



HMRC Trusts

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Date 29 June 05
Our Ref
Your Ref

www.hmrc.gov.uk

Dear Mr de Souza,

Trusts with vulnerable beneficiaries – Finance Act 2005

Thank you for your letter of 4 April 2005 concerning the recent legislation in Finance Act 2005 introducing a new regime for certain trusts with vulnerable beneficiaries. I am sorry for the delay in replying to you.

I will address the points you have made in turn and have used the section numbers for the Finance Act 2005, rather than the Finance Bill clause numbers you used in your letter.

1. **Section 30(5)** – this feature of the special capital gains tax regime exactly mirrors the existing tax rules that apply in cases where a settlor has an interest in a settlement, and has not caused any problems in practice. The rule secures that exactly the same outcome applies in cases where a disabled beneficiary is the settlor and cases where he or she is not the settlor.
2. **Section 31** – the trustees and the vulnerable person are treated separately. If a claim for special capital gains tax treatment means that a gain is no longer chargeable to tax on the trustees, any tax that they have overpaid will be refundable to the trustees. The claim may result in the vulnerable beneficiary having a liability to capital gains tax, and he or she can require the trustees to reimburse that tax, but the trustees will be entitled to any repayment of tax that they have paid.

We should point out, though, that there is no requirement to make a payment on account for capital gains tax. The liability is due on 31 January after the end of the tax year.

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3. **Section 37(3)(a)** – we will shortly be publishing guidance on the new regime, which will give details about making the election. The form for making elections will be published at the same time.
4. **Section 37(3)(d)** – with regard to your first comment here, it is a point of general law that a guardian would be able to make an election on behalf of a vulnerable person, if that person is incapable of managing their own affairs. Sections 42(8) and (10) of TMA 1970 provide that an election may be made on behalf of an incapacitated person by his trustee, guardian, tutor or curator.

To address your second point, as stated above, the trustees will be entitled to any repayment of tax that they have made.

I hope this reply is helpful to you.

Yours sincerely,



Doug Stoneham
Policy Adviser