be available to make lifetime chargeable transfers.

TRANSFERABLE NIL RATE BAND

It is possible for spouses and civil partners to transfer the nil rate band unused on the first death to the surviving spouse for use on the death of the surviving spouse/partner. On that second death, their estate will be able to use their own nil rate band and in addition the same proportion of a second nil rate band that corresponds to the proportion unused on the first death. This allows the possibility of doubling the nil rate band available on the second death. This arrangement can apply where the second death happens after 9 October 2007, generally irrespective of the date of the first death.

ANNUAL EXEMPTION

An amount of £3,000 per annum may be given by an individual without an IHT charge. Any unused annual exemption may be carried forward one year only, for use in the tax year that immediately follows.

SMALL GIFTS

Gifts to individuals not exceeding £250 in total per tax year per recipient are exempt. The exemption cannot be used to cover part of a larger gift.

NORMAL EXPENDITURE OUT OF INCOME

Gifts which are made out of income which are typical and habitual and do not result in a fall in the standard of living of the donor are exempt. Payments under deed of covenant and the payment of annual premiums on life insurance policies would usually fall within this exemption.



FAMILY MAINTENANCE

A gift for family maintenance does not give rise to an IHT charge. This would include the transfer of property made on divorce under a court order, gifts for the education of children or maintenance of a dependent relative.

WEDDING PRESENTS

Gifts in consideration of marriage are exempt up to £5,000 if made by a parent with lower limits for other donors.

GIFTS TO CHARITIES

Gifts to UK registered charities are exempt provided that the gift becomes the property of the charity or is held for charitable purposes.

BUSINESS PROPERTY RELIEF (BPR)

When 'business property' is transferred there is a percentage reduction in the value of the transfer. Often this provides full relief. It is available on worldwide assets. In cases where full relief is available there is little incentive, from a tax point of view, to transfer such assets in lifetime. Additionally no CGT will be payable where the asset is included in the estate on death. Professional advice should be sought to determine whether you have qualifying business property.

AGRICULTURAL PROPERTY RELIEF (APR)

APR is similar to BPR in that it reduces the value of the transfer but it may not give full relief on the value. It is available on the transfer of agricultural property so long as various conditions are met. APR is restricted to UK assets only from April 2024.

RESTRICTION ON BPR AND APR

From 6 April 2026, qualifying agricultural and business property will continue to benefit from the 100% IHT relief up to a limit of £2.5 million. The limit is a combined limit for both agricultural and business property. Such property in excess of the limit will benefit from a 50% relief. This allowance will be transferable between spouses and civil partners.

The changes may have a significant impact for some clients. Please contact us to discuss if you have business or agricultural interests in excess of £2.5 million.

USE OF TRUSTS

Trusts can provide an effective means of transferring assets out of an estate whilst still allowing flexibility in the ultimate destination and/or permitting the donor to retain some control over the assets. Provided that the donor does not obtain any benefit or enjoyment from the trust, the property is removed from the estate.

We can advise you on whether a trust is suitable for your circumstances and the types of trust arrangements available.



LIFE ASSURANCE

Life assurance arrangements can be used as a means of removing value from an estate and also as a method of funding IHT liabilities.

A policy can also be arranged to cover IHT due on death. It is particularly useful in providing funds to meet an IHT liability where the assets are not easily realised, e.g. family company shares.

COMPLEXITY - IS YOUR WILL UP TO DATE?

Individuals have both a nil rate and a potential residence nil rate band available to mitigate IHT. Careful consideration is needed by spouses as to whether these should be used in full or part on the first spouse death or whether they should be transferred to the second spouse for use. There are a number of factors to be considered including the overall value of the combined estate. Potentially a second spouse has £650,000 of standard nil rate band and £350,000 of residence nil rate band if nothing is used on the first death, in other words £1 million in total before IHT is chargeable.

This will only be achieved by careful planning however and, in some cases, it may be better for the first deceased spouse to give some assets to the next generation and use up their own nil rate band and residence nil rate band. Pivotal to this planning is an up to date Will to ensure that any reliefs available are efficiently utilised.





