

Trustees of settlement (S.568)

Part 19-03-02

This document should be read in conjunction with section 568
of the Taxes Consolidation Act 1997

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Introduction

Section 568 of the Taxes Consolidation Act 1997 ("TCA 1997") makes special provision relating to the assessment of the trustees of a settlement and the personal representatives of a deceased person.

2.1 Application

The following sub-paragraphs apply only to trustees of settled property and not to a "bare" trustee (i.e. one who may be described as simply a nominee of the beneficial owner or a custodian of the property).

Where trustees receive assets as, for example, by gift in settlement, they are deemed, for Capital Gains Tax ("CGT") purposes, to have acquired the assets at market value and are assessable like any other person on any disposals they make in the course of managing the trust's investments. In addition, they may be assessable on a number of other occasions (see [Tax and Duty Manual \(TDM\) Part 19-03-01](#)).

Where assets are acquired by trustees under a will or intestacy, they are deemed to acquire them at market value. Death is not the occasion of a disposal for CGT purposes.

Where a beneficiary becomes absolutely entitled as against trustees to any assets other than on the occasion of a death (i.e., when the trustees cease to have any interest in the assets except, perhaps, as "bare" trustees), those assets are deemed to have been disposed of to the beneficiary at market value.

When a life interest in possession (as defined, see [TDM Part 19-03-03](#)) comes to an end, the assets of the trust are deemed to have been disposed of and re-acquired by the trustees at market value.

Where a life interest is in income only and is secured by specific assets which constitute part only of the trust property, the charge on termination of the interest is limited to the deemed disposal and re-acquisition of these assets. Where the life interest terminated is one of a number in the same fund, none of which is secured specifically on any part of the assets, the charge is by reference to the part of the assets corresponding to the share of the interest in the income of the fund.

There are also provisions allowing the transfer of expenses and losses from trustees to beneficiaries in some circumstances.

2.2 Additions to trust funds

Where assets (including cash) are added to an existing trust and all the beneficiaries have the same relative interests in the new assets as they had in the old assets, the additional assets need not be regarded as creating a separate trust unless the trustees request in writing that it should be so regarded. This paragraph does not, however, apply to a **non-resident trust established before 28 February 1974** (see **section 579(4) TCA 1997** - [TDM Part 19-03-05](#)).

Trustees who request that additions to trust funds are to be regarded as creating a separate trust should be asked to formulate provisions (which, if they appear satisfactory, may be accepted by the Inspector) for determining the chargeable gains when part of the fund becomes chargeable under **sections 574 TCA 1997** et seq. Such provisions should include an agreement in writing that the treatment of the additional funds as creating a separate trust is to be continuously operative over the life of the existing trust and that it is irrevocable after the first occasion on which it takes effect.

2.3 Settled property

“Settled property” (i.e. property in trust) is any property held in trust except, in general, where the beneficiary is “absolutely entitled as against the trustee” (see [TDM Part 19-03-03](#)) to the property. The property may be real or personal, tangible or intangible.