

Example. Caspian

Caspian has been resident and ordinarily resident in the UK since 1985-86. Already a successful business man, when he took up residence in the UK he set up a financial company (Dawn Treader Enterprises Ltd), with offices in the City of London. The company is incorporated in the Isle of Man, but is resident in the UK for tax purposes. It pays no dividends, retaining its trading profits.

Before taking up residence in the UK and without reference to UK taxation, Caspian had settled money and shares (the 'Caspian Trust') on trustees resident in the Island of Romandu which is a tax haven. The trustees have a wide discretion to benefit any one or more of the class of beneficial objects and Caspian is a member of that class. The trustees have established two bank accounts in Romandu; one for income and the other for capital. Romandu does not impose any direct taxes and has no double tax treaties.

On 6 April 2005, the trustees made a loan (interest-free and repayable on demand) to Caspian of £500,000. The moneys were transferred from the trustees' capital bank account to Caspian's UK bank account. This loan remains outstanding. The market rate of interest which would have been paid on an equivalent loan from a commercial lender is 5% in all relevant periods. Caspian's loan is secured on his UK residence.

The assets in the settlement and the annual income which arises in respect of them as at 6 April 2008 are as follows.

Settlement assets	Market value £000	Income £000	Rate of foreign tax %
Various Narnia shares	2,000	60	15
Capital bank account	1,200	60	0
Income account	900	45	0
Loan to Caspian	500	0	N/A
Total	4,600	165	

The trustees have made the following capital gains over the life of the trust.

Year	Trust gains (£000)
2000-01	200
2007-08	200
2008-09	1,000

The gains in 2008-09 arose on disposals of Narnian shares which took place on 30 April 2008 resulting in total proceeds with a sterling equivalent of £1,200,000. The entire gain arose from an increase in value which took place after 5 April 2008.

Caspian's personal assets with their market values and the annual income to which they give rise are as follows.

Personal assets	Capital value £000	Income £000	Rate of foreign tax %
UK residence	4,000	0	N/A
Shares in Dawn Treader Enterprises Ltd	20,000	0	N/A
UK bank accounts	100	5	N/A
Narnian shares	3,000	90	15
Narnian real property	4,000	280	18
Narnian original capital bank account	500	25	0
Narnian accumulated income account	900	45	0
Narnian capital proceeds account	700	35	0
Total	33,200	480	

On 30 April 2008, Caspian sold a number of Narnian shares giving rise to proceeds of £1,500,000 and gains of £1,000,000. Due to an error in his instructions to his bankers, the proceeds were paid into his Narnian original capital bank account rather than the Narnian capital proceeds bank account. Unaware of this, on 1 May 2008 he transferred £500,000 from his Narnian original capital bank account to his UK account from which he made a short term loan to a fledgling UK resident trading company ('Enterprise Ltd') of which he was a controlling shareholder. This loan was repaid on 31 March 2009 and the repayment was made directly to his Narnian original capital bank account.

On 5 October 2008, the trustees lent Caspian's son, Rilian (who was born on 6 April 1991 and who had never lived in the UK) £250,000 to fund the acquisition of an apartment in the UK in which Rilian intended to stay on his annual visits to the UK of four to six weeks a year in aggregate. The trustees transferred the cash from their capital bank account.

In completing Caspian's taxation return for 2008-09, his accountant discovered the error in relation to the banking of the proceeds of Caspian's disposal on 30 April 2008. On his accountant's recommendation, Caspian elected for the remittance basis charge to apply for 2008-09 and nominated £166,000 of the capital gains arising on his disposal of shares on the 30 April 2008 as being gains to which new ITA 2007, s 809G(2) was to apply. In this way the accountant hoped that the remittance basis charge would be franked by the foreign tax credit in respect of Narnian tax charged on Caspian's disposal and Caspian's UK tax liability would be £11,000 ((£500,000 @ (18% - 16%)) + (£5,000 @ 20%).