A V O I D

INSURANCE

INHERITANCE TAX AVOIDANCE - PRE-OWNED ASSETS

Inheritance tax (IHT) was introduced nearly 40 years ago and broadly charges tax on certain lifetime gifts of capital and estates on death.

With IHT came the concept of 'potentially exempt transfers' (PETs). Put simply, this is a gift by an individual of capital to another individual and, so long as you live for seven years from making the gift, there can be no possible IHT charge on it whatever the value of the gift. The rules create uncertainty until the seven year period has elapsed but, at the same time, provide opportunity to pass significant capital value down the generations without an IHT charge. Of course tax is not simple and other factors, both tax and non-tax, need to be considered before undertaking such transactions.

In any case, many people are simply not in a position to make significant lifetime gifts of capital. There are a number of reasons for this, the most obvious being that their capital is tied up in assets such as the family home and business interests and/or it produces income they need to live on.



GIFTING THE FAMILY HOME?

But what is to stop a gift of the family home being made to, say, your (adult) children whilst you continue to live in it? The answer is simple: nothing! However such a course of action is unattractive for a number of reasons the most significant being:

- security of tenure may become a problem
- loss of main residence exemption for capital gains tax purposes
- it doesn't actually work for IHT purposes.

The reason such a gift doesn't work for IHT is because the 'gift with reservation' (GWR) rules deem the property to continue to form part of your estate because you continue to derive benefit from it by virtue of living there. This is a complex area so do get in touch if you would like some advice.

GETTING AROUND THE RULES

To get around the GWR rules a variety of complex schemes were developed, the most common being the 'home loan' or 'double trust' scheme, which allowed continued occupation of the family home whilst removing it from the IHT estate. For an individual with a family home worth say £750,000 the prospect of an ultimate IHT saving of £300,000 (being £750,000 x 40%) was an attractive one.

HMRC'S RESPONSE

Over time the schemes were tested in the courts and blocked for the future. However HMRC decided that they needed additional measures to support circumstances where the GWR rules may not strictly apply but nevertheless, a gift has been effected and a benefit retained. A new income tax charge was introduced instead, levied on the previous owner of an asset if they continue to be able to enjoy use of the asset or the capital. The rules are referred to as the Pre-Owned Assets (POA) rules. They are aimed primarily at land and buildings but also apply to chattels and certain intangible assets commonly held in a trust.

SCOPE

In broad outline, the rules apply where an individual successfully removes an asset from their estate for IHT purposes (ie the GWR rules do not apply) but is able to continue to use the asset or benefit from it.

EXAMPLE 1

Ed gave his home to his son Oliver in 2014 by way of an outright gift and Ed continues to live in the property.

This is not caught by the POA rules because the house is still part of Ed's IHT estate by virtue of the GWR rules. The GWR rules override the fact that the gift was also a PET made more than seven years earlier.

EXAMPLE 2

In 2015 Hugh made a gift of cash to his daughter Caroline. Caroline later used the cash to buy a property which Hugh then moved into in 2020. The POA rules apply.

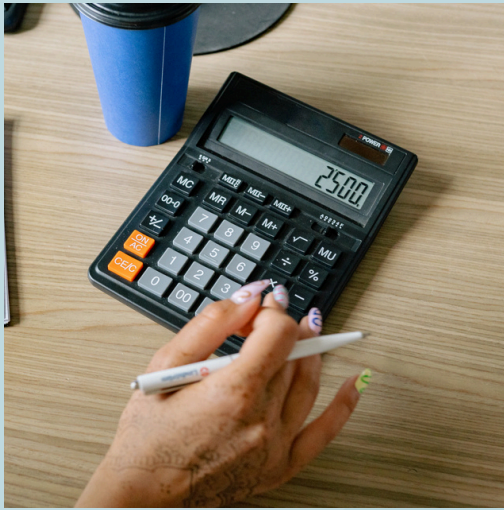
The rules would still apply even if Caroline had used the initial cash to buy a portfolio of shares which she later sold using the proceeds to buy a property for Hugh to live in.

If Hugh's occupation of the property had commenced in 2023, the POA rules would not apply because there is a gap of more than seven years between the gift and occupation.

