

Nominees, bare trustees and agents (S.567)

Part 19-03-01

This document should be read in conjunction with section 567
of the Taxes Consolidation Act 1997

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Introduction

Section 567 of the Taxes Consolidation Act 1997 (“TCA 1997”) provides for the situation where assets are held by a person as nominee for another person, or as bare trustee for another person who is absolutely entitled to the assets or who would be so entitled but for the fact of being an infant or a person under disability. In such cases disposals and acquisitions by the nominee or trustee are to be treated as if they were made by the beneficial owner.

1.1 Interests in trusts

Interests in trusts are assets, but the extreme difficulty of valuing “wasting” interests (e.g. life interests), expanding interests (e.g. reversionary interests), interests in succession, contingent interests and discretionary interests, and the possibility that by the creation of trusts some liabilities might be deferred, render the application of the general rules of charge and computation impracticable. A particular and artificial scheme is, therefore, necessary. This is provided by sections 574 - 578 TCA 1997, which set out the occasions on which chargeable gains arise and the bases of computation.

1.2 Meaning of terms

The terms used in the legislation are to be given their ordinary legal meaning except where there is specific definition in the legislation itself.

1.3 Details

A trust is an obligation binding a person (a “trustee”) to deal with property in a particular way or for the benefit of another person or class (of which he or she may himself or herself be a member) whose interests are protected by the equitable jurisdiction of the Courts.

A trust may be expressly established by deed, by will, by the operation of law (e.g., in an intestacy) or may be presumed to exist (e.g. where a person buys property in the name of another person, resulting in a presumed trust in favour of the person who paid the purchase money).

A single instrument (e.g., a will) may create more than one trust even though there may be only one body of trustees. A will, on the other hand, does not necessarily settle any property on trust; it may devise all the assets to legatees absolutely.

If in any case there is doubt whether a trust exists, the legal instrument or a statement of the relevant evidence should be considered in detail. In particular, no oral trust should be admitted without full consideration of all evidence.