

DIPLOMA IN TRUSTS AND ESTATES

SCOTLAND

Syllabus

INTRODUCTION

This document contains the detailed syllabus for the STEP Diploma in Trusts and Estates (Scotland) which aims to provide a practical knowledge of the law and procedures involved in trust and estate practice in Scotland.

The Diploma comprises the following four papers:

- Wills and Executries: Law and Practice
- Trusts: Law and Practice
- Taxation of Trusts and Estates
- Trust and Executry Accounting

This syllabus should be read in conjunction with the course brochure, which explains the method of delivery and assessment, entry requirements and personal and business benefits of completing the programme

The brochure, course dates and enrolment application form can also be found on the programme website www.cltint.com/stepdiplomascot

CONTENTS

	Page
Diploma: Wills and Executries: Law and Practice	3
Diploma: Trusts: Law and Practice	11
Diploma: Taxation of Trusts and Estates	24
Diploma: Trust and Executry Accounting	38
Contact Us	43

MODULE 1: THE REQUIREMENTS FOR MAKING A VALID WILL

This module covers:

- The requirements for making a valid Will in Scotland
- The concept of capacity and how this is assessed
- What is meant by undue influence
- How testamentary intention may be demonstrated
- Practical tips as to how to ensure a Will is correctly executed

By the end of this module you should be able to:

- Identify and explain the requirements for making a valid Will in Scotland
- Describe the changes brought about by the Requirements of Writing (Scotland) Act 1995 in relation to the preparation of Wills
- Define the concepts of capacity, facility, circumvention and undue influence
- Evaluate the potential effects of the above concepts in relation to making a valid Will
- Identify the formalities necessary for valid execution of a Will
- Explain how to make alterations to a Will and the importance of authentication
- Avoid some common pitfalls in the preparation of a Will

MODULE 2: RULES FOR WILL DRAFTING

This module covers:

- The statutory rules that apply to the interpretation and implementation of Wills prepared in Scotland
- Guidance as to drafting clauses in a Will to ensure client instructions are reflected accurately
- The concept of legal rights in Scotland
- Revocation and forfeiture
- What is meant by abatement and ademption
- The rules around vesting

By the end of this module you should be able to:

- Describe the limitations on freedom of testation in Scotland, including limitations on the conditions that can be imposed on a legacy and legal rights
- Advise a testator on making casual and potestive conditions
- Draft clauses in a Will that take into account the above limitations whilst allowing for instructions to be effected as accurately as possible
- Identify the circumstances in which a Will may be revoked
- Explain the statutory forms of forfeiture and the circumstances in which these are applicable
- Define the concepts of abatement and ademption
- Describe how to avoid the pitfalls created by abatement and ademption
- Explain when a legacy will usually vest in a beneficiary
- Prevent the application of the *conditio si institutus sine liberis decesserit* rule

MODULE 3: CLAUSES IN WILL DRAFTING

This module covers:

- Standard clauses to be included in a well drafted Will
- The importance of drafting a Will that is tailored to the individual circumstances of the testator
- The potential limitations of some standard Will clauses and how to avoid the consequences of these

By the end of this module you should be able to:

- Identify the standard clauses in a Will and explain their importance
- Provide tailored advice to individual testators regarding which of the standard clauses should be included in a Will and how (if at all) they should be amended to reflect specific instructions
- Describe how to advise a testator with children as to specific clauses that may need to be included in a Will
- Evaluate the circumstances in which simple powers clauses are appropriate and those circumstances where more specific powers clauses are required
- Explain the importance of domicile and the issues that can arise in relation to this in Will drafting

MODULE 4: HOW TO DRAFT AN APPROPRIATE WILL

This module covers:

- Problems that can arise in the preparation of a Will where a client has foreign property
- Revocation of a Will as a result of foreign property in the estate
- The issues created by special destinations
- The effects of recent legislation on the estates (both testate and intestate) of particular clients
- Five styles of Wills and when these will be appropriate

By the end of this module you should be able to:

- Describe how to draft a valid Will that takes into account any foreign property owned by a testator
- Explain what is meant by a precatory bequest and a two-year discretionary trust Will
- Define the term special destination and identify the problems that arise from a bequest of joint property
- Analyse the implications of the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2008 on Will drafting
- Identify the five styles of Will and explain the circumstances in which each one may be most suitable

MODULE 5: POST-DEATH VARIATIONS

This module covers:

- The purpose of a deed of variation
- The legal framework provided by the Inheritance Tax Act 1984 in relation to the drafting of deeds of variation
- Tips as to how to avoid the potential pitfalls created by deeds of variation

By the end of this module you should be able to:

- Explain the circumstances when a deed of variation is appropriate
- Summarise the key elements of section 142 of the Inheritance Tax Act 1984 relating to deeds of variation
- Identify the issues that may arise as a result of a deed of variation being used to vary an estate where there are beneficiaries under the age of 16
- Describe how a deed of variation can be used to circumvent Capital Gains Tax