There are a number of exclusions from the rules, one of the most important being that transactions will not be caught where a property is transferred to a spouse or former spouse under a court order.

START DATE - RETROSPECTION?

Despite the fact that the regime is only effective from 6 April 2005, it can apply to arrangements that may have been put in place at any time since March 1986. This aspect of the rules has come in for some harsh criticism. At the very least it means that pre-existing schemes need to be reviewed to see if the charge will apply.



CALCULATING THE CHARGE

The charge is based on a notional market rent for the property. Assuming a rental yield of, say, 5%, the income tax charge for a higher rate taxpayer on a £1 million property will be £20,000 each year.

The rental yield or value is established assuming a tenant's repairing lease. Properties need to be valued once every five years. In situations where events happened prior to 6 April 2005, the first year of charge was 2005/06 and the first valuation date was 6 April 2005. In these cases a new valuation should have been made on 6 April 2010, 6 April 2015, 6 April 2020 and 6 April 2025.

In the case of chattels and intangibles the capital value on which the charge is calculated needs to be reviewed every year.

The charge is reduced by any actual rent paid by the occupier – so that there is no charge where a full market rent is paid.

The charge will not apply where the deemed income in relation to all property affected by the rules is less than £5,000.

The rules are more complex where part interests in properties are involved.



AVOIDING THE CHARGE

There are a number of options for avoiding the charge where it would otherwise apply.

- Consider dismantling any remaining old schemes or arrangements. However this may not always be possible and even where it is the costs of doing so may be prohibitively high and specialist legal and tax advice is required.
- Ensure a full market rent is paid for occupation of the property - not always an attractive option.
- Elect to treat the property as part of the IHT estate – this election cannot be revoked once the first filing date for a POA charge has passed.

THE ELECTION

The effect of the election using the example above is that the annual £20,000 income tax charge will be avoided but instead the £1 million property is effectively treated as part of the IHT estate and could give rise to an IHT liability of £400,000 for the donee one day. Whether or not the election should be made will depend on personal circumstances but the following will act as a guide.

REASONS FOR MAKING THE ELECTION

Where the asset qualifies for business or agricultural property reliefs for IHT.

Where the value of the asset is within the IHT nil rate band even when added to other assets in the estate.

Where the asset's owner is young and healthy.

REASONS NOT TO MAKE THE ELECTION

The life expectancy of the donor is short due to age or illness and the income tax charge for a relatively short period of time will be substantially less than the IHT charge. The amount of the POA charge is below the £5,000 de minimis.

The donor does not want to pass the IHT burden to the donee.

The election must be made by 31 January in the year following that in which the charge would first apply. HMRC will however allow a late election at their discretion.

WHAT NOW?

The rules undoubtedly make effective tax planning with the higher value family home more difficult. However they do not rule it out altogether and the ideas we mention below may be appropriate depending on your circumstances.

In addition, the introduction of the Residence Nil Rate Band from 6 April 2017 has restricted the need to consider this type of planning for homes up to £350,000 (£175,000 for a single person) per married couple (including registered civil partners) because, provided the home is left to direct descendants on death, the transaction is relieved from IHT. Where the home has a value exceeding £350,000, the amount charged will still be reduced, provided the estate does not exceed £2 million. Where it does exceed £2million (before other reliefs given) the relief is gradually tapered to nil.

SHARING ARRANGEMENTS

Where a share of your family home is given to a family member (say an adult child) who lives with you, both GWR and the POA charge can be avoided. The expenses of the property should be shared. This course of action is only suitable where the sharing is likely to be long term and there are no other family members who would be compromised by the making of the gift.



