Interests in trusts

Part 19-03-03

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Interests in trusts

3.1 A person is, in general law, absolutely entitled to property as against the trustee when -

(a) the trustee has no control over the property except with the leave of that person, who is the beneficial owner, or

(b) the person can, if the person so wishes and provided that person has no legal disability, take complete control of the property either immediately or on giving due notice to the trustee.

Two or more persons may be absolutely entitled as against the trustee -

(i) when property which has never been settled property within **Section 574** et seq. (see Tax Instruction Part 19-03-01 Par. 1 et seq.) is held by trustees for two or more persons absolutely as joint tenants or tenants in common (e.g., an ordinary trust for sale