MODULE 6: THE PROCEDURE FROM DEATH TO THE CLOSE OF EXECUTRY

This module covers:

- The steps to take on the death of a testator
- The process of ascertainment and valuation of a deceased testator's estate
- How to obtain Confirmation
- The procedures involved in the close of an executry

By the end of this module you should be able to:

- Explain how to register a death
- Identify the differences between the administration of a testate and intestate estate
- Distinguish between the different types of assets that the deceased's estate may comprise
- Identify the additional information and documentation that is required for certain assets to be administered correctly
- Explain how to provide a valuation of some of the most common assets in an estate for the purposes of administration of the estate
- Complete forms C1 and C5 correctly and accurately
- Describe how Inheritance Tax is paid and what certificate is required to confirm payment
- Explain the importance of providing a final account and to whom this should be provided
- Describe how to account to beneficiaries
- Describe how executry papers should be dealt with once the administration of the estate has been completed

MODULE 7: THE IHT400

This module covers:

- The IHT400 form
- The requirements of HMRC in relation to Inheritance Tax

By the end of this module you should be able to:

- Explain the purpose of the IHT400 form
- Describe how property is categorised in the IHT400
- Identify which schedules may be relevant for particular estates
- Complete an IHT400 and the appropriate schedules

MODULE 8: THE PROCEDURE IN INTESTATE SUCCESSION

This module covers:

- The principle differences between a testate and an intestate estate
- The statutory framework that governs intestate estates in Scotland
- The key procedures required to correctly administer an intestate estate

By the end of this module you should be able to:

- Define what is meant by an intestate estate
- Describe the intestate rights of succession under the Succession (Scotland) Act 1964
- Explain how a scheme of division is used to calculate the rights of beneficiaries and any Inheritance Tax liability
- Identify the correct procedure to administer an intestate estate
- Explain when the Small Estates Procedure is applicable
- Identify who is entitled to lodge a petition of appointment and the procedure for doing this
- Describe how to circumvent the most common problems associated with caution

MODULE 9: INHERITANCE TAX

This module covers:

- When Inheritance Tax (IHT) is payable and who may be liable
- How the level of IHT is calculated
- Guidance as to how IHT may impact on the drafting of a Will
- Exemptions and reliefs from IHT
- Examples of IHT calculations

By the end of this module you should be able to:

- Identify the circumstances in which IHT will be payable
- State who is liable to pay IHT
- Explain how liability to IHT may be affected by marriage, domicile, location of property and double taxation agreements
- Describe at what point the assets of a deceased's estate should be valued
- List and explain the main exemptions and reliefs from IHT
- Calculate IHT on an estate
- Explain how to allow for the incidence of IHT in the drafting of a Will

MODULE 10: EXECUTRY ACCOUNTS

This module covers:

- Who is entitled to copies of executry accounts
- The purpose of executry accounts
- The structure of a basic executry account

By the end of this module you should be able to:

- State those parties entitled to copies of executry accounts
- Identify the information required to prepare executry accounts
- Describe the structure and content of an executry account
- Prepare a basic executry account

MODULE 11: POWERS OF ATTORNEY AND GUARDIANSHIP

This module covers:

- The legislative basis of powers of attorney
- When powers of attorney are appropriate
- The key issues to consider in the drafting of powers of attorney
- Alternatives to a power of attorney

By the end of this module you should be able to:

- Describe the statutory provisions governing powers of attorney contained within the Adults with Incapacity (Scotland) Act 2000
- List the differences between welfare, financial and continuing powers of attorney
- Draft a power of attorney tailored to each individual client that incorporates all necessary powers
- Identify and evaluate the viability of the alternatives to a power of attorney
- Explain how to proceed in an application for an adult who has already lost capacity
- Describe the procedure for a guardianship application and how to avoid potential pitfalls of this type of application

MODULE 1: INTRODUCTION TO THE LAW OF TRUSTS (1) – STRUCTURE AND CONCEPTS

This module covers:

- The concept of a trust
- The parties to a trust
- How a trust fund works
- The purposes of trusts
- The definition of a trust
- A comparison of the trust with other similar concepts

By the end of this module you should be able to:

- Explain the concept of a trust
- Identify the parties to a trust, and explain the rights that a trust may have once a trust is established
- Describe what is meant by trust fund, different types of property and explain the ownership of the trust fund
- Explain the nature of trust purposes and the general rules that apply to them
- Define a trust and identify its defining features
- Explain what is meant by a fiduciary relationship
- Distinguish between trusts that apply to income and trusts that apply to capital
- Describe the nature of a beneficiary's interest in a trust
- Explain the differences between fixed and discretionary interests, vested and contingent interests
- Distinguish the trust from other similar concepts

MODULE 2: INTRODUCTION TO THE LAW OF TRUSTS (2) – TYPES AND USE

This module covers:

- The classification of trusts
- Types of trust encountered in practice
- An overview of the way in which trusts are used today

By the end of this module you should be able to:

- Explain the different ways in which trusts may be classified, including the distinction between
 - Voluntarily and involuntarily created trusts
 - Inter vivos and mortis causa trusts
 - Public and private trusts
 - Fixed interest and discretionary trusts
 - Bare trusts and purpose trusts
- Describe the different types of trust that may be encountered, namely:
 - The life interest trust
 - The discretionary trust
 - The accumulation and maintenance trust
 - The trust for bereaved minors
 - The age 18–25 trust
 - The bare trust
 - The charitable trust
 - The protective trust
 - The trust for the disabled
 - The resulting trust
 - The fiduciary fee
 - The constructive trust
- Identify some uses of trusts today, including:
 - Protection of certain people
 - Asset protection and reduction of tax liability
 - Charitable or public trusts
 - Unincorporated associations
 - Partnership property
 - Sequestration
 - Pension provision
 - Investment trusts and unit trusts
 - Offshore trusts
 - Trade union funds
 - Debentures

MODULE 3: THE CREATION OF A TRUST

This module covers:

- Voluntarily created trusts including:
 - An overview of the procedure involved
 - Preparation of the trust deed
 - Execution of the trust deed
 - Confirmation from the trustees of their willingness to act
 - Transfer of trust property

By the end of this module you should be able to:

- Explain the requirements to create a voluntarily created trust namely:
 - Provide an overview of the procedure involved
 - Describe how to prepare the trust deed
 - Describe how the trust deed should be executed
 - How to obtain confirmation from the trustees of their willingness to act
 - How trust property is transferred

MODULE 4: THE LIFERENT TRUST

This module covers:

- The liferent trust
- A number of concepts related to the liferent trust
- The rules restricting successive liferents
- The rule on apportionment

By the end of this module you should be able to:

- Describe the concept of the liferent trust, including
 - The interest of the liferenter
 - The interest of the fiar
- Distinguish between the income and capital of a trust
- Explain the effects of inheritance tax and of the Finance Act 2006 on liferent trusts
- Identify and describe concepts related to the liferent trust, including:
 - The proper liferent
 - The alimentary liferent
 - The flexible liferent trust
 - The protective trust
- State the rules restricting successive liferents
- Explain the rule on apportionment

MODULE 5: THE DISCRETIONARY TRUST

This module covers:

- The nature of the discretionary trust
- Choice of trustee and guidance from the truster
- Interests of beneficiaries
- Powers of the trustees
- The inheritance position of discretionary trusts
- The nature of the accumulation and maintenance trust
- Restrictions on the accumulation of income

By the end of this module you should be able to:

- Describe the nature, uses and advantages of the discretionary trust
- Explain the importance of appointing trustees in whom the truster has complete confidence, and the need to allow the trustees to exercise their discretion freely to avoid the risk of the trust being classed as a sham
- Analyse the value of a letter of wishes or guidance from the truster and explain why it must not override the trustees' discretion
- Describe the extent of beneficiaries' interests to the income and capital of a discretionary trust
- Identify the discretionary powers that trustees have, and explain the distinction between administrative and dispositive powers
- Describe how to avoid the reversion of trust assets to the truster should the trust fail
- Explain the special tax regime that affects the inheritance position of discretionary trusts
- Explain how an accumulation and maintenance trust operates, the conditions imposed by IHTA 1984 and how such trusts have been affected by changes in the law since the Finance Act 2006
- Identify the special rules relating to a trust for bereaved minors and an 18–25 trust
- Describe the restrictions on the accumulation of trust income, and explain the importance of the Trusts (Scotland) Act 1961 in this regard

MODULE 6: THE CHARITABLE TRUST

This module covers:

- Charitable trusts
- An overview of the administration of charitable trusts before the 2005 Act
- Administration of charitable trusts after the 2005 Act
- Tax advantages of a charitable trust

By the end of this module you should be able to:

- Describe how the concept of the charitable trust relates to that of the public trust
- Explain the administration of charitable trusts as it was under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990
- Explain how trusts are now administered, under the Charities and Trustee Investment (Scotland) Act 2005, including the role of:
 - The Office of the Scottish Charity Regulator
 - The Scottish Charity Register and the Charity Test
 - The provision of documents and information by and to the OSCR
 - The supervision of charities
 - The reorganisation of charities
 - Charity accounts
 - SCIOs
 - Religious charities
 - Charity trustees
- Identify the tax advantages of a charitable trust under the 2005 Act

MODULE 7: THE OFFICE OF TRUSTEE

This module covers:

- How trustees are appointed
- Procedures for acceptance of office by trustees, and for their resignation
- What happens when trustees lose capacity or die
- Procedures for the removal of trustees
- Different types of trustee
- Remuneration of trustees
- Trustees' personal liability in contracts
- The position of third parties contracting with the trustees