EQUITY RELEASE SCHEMES

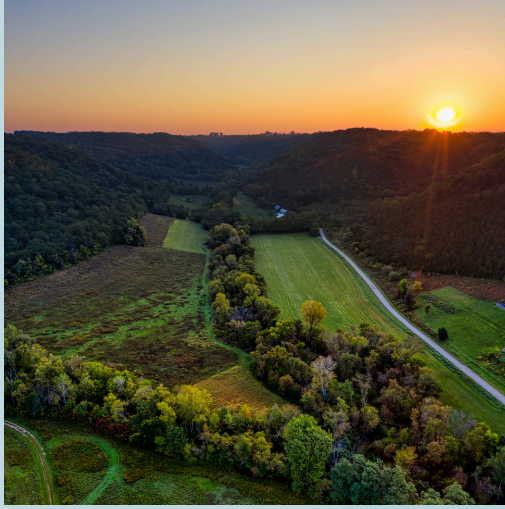
Equity release schemes whereby you sell all or part of your home to a commercial company or bank have been popular in recent years. Such a transaction is not caught by the POA rules.

If the sale is to a family member, a sale of the whole property is outside the POA rules but the sale of only a part is caught if the sale was on or after 7 March 2005. The cash you receive under such a scheme will be part of your IHT estate but you may be able to give this away later.

WILLS

Wills are not affected by the regime and so it is more important than ever to ensure you have a tax-efficient Will.

This is a complex area and professional advice is necessary before embarking on any course of action. The POA rules are limited in their application but having said that they have the potential to affect transactions dating back to March 1986.



LAND AND BUILDINGS TRANSACTION TAX

LBTT is payable by the purchaser in a land transaction occurring in Scotland. Stamp Duty Land Tax (SDLT) applies to land transactions in England and Northern Ireland and Land Transaction Tax (LTT) applies in Wales.

WHAT IS A LAND TRANSACTION?

A transaction will trigger liability if it involves the acquisition of an interest in land. This includes a simple conveyance of land such as buying a house, creating a lease or assigning a lease.

WHEN IS THE TAX PAYABLE?

Individuals must send an LBTT return and pay the tax due to the WRA within 30 days of the day after completion (or other effective date of the transaction). Penalties and interest may be charged if you fail to file your LBTT return or pay the necessary tax within the 30 days after the day of completion. The tax has to be paid when a contract has been substantially performed. In cases where the purchaser takes possession of the property on completion, that will be the date. However, if the purchaser effectively takes possession before completion - known as 'resting on contract' - that will be regarded as triggering the tax.



RESIDENTIAL RATES OF LBTT

The rates of LBTT which apply from 1 April 2021 are set out in the following table:

Residential property	Band % Rate
£0 - £145,000	0
£145,001 - £250,000	2
£250,001 - £325,000	5
£325,001 - £750,000	10
£750,001 and over	12

The rates apply to the portion of the total value which falls within each band.

FIRST-TIME BUYER RELIEF

A LBTT relief applies for first-time buyers of properties up to £175,000. The relief raises the zero tax threshold for first-time buyers from £145,000 to £175,000. First-time buyers purchasing a property above £175,000 also benefit from the relief on the portion of the price below the threshold. All first-time buyers will benefit from a relief of up to £600.

HIGHER RATES FOR ADDITIONAL RESIDENTIAL PROPERTIES

Higher rates of LBTT are charged on purchases of additional residential properties (above £40,000), such as buy to let properties and second homes.

The main target of the higher rates is purchases of buy to let properties or second homes. However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not be a buy to let or a second home. The 36 month rules set out below will help to remove some transactions from the additional rates (or allow a refund). The 36 month timeframe was extended from 18 months with effect from 1 April 2024. Care will be needed if an individual already owns, or partly owns, a property and transacts to purchase another property without having disposed of the first property.

The higher rates are 8% above those shown in the table above, having increased from 6% from 5 December 2024. The higher rates potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties.

Some further detail:

- Purchasers will have 36 months to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence.
- Purchasers will also have 36 months between selling a main residence and replacing it with another main residence without having to pay the higher rates, if they also own another property which is not their main residence.
- A small share in a property which has been inherited within the 36 months prior to a transaction will not be considered as an additional property when applying the higher rates.
- There will be no exemption from the higher rates for significant investors.

NON-RESIDENTIAL RATES OF LBTT

Non-residential	Band % Rate
£0 - £150,000	0
£150,001 - £250,000	1
£250,001 - over	5



LAND TRANSACTION TAX

Land Transaction Tax (LTT) is payable by the purchaser of property in Wales.

WHO PAYS THE TAX?

LTT is payable by the purchaser of residential or non-residential property in a land transaction occurring in Wales. Stamp Duty Land Tax (SDLT) is payable on land transactions in England and Northern Ireland and Land and Buildings Transaction Tax (LBTT) on land transactions in Scotland.

WHAT IS A LAND TRANSACTION?

A transaction will trigger liability to LTT if it involves the acquisition of an interest in land. This will include a simple conveyance of land, such as buying a house, creating a lease or assigning a lease.

LTT is operated by the Welsh Revenue Authority (WRA), and individuals who are liable to the tax must complete and submit an LTT return.

WHAT IF MY PROPERTY STRADDLES THE ENGLAND-WALES BORDER?

For cross-border cases, a home buyer will only be required to pay SDLT on the English part of the transaction and LTT to the WRA for the Welsh part of the transaction.

WHEN IS THE TAX PAYABLE?

Individuals must send an LTT return and pay the tax due to the WRA within 30 days of the day after completion (or other effective date of the transaction). Penalties and interest may be charged if you fail to file your LTT return or pay the necessary tax within the 30 days after the day of completion.

In some circumstances, the transaction is not notifiable and the acquirer is not required to send a LTT return or pay LTT. These include both exempt transactions and exceptions:

- no money has exchanged hands (exempt)
- a property is left to you and you are not required to make a payment for the transfer of the property (exempt)
- property ownership is transferred to you as a result of a divorce or the dissolution of a civil partnership (exempt)
- freehold property has been purchased for less than £40,000 (exception)
- a new or assigned lease of seven years or more is purchased, and the premium is less than £40,000 and the annual rent is less than £1,000 (exception)
- a lease assignment or surrender, where the original term was:
 - less than seven years and the amount you pay is less than the residential or non-residential LTT zero rate threshold.
 - more than seven years and the amount you pay is less than £40,000 (exceptions).

LTT RATES

Non-residential rates have been applicable since 22 December 2020:

Non-residential (£)	Band % Rate
0 - 225,000	0
225,001 - 250,000	1
250,001 - 1,000,000	5
Over 1,000,000	6

The residential rates have applied from 10 October 2022:

Residential (£)	Band % Rate
0 - 225,000	0
225,001 - 400,000	6
400,001 - 750,000	7.5
750,001 - 1,500,000	10
Over 1,500,000	12

The higher rates for the purchase of a second or subsequent residential property or residential properties purchased by companies/non-natural persons which have been increased by 1% from 11 December 2024 are:

Residential (£)	Band % Rate
0 - 180,000	5
180,001 - 250,000	8.5
250,001 - 400,000	10
400,001 - 750,000	12.5
750,001 - 1,500,000	15
1,500,000 and above	17

The higher rates for the purchase of a second or subsequent residential property or residential properties purchased by companies/non-natural persons that applied from 22 December 2022 to 10 December 2024 were:

Residential (£)	Band % Rate
0 - 180,000	4
180,001 - 250,000	7.5
250,001 - 400,000	9
400,001 - 750,000	11.5
750,001 - 1,500,000	14
1,500,000 and above	16



STAMP DUTY LAND TAX

SDLT is payable by the purchaser in a land transaction occurring in England and Northern Ireland. For land transactions occurring in Scotland, Land & Buildings Transaction Tax (LBTT) applies and in Wales land transactions are chargeable to Land Transaction Tax (LTT).

WHAT IS A LAND TRANSACTION?

A transaction will trigger liability if it involves the acquisition of an interest in land. This will include a simple conveyance of land such as buying a house, creating a lease or assigning a lease.

WHAT IS THE TAX CHARGED ON?

Tax is chargeable on the consideration. This will usually be the actual cash that passes on the sale. However the definition is very wide and is intended to catch all sorts of situations where value might be given other than in cash: for example, if the purchaser agrees to do certain work on the property.

WHEN IS THE TAX PAYABLE?