By the end of this module you should be able to:

- Describe the various ways in which trustees can be appointed under the Trusts (Scotland) Act 1921 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990
- Explain the requirement that trustees accept office and the ways in which they can do so
- Describe how trustees may resign and the potential consequences of a trustee losing capacity or dying
- Identify the circumstances in which a trustee can be removed from office under the Trusts (Scotland) Act 1921
- Define the concepts of trustees ex officio and trustees sine quo non and explain the relevant rules
- State the rules relating to the remuneration of trustees
- Explain the rules that apply to trustees who enter into contracts on behalf of the trust
- Describe the position of third parties who contract with the trustees, including the limits of the common law and statutory protection available for such parties

MODULE 8: TRUSTEES' DUTIES

This module covers:

- The duties with which trustees must comply
- Use of the trust deed to modify trustees' duties
- Use of trustees' immunity clauses, indemnity clauses and indemnity insurance

By the end of this module you should be able to:

- Identify and explain the various duties with which trustees must comply, namely:
 - The duty to act *intra vires*
 - The duty of care
 - The fiduciary duty
 - The duty to act impartially between the beneficiaries
 - The duty to act personally
 - The duty to act by quorum
 - The duty to consult
 - The duty to take control of the trust property
 - The duty to comply with the terms of the trust
 - The duty to meet
 - The duty to take advice
 - The duty to invest
 - The duty to keep accounts
 - The duty to provide information
 - The duty to distribute
- Describe the ways in which trustees' duties might be amended by the trust deed, including:
 - Diluting the standard of care
 - Use of trustees' powers
 - Excluding duties
- Analyse the use, effect and limitations of trustees' immunity clauses, indemnity clauses and indemnity insurance

MODULE 9: TRUSTEES' POWERS

This module covers:

- Powers available to trustees
- How additional powers can be obtained by the trustees
- The distinction between dispositive and administrative powers
- The power of appropriation
- A summary of the ways in which the trustees may obtain the directions of the court

By the end of this module you should be able to:

- Describe the powers available to trustees, including
 - Powers available under the trust deed
 - Powers available under section 4 Trusts (Scotland) Act 1921
 - Powers available under the Charities and Trustee Investment Act 2005
 - Powers previously available under the Trustee Investment Act 1961 and the types of investment covered
- Explain how additional powers can be obtained, either
 - Without reference to the court
 - With reference to the court
- Distinguish between dispositive powers and administrative powers
- State the use and effect of a power of appropriation
- Describe the ways in which the trustees can obtain the directions of the court

MODULE 10: BREACH OF TRUST

This module covers:

- The different types of breach of trust that can occur and their effects
- Remedies that will be open to the beneficiaries of a trust where a breach of trust has occurred
- A trustee's liability for the acts of others and for omissions
- The protections available to trustees who face an action for breach of trust

By the end of this module you should be able to:

- Describe the different types of breach of trust that can occur
- Explain the effect of an ultra vires breach of trust, an intra vires breach of trust and a breach of the fiduciary duty
- Summarise the remedies that will be open to the beneficiaries of a trust where a breach of trust has occurred, including:
 - Interdict
 - Damages
 - Accounting
 - Removal
 - Reporting
- Explain a trustee's liability for the acts of others and for omissions, and the limitations of this liability under the Trusts (Scotland) Act 1921
- Summarise the protections available to trustees facing an action for breach of trust, including:
 - Protection afforded by the trust deed
 - Protection afforded by statute

MODULE 11: VARIATION OF TRUSTS

This module covers:

- The means of varying the terms of private trusts
- The means of varying the terms of public trusts

By the end of this module you should be able to:

- Describe the means by which a private trust can be varied, including:
 - Exercise of trustees' powers within the trust deed
 - Exercise of beneficiaries' powers
 - Variation of trust with consent of all beneficiaries
 - Application to court under section 1(1) Trusts (Scotland) Act 1961
 - Application to court under section 1(4) Trusts (Scotland) Act 1961
 - Application to court under section 5 Trusts (Scotland) Act 1921
 - Application to court under section 16 Trusts (Scotland) Act 1921
- Identify the means by which a public trust can be varied, including:
 - An application for *cy-près*
 - An application under section 39 Charities and Trustee Investment (Scotland) Act 2005
 - An application under Law Reform (MP) (Scotland) Act 1990, section 9
 - The procedure under Law Reform (MP) (Scotland) Act 1990, section 10
 - The procedure under Law Reform (MP) (Scotland) Act 1990, section 11
 - Application to court under section 5 Trusts (Scotland) Act 1921
 - Application under *nobile officium* to provide machinery
 - Use of a private Act of Parliament

MODULE 12: EFFECTIVE TRUST DRAFTING

This module covers:

- General principles of drafting trust documentation
- Specific issues encountered when drafting various types of trust
- Other clauses in the trust deed
- Drafting of ancillary trust documentation