The tax has to be paid when a contract has been substantially performed. In cases where the purchaser takes possession of the property on completion, that will be the date. However, if the purchaser effectively takes possession before completion - known as 'resting on contract' - that will be regarded as triggering the tax.

HOW MUCH TAX IS PAYABLE ON RESIDENTIAL PROPERTY?

Each SDLT rate is payable on the portion of the property value which falls within each band.

SDLT RATES

The current rates are as follows:

Residential property Purchase price of property	Band % Rates
£0 - £125,000	0
£125,001 - £250,000	2
£250,001 - £925,000	5
£925,001 - £1,500,000	10
£1,500,001 and above	12

FIRST-TIME BUYER RELIEF

First-time buyers may be eligible for first-time buyer relief on purchases of residential property up to £500,000. The rates apply to the portion of the total value which falls within each band.

Each SDLT rate is payable on the portion of the property value which falls within each band. The rates and thresholds are:

Property value	Band % Rates
£0 - £300,000	0
£300,001 - £500,000	5

No relief can be claimed if the property is over £500,000 and the normal SDLT rates will apply to the full amount of consideration.



ADDITIONAL RESIDENTIAL PROPERTIES

Higher rates of SDLT are charged on purchases of additional residential properties (above £40,000).

The main target of the higher rates is purchases of buy to let properties or second homes.

However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not be a buy to let or a second home. The 36-month rule set out below helps to remove some transactions from the additional rates (or allow a refund).

The higher rates are 5% above the SDLT rates shown in the table above. The higher rates potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties.

Some further detail:

- Purchasers will have 36 months to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence
- Purchasers will also have 36 months between selling a main residence and replacing it with another main residence without having to pay the higher rates
- A small share in a property which has been inherited within the 36 months prior to a transaction will not be considered as an additional property when applying the higher rates
- There will be no exemption from the higher rates for significant investors.

SDLT SURCHARGE ON NON-UK RESIDENTS

There is a 2% SDLT surcharge on non-UK residents (and certain UK resident companies that are controlled by non-UK residents) purchasing residential property in England and Northern Ireland.

WHAT ABOUT NON-RESIDENTIAL AND MIXED PROPERTY?

The rates for non-residential and mixed property are set out in the table below. The SDLT rates are payable on the portion of the property value which falls within each band.

Non-residential and mixed	Band % Rates
£0 - £150,000	0
£150,001 - £250,000	2
£250,001 and over	5

ARE THERE ANY EXEMPTIONS?

Yes. There are a number of situations in which the transfer of land will not be caught for SDLT. No SDLT will be payable and no return will be due. These include:

- the value of the freehold is less than £40,000
- a licence to occupy
- a gift of land
- transfers of land in a divorce or on death
- transfer of land to a charity
- transfers of land within a group of companies where an SDLT group relief claim is made.

HOW DOES THE TAX WORK ON LEASES?

The SDLT payable on the purchase of a lease depends on whether the lease is new or existing (an assigned lease).

Where a new lease is purchased the SDLT payable will be calculated on the value of the premium (upfront lump sum payment). If anything more than a nominal rent is payable, SDLT will also be payable on the net present value (NPV) of the rent over the term of the lease. The premium and the NPV are treated as two separate amounts. If the calculated value of either exceeds £250,000 for residential property and £150,000 for non-residential, the excess is charged SDLT at the normal rates.

An SDLT return will be due where the premium is £40,000 or more, even if no SDLT is due, unless the term of the lease is less than seven years.

If an existing lease is purchased, SDLT is calculated in the same way as the purchase of a freehold property. The amount of the premium is the consideration subject to SDLT and is also calculated in the same way as the purchase of a freehold property.

The government has SDLT calculators which work out the amount of SDLT payable. The calculators can be found at www.gov.uk/stamp-duty-land-tax-calculators.

HOW DO I TELL HMRC ABOUT A LIABILITY?

The purchaser must complete an SDLT1 return and this must be submitted to the relevant HMRC office within 14 days of the transaction's effective date. Solicitors and conveyancers can submit the return online on your behalf. Otherwise, a paper return must be used. Payment must be made at the same time. A late return triggers an automatic penalty of £100, and late payment of the tax will mean a charge to interest.

WHAT WILL HMRC DO THEN?

A certificate will be sent to the purchaser to show that they have paid the tax. This certificate is required to change the details of the property ownership at the Land Registry. The fact that HMRC has given the purchaser a certificate does not mean the SDLT calculations are agreed. HMRC has nine months in which to decide whether or not to enquire into the return and challenge the figures.



TRUSTS

Trusts are a long established mechanism which allow individuals to benefit from the assets whilst others (the trustees) have the legal ownership and day to day control over the assets. A trust can be extremely flexible and have an existence totally independent of the person who established it and those who benefit from it.

A person who transfers property into a trust is called a settlor (or truster in Scotland). Persons who enjoy income or capital from a trust are called beneficiaries. Though not very common with English trusts, it is possible for the settlor to appoint a protector, an independent person who oversees the administration of the trust.

Trusts are separate persons for UK tax purposes and have specific rules for all the main taxes. There are also a range of anti-avoidance measures aimed at preventing exploitation of potential tax benefits.

TYPES OF TRUSTS

There are two basic types of trust in regular use for individual beneficiaries:

- life interest trusts (often referred to as interest in possession trusts and in Scotland known as life renter trusts)
- discretionary trusts.

LIFE INTEREST TRUSTS

A life interest trust has the following features:

- a nominated beneficiary (the life tenant or life renter in Scotland) has an interest in the income from the assets in the trust or has the use of trust assets. This right may be for life or some shorter period (perhaps to a certain age)
- the capital may pass onto another beneficiary or beneficiaries.

A typical example is where a widow is left the income for life and on her death the capital passes to the children.

DISCRETIONARY TRUSTS

A discretionary trust has the following features:

- no beneficiary is entitled to the income as of right
- the settlor gives the trustees discretion to pay the income to one, some or all of a nominated class of possible beneficiaries
- income can be retained by the trustees
- capital can be gifted to nominated individuals or to a class of beneficiaries at the discretion of the trustees.

INHERITANCE TAX CONSEQUENCES

Major changes were made in the IHT regime for trusts with effect from 22 March 2006. The old distinction between the tax treatment of discretionary and life interest trusts was swept away. The approach now is to identify trusts which fall in the so-called 'relevant property' regime and those which do not.

RELEVANT PROPERTY TRUSTS

Trusts which fall in the relevant property regime are:

- all discretionary trusts whenever created
- all life interest trusts created in the settlor's lifetime after 22 March 2006
- any life interest trust created before 22 March 2006 where a beneficiary changes after 6 October 2008. A key exception exists where a change occurs after 6 October 2008 on the death of a life tenant but the new life tenant is their spouse.

If a relevant property trust is set up in the settlor's lifetime, this may give rise to an immediate charge to inheritance tax at the lifetime rate of 20%. If the value of the gift (and certain earlier gifts) is below £325,000 or is covered by an IHT relief then no tax is payable. Trusts set up under a will attract the normal inheritance tax charge at the death rate of 40% (after reliefs and the nil rate band where available).

Relevant property trusts are charged to tax every ten years (known as the periodic charge) at a maximum rate of 6% of the value of the assets on each tenth anniversary of the setting up of the trust. A fair prorate charge of less than 6% (and often much lower) is also made if assets are appointed out of the trust known as an 'exit charge'.

BENEFITS OF A RELEVANT PROPERTY TRUST

Whilst the inheritance tax charges may not look attractive, the relevant property trust has a significant benefit in that no tax charge will arise when a beneficiary dies because the assets in the trust do not form part of a beneficiary's estate for IHT purposes. There can be significant long-term IHT advantages in using such trusts.

TRUSTS WHICH ARE NOT RELEVANT PROPERTY

Within this group are:

- life interest trusts created before 22 March 2006 where the pre-2006 beneficiaries remain in place or were changed before 6 October 2008 or where a second spouse has taken over the life interest on the death of the first spouse
- the trust was created after 22 March 2006 under the terms of a will and gives an immediate interest (cannot be replaced by another) in the income to a beneficiary and the trust is neither a bereaved minor's nor a disabled person's trust; or
- the trust is created in the settlor's lifetime or on death for a disabled person.