By the end of this module you should be able to:

- Explain the general principles of drafting trust documentation, including determining the client's requirements, avoiding blind adherence to precedents, and the need to explain the draft trust deed to the client
- Describe specific issues encountered when drafting liferent trusts, including the different kinds of liferents, the need for flexibility, and issues surrounding vesting
- Describe specific issues encountered when drafting discretionary trusts, including the importance of dispositive powers and choice of accumulation period
- Identify the requirements under the Inheritance Tax Act 1984, that are applicable when drafting other trusts, such as those for bereaved minors, or age 18–25 trusts
- Analyse drafting issues relating to other clauses in the trust deed, such as those concerned with the trustees' powers, immunity and indemnity clauses, and the exclusion of the truster
- Explain drafting issues for ancillary trust documentation, such as minutes of trustees' meetings, records of changes of trustees, and deeds of appointment

MODULE 13: RISK MANAGEMENT FOR TRUST ADVISERS

This module covers:

- An overview of matters relating to risk management for trust advisers

By the end of this module you should be able to:

- Identify and explain the issues relating to risk management for trust advisers including:
 - Issues that arise where a trust adviser acts as a trustee
 - Issues to be considered when providing advice to the trustees in terms of:
 - Money laundering and proceeds of crime regulations,
 - Terms of business and remit, taking instructions, and
 - Giving advice
- State the ways in which to minimise risk when acting as an adviser to the beneficiaries of a trust including:
 - The use of centralised structures to manage risk
 - The use of technology in trust management

MODULE 1: INCOME TAX IN THE PERIOD TO THE DATE OF DEATH AND DURING THE ADMINISTRATION OF AN ESTATE

This module covers:

- The steps required for calculating income tax liabilities in the period up to the date of death
- How income is taxed during the period of administering the estate of a deceased
- The basis of taxation applicable to estates and the way in which beneficiaries may recover tax
- How the net income of an estate is calculated and certified

By the end of this module you should be able to:

- Describe the importance of maintaining up-to-date accounts of an estate in administration
- Calculate how responsibility for income tax on income received by the estate is allocated
- Understand how income tax affects trusts and know how to obtain tax clearance
- Appreciate the trustee's duty to strike a balance between the interests of different beneficiaries and the consequent rules of apportionment
- Know what expenses are allowable against tax in the administration period
- Identify when it is safe, from the point of view of income tax, to pay out the rest of the money in an estate, and the situations in which beneficiaries can recover income tax
- Calculate the residuary income of an estate and to divide it among the people entitled to it
- Know how and when to use HMRC Form R185
- Identify a POAT situation when it arises and know what to do, either to ensure that the tax is paid, or to opt out of the tax by election

MODULE 2: INCOME TAX RULES APPLICABLE TO TRUSTS

This module covers:

- The usual rates of income tax applied to trusts
- The accrued income scheme
- The tax treatment of trusts in which the settlor has an interest
- The difference between a bare trust and a substantive trust and how bare trusts are subjected to income tax
- An overview of special forms of trust commonly found in practice

By the end of this module you should be able to:

- Explain how different kinds of trust income attract different tax rates and the types of relief available to the trustees and different categories of beneficiary
- Describe what is meant by the tax pool and how to manage it
- Complete the 'accrued income scheme' on the trust and estate tax return
- Describe the tax treatment of special distributions by companies to trustees by way of scrip dividend or demerger
- Identify when a trust is subject to the interest of a settlor and when the anti-avoidance rules apply, and know how to deal with the income in the trust
- Identify a bare trust and deal with the income arising in it
- Identify the taxation reliefs available to vulnerable beneficiaries
- Calculate the income tax charge on a typical discretionary trust

MODULE 3: CAPITAL GAINS TAX (CGT) – INTRODUCTION

This module covers:

- The main features of CGT
- How to claim relevant losses and reliefs
- Valuation issues relating to quoted securities and principles for valuation of other assets
- The identification rules for CGT
- The basic structure of a CGT computation and how to draft an appropriate computation

By the end of this module you should be able to:

- Define basic terms relating to CGT, such as annual allowances, allowable expenses, and the different rates of CGT
- Explain how relief operates on disposal of a business, including the annual exemption and part-disposal rules
- Know when indexation relief still applies and how to calculate it
- Explain the rules governing CGT loss relief, including the anti-avoidance rule and understand the share identification rules
- Calculate CGT due on the sale of chattels
- Apply the rules in relation to both roll-over and holdover
- Identify the rules in relation to entrepreneurs' relief
- Describe the circumstances where anti-avoidance rules may apply
- Prepare straightforward computations

MODULE 4: CAPITAL GAINS TAX IN THE PERIOD TO THE DATE OF DEATH AND IN THE ADMINISTRATION OF AN ESTATE

This module covers:

- The main features of CGT arising by reason of a death and during the period of administration of an estate
- Computation of CGT arising in the administration period after claiming relevant allowances
- How to claim relevant losses and reliefs
- Valuation issues relating to quoted securities and know the outline principles for valuation of other assets
- The way in which deeds of variation and disclaimers can affect the computation of CGT

By the end of this module you should be able to:

- Calculate CGT in the period up to the date of death and during the administration of an estate
- Explain the valuation principles for CGT on death
- Arrange disposals of securities in the administration period to the best advantage of the beneficiaries, having regard to the tax situation of each
- Describe the CGT possibilities of a DOV, and know when an election should be made in relation to such a deed

MODULE 5: CAPITAL GAINS TAX – RULES APPLICABLE TO THE ADMINISTRATION OF TRUSTS

This module covers:

- The charges to CGT arising when assets leave a trust fund
- The workings of holdover relief in relation to trusts
- Roll-over relief in relation to trusts
- The identification rules for CGT

By the end of this module you should be able to:

- Deal with the capital gains tax situation where a life interest comes to an end, whether on the death of the tenant for life or of any other person
- Understand the implications of the *Crowe v Appleby* rule
- Evaluate the interaction of CGT and holdover relief and how they apply to trusts
- Explain the impact of the bed and breakfasting rules as applied to trusts
- Describe settlor interested trusts and the CGT treatment of these, including clawback provisions and the rules governing who counts as a settlor

MODULE 6: CAPITAL GAINS TAX – THE FAMILY HOME AND OTHER LAND INCLUDING HIGH VALUE UK RESIDENTIAL PROPERTY (ATED)

This module covers:

- An outline of the type of transaction a trust or estate practitioner would encounter
- The main CGT rules that apply to the family home
- Situations where principal private residence relief does not apply
- The types of transactions that are regarded as 'dealing in land' where CGT would be due

By the end of this module you should be able to:

- Describe the computation of PPR relief
- Identify the factors that determine the relief on land associated with a property
- Appreciate the importance of ascertaining whether a property is the taxpayer's principal private residence and know the indicators that HMRC is likely to consider
- Explain some of the case law on residence and trading in land, including *Longson v Baker* and *Griffin v Graig-Harvey*
- Identify when PPR relief does not apply
- State how the anti-avoidance provisions apply
- Warn a client about the existence of the non-resident CGT charge

MODULE 7: INHERITANCE TAX ON LIFETIME TRANSFERS

This module covers:

- An overview of the lifetime transfer regime for inheritance tax (IHT)
- The basis of lifetime reliefs
- PETs and chargeable lifetime transfers
- The interaction between the reliefs and the transferred value for IHT purposes

By the end of this module you should be able to:

- Understand the broad scope of IHT in the context of lifetime gifting
- Identify and apply the main exemptions from IHT
- Explain the broad principles of the valuation of lifetime gifts, in particular how PETs affect IHT
- Distinguish between PETs and CLTs, and how close company transactions and the 'backward shadow' can affect CLTs, and how failed PETs can give rise to an 'extended backward shadow'
- Understand the IHT treatment of a failed PET
- Outline the advantages and disadvantages of lifetime giving
- Explain how annual exemptions for IHT can be used and the concept of 'normal expenditure out of income'
- Explain how IHT is affected by the registered legal partner exemption, payments to support dependants, and civil partnerships

MODULE 8: INHERITANCE TAX - AGRICULTURAL PROPERTY RELIEF AND BUSINESS PROPERTY RELIEF

This module covers:

- An overview of the regime for inheritance tax (IHT) specific to agricultural and business property relief
- Which assets qualify for agricultural property relief (APR) and which do not, and the rate at which the relief may be claimed
- The main limitations on APR
- The extent of business property relief (BPR) and the main exceptions to that relief
- The rules under which APR and BPR may be clawed back and the exception to those rules

By the end of this module you should be able to:

- State what property qualifies for APR and BPR
- State the rates at which APR and BPR are available and when each rate applies
- Understand the situations where BPR might apply to activities associated with a farm
- Identify the period for which a person must hold property in order to qualify for APR or BPR
- Explain the broad principles of valuation of business and agricultural property
- State the chief exceptions to APR and BPR, and the restrictions that apply to limited liability partnerships
- Outline some of the problems that can arise with both APR and BPR
- Define what is meant by 'clawback' and explain in broad terms when it may apply

MODULE 9: THE CHANGE TO INHERITANCE TAX ON DEATH – EXEMPT TRANSFERS AND THE BURDEN OF TAX ON BENEFICIARIES

This module covers:

- How IHT is charged on death and how the property is affected
- Which liabilities may be deducted from the estate at death for IHT purposes and which may not
- The categories of transfer that are exempt from IHT on death
- Who suffers tax by payment from an inheritance, and how the burden of tax is divided between different beneficiaries

By the end of this module you should be able to:

- Understand what is meant by having power over, or control of, property
- Distinguish between 'excluded property' and 'excepted property' and to list the categories of the former and other concessions
- Describe how IHT is charged on death, bearing in mind the exemptions that may apply
- Explain the difference between the tax charge on a fund that is subject to a life interest and the charge on a trust interest that has not yet come into possession
- State the basic valuation rules as they apply to the charge to IHT on death
- Appreciate how loans and other liabilities owed by/to the estate should be treated
- Know what kinds of transfers that are exempt from IHT and the circumstances in which making gifts to exempt beneficiaries will reduce the amount of IHT otherwise payable
- Explain the possibilities of claiming relief on heritage property and the restrictions that apply to new gifts of that kind of asset
- Identify the basic rules that apply when there is a gift with reservation, whether by way of a reservation out of the gift or by way of subsequent borrowing
- Explain the general principles of 'double grossing'
- Describe the 'attribution rules'
- Describe the way that the burden of tax is shared among the beneficiaries and be able to make simple calculations of it

MODULE 10: THE USE OF DISCLAIMERS AND DEEDS OF VARIATION IN RELATION TO INHERITANCE TAX AND CAPITAL GAINS TAX

This module covers:

- How disclaimers and deeds of variation may affect the tax payable
- The essential conditions for tax-efficient deeds of variation

By the end of this module you should be able to:

- List the differences between disclaimers and deeds of variation
- Explain the requirements that must be satisfied for a DOV to have effect
- Describe how DOVs can be abused
- Understand the ban on successive variations of the will for the same asset
- Appreciate the limitations on the Hastings-Bass rule
- Explain the basic principles by which IHT may be saved through the use of disclaimers and deeds of variation
- Outline the effect of the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011

MODULE 11: THE REGIME FOR TAXING TRUSTS

This module covers:

- How relevant property and non-relevant property trusts are taxed under the IHT regime
- How tax on trusts is administered
- The special position of the qualifying trust interest

By the end of this module you should be able to:

- Be aware of the transitional rules for pre-22 March 2006 trusts
- Appreciate how APR/BPR can affect a trust
- Understand how AMT, IIP, loan, single-premium investment bond, discounted gift and life assurance trusts, and those for the disabled are treated under the post-22 March 2008 regime
- Explain how discretionary trusts and other 'relevant property' trusts are taxed
- Describe the scheme of charging IHT on trusts under both the periodic charge regime and exit charge regime
- Consider the intricacies involved for later-added property or property that has changed in nature
- Identify the circumstances in which the charge to IHT on a trust may be very small or even nil

MODULE 12: SELF-ASSESSMENT PRACTICE & PROCEDURE

This module covers:

- Routine tax compliance
- The rules of full disclosure
- The penalty regime

By the end of this module you should be able to:

- Explain the implications of self-assessment for trustees and their advisers
- Describe the routine tax administration of trusts, including use of estimates and valuations in the tax return and how to deal with errors, once discovered
- Explain how 'aspect' and 'full' enquiries begin, are conducted, and concluded
- Understand what is meant by 'discovery' and the implications for the trustees
- Identify the basic record-keeping requirements for trusts and estates
- Describe the penalty system including the new regime,
- State the dates by which returns must be filed, and how disclosures and payments of tax should be made
- Understand the role of the tax tribunals

MODULE 13: THE FOREIGN ELEMENT – RESIDENCE AND DOMICILE

This module covers:

- The basic rules of residence and ordinary residence
- The residence rules for trustees
- Where a taxpayer may be domiciled

By the end of this module you should be able to:

- Explain the circumstances in which residence may be temporary or permanent
- Evaluate the relevance of employment to residence and domicile
- Explain the differences between domiciles of origin, choice and dependency, and deemed domicile
- Explain some relevant case law on domicile of choice
- Describe the problems in determining domicile for individuals who have lived in different countries, and understand the tax implications
- Calculate IHT liabilities where a non-domiciled registered legal partner is concerned

MODULE 14: THE ADMINISTRATION OF CAPITAL TAXATION AND PENALTIES

This module covers:

- The administration of capital taxation
- The system for collection of inheritance tax, including the regime for payment by instalments
- The penalty regime

By the end of this module you should be able to:

- Describe how capital taxation is administered
- Identify excepted estates, whether low-value, exempt or estates of a foreign domiciliary, and know how to deal with them
- Identify the duties of care owed by a personal representative and the dangers of failing to take due care
- Evaluate the importance of correctly valuing a deceased's estate and of making full enquiries of relatives, trustees and business associates
- Appreciate the implications of the *Hutchings* case
- State how IHT is calculated and paid on deceased estates
- Explain how to deal with disclosure of tax avoidance schemes
- Explain the main penalty provisions and how to avoid them

MODULE 1: BASIC PRINCIPLES

This module covers:

- Why Trustees and Executors should keep accounts
- The differences between single and double-entry accounting
- Cash books, client ledgers and why debit and credit entries are reversed as between the cash book and the client ledger

By the end of this module you should be able to:

- Explain a single-entry accounting system and differentiate this from a double-entry system
- Write up a cash book under single-entry accounting principles
- Prepare simple Executry Accounts
- Reconcile cash held to these Executry Accounts

MODULE 2: CAPITAL AND INCOME

This module covers:

- How to allocate receipts and payments between capital and income

By the end of this module you should be able to:

- Explain the need for a distinction between capital and income
- Describe how tax payments are attributed, with an example of an exception to the rule that Income Tax is a charge on income
- Define clearly which categories of professional fees should be charged either to capital or income
- Describe the areas of confusion relating to the position in an executry at the date of death

MODULE 3: EXECUTRY ACCOUNTS

This module covers:

- What accounting and other basic records should be kept in the administration of an executry
- How the single-entry system can be applied in practice to the administration of an executry
- Who is entitled to receive and approve Executry Accounts
- How to prepare a set of Executry Accounts from the entries contained in a single-entry set of records

By the end of this module you should be able to:

- Describe the role and duties of the Executor in accounting for the assets belonging to the estate
- Explain clearly what is meant by the terms “capital” and “income” and which funds should be contained in each
- State when and in what circumstances accounts should be presented to Executors and beneficiaries
- Identify by whom and in what manner the accounts are approved
- Identify the objectives of a well-organised set of accounts
- Describe the various aspects necessary for preparing accounts and where Working Papers need to be

MODULE 4: TRUST ACCOUNTS

This module covers:

- The application of the principles in accounting for executries to accounting for trusts

By the end of this module you should be able to:

- Identify the overriding principles and objectives in preparing and maintaining Trust Accounts
- State which documents and information are incorporated into the trust accounting file
- Explain what trust accounting records are required to be maintained, whether single entry or otherwise
- Describe clearly the constitution of a set of standard Trust Accounts and Trust Distribution Accounts

MODULE 5: PRINCIPAL TYPES OF TRUSTS & TRUST ACCOUNTS

This module covers:

- The principal trusts for which accounting may be required in modern trust practice and the type of Accounts required
- The special rules relating to the accounting treatment of testamentary trusts for children, with e.g. liferents at 18, vesting at 25
- Examples of two further Trust Accounts

By the end of this module you should be able to:

- Describe the principal types of trusts for which accounting may be required in modern trust practice
- Identify the characteristics of a TBM or 18 – 25 Trust
- Explain the accounting provisions relating to TBM's or 18 – 25 Trusts
- State where liability falls in respect of income tax for trust income
- Ascertain when tax at the rate payable by trustees should be calculated and from which account it should be paid

MODULE 6: INVESTMENT OF A TRUST FUND

This module covers:

- The law governing the investment of a trust fund by Trustees
- The manner in which that law is applied in practice to create the investment portfolio

By the end of this module you should be able to:

- Describe the extent of the power of Trustees to invest trust funds
- Explain the limitations imposed on that power by the concept of duty of care
- Explain the ability of Trustees to delegate to advisers the power of investment
- Explain the need to monitor and keep under review an adviser or manager to whom authority is delegated

MODULE 7: DISTRIBUTION OF A TRUST FUND

This module covers:

- The practicalities of distribution of the income and capital of a trust fund among the beneficiaries
- Trustees' duty to account to beneficiaries and to disclose information

By the end of this module you should be able to:

- Identify the duties and discretions affecting Trustees when considering distributions
- Describe the position of Trustees in accounting to beneficiaries for the their stewardship of the Trust and the Trust Estate

MODULE 8: VALUATION

This module covers:

- How trustees and executors should value assets
- How valuations are used in Trust and Executry Accounts

By the end of this module you should be able to:

- Describe the basis of how different assets are valued for confirmation and appropriation purposes
- Assess the appropriate valuation that is suitable for particular circumstances and the implications of so doing

MODULE 9: APPORTIONMENTS

This module covers:

- The various statutory and common law rules that can affect the allocation of funds between capital and income, where the beneficial interests in capital and income are different
- The calculations required in carrying out such apportionments

By the end of this module you should be able to:

- Explain why apportionment between capital and income was once perceived as fundamental, yet is now seen as an outdated concept
- Explain why practitioners must still be aware of the rules relating to apportionment
- Identify key elements of the 1870 Act and common law provisions relating to apportionment
- Demonstrate a knowledge of how to deal with apportionments
- Describe the rationale behind the treatment of the enhanced scrip dividends option when taken up by a life renter

MODULE 10: MISCELLANEOUS

This module covers:

- A variety of points not considered elsewhere in this course and to know when they apply in the accounting for trusts and estates

By the end of this module you should be able to:

- Describe the principles underlying abatement and the steps to be taken if there is a deficiency in residue
- Explain the appropriation of assets
- Demonstrate a broad knowledge of Accounts of Charge and Discharge

CONTACT US

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