TRUSTS WHICH ARE NOT RELEVANT PROPERTY CONTINUED

For pre-22 March 2006, lifetime transfers into a life interest trust, the gift would have been a potentially exempt transfer (PET) and no inheritance tax would have been payable if the settlor survived for seven years. Transfers into a trust on death would be chargeable unless the life tenant was the spouse of the settlor. There is no periodic charge on such trusts. There will be a charge when the life tenant dies because the value of the assets in the trust in which they have an interest has to be included in the value of their own 'settled estate' for IHT purposes.

CAPITAL GAINS TAX CONSEQUENCES

If assets are transferred to trustees, this is considered a disposal for capital gains tax purposes at market value but in many situations any capital gain arising can be deferred and passed on to the trustees.

Gains made by trustees on the disposal of trust assets are chargeable at 24%.

Where assets leave the trust on transfer to a beneficiary who becomes legally entitled to them, there will be a CGT charge by reference to the then market value. Again it may be possible to defer that charge.

INCOME TAX CONSEQUENCES

Life interest trusts are taxed on their income at 10.75% on dividends and 20% on other income. Discretionary trusts pay tax at 39.35% (dividends) and 45% (other income). Income paid to life interest beneficiaries has an appropriate tax credit available with the effect that the beneficiaries are treated as if they receive the income as the owners of the assets.

If income is distributed at trustee discretion from discretionary trusts, the beneficiaries will receive the income net of 45% tax. They are generally able to obtain refunds of any overpaid tax and if they pay tax at 45%, they will get credit for the tax paid. Refund exceptions may apply in certain settlor trust situations.

COULD I USE A TRUST?

Trusts can be used in a variety of situations both to save tax and also to achieve other benefits for the family. Particular benefits are as follows:

- If you transfer assets into a trust in your lifetime you can remove the assets from your estate but could act as trustee so that you retain control over the assets (always remembering that they must be used for the beneficiaries).
- A transfer of family company shares into a trust in lifetime (or on death) can be a way of ensuring that the valuable business property relief is utilised.
- By putting assets into a trust you can give the beneficiary the income from the asset without actually giving them the asset which could be important if the beneficiary is likely to spend the capital or the capital could be at risk from predators such as a divorced spouse.
- Trusts (particularly discretionary trusts) can give great flexibility in directing benefit for different members of the family without incurring significant tax charges.
- If you want to make some IHT transfers in your lifetime but are not sure who you would like to benefit from them, a transfer to a discretionary trust can enable you to reduce your estate and leave the trustees to decide how to make the transfers in later years. It also means that the assets transferred do not now hit the estates of the beneficiaries.

TRUST REGISTRATION SERVICE

This is an important recent digital administration development, which came about due to Money Laundering Regulations which require countries to have a national register of certain information to fight against money laundering and terrorist financing.

Since 2020, The Trust Registration Service ('TRS') requires all UK non - taxable 'express' trusts (and certain additional non-UK trusts - not considered further here) to register. An express trust is one which is created deliberately by an individual in writing for specific purposes rather than being created by an act of law which is a non express trust. Common examples include but are not restricted to interest in possession and discretionary trusts. Non express trusts include trusts established by a Court or by legislation and provided there is no tax liability are not required to register.

The deadline for registration of new trusts or where changes determine that a trust needs to register is 90 days from creation. Trusts on the register have to be updated whenever there are certain changes, such as a change in the lead trustee. These changes will also have a 90 day action deadline.

THANK YOU

We hope you've found this guide useful. If you'd like support with your business finances then we'd love to have a chat with you.

Get in touch using the below details.



**SCAN THE QR CODE FOR
A CALL BACK OR**

EMAIL:

INFO@RASHIDANDCO.CO.UK

HOW WE CAN HELP

Whilst this guide has been put together with as much information as possible. There may be aspects of your specific circumstances that it doesn't quite cover. It's always best to seek professional advice when it comes to all areas of Tax Advice.

If you have any questions after reading this guide please [contact us](#) at Rashid & Co to find out more about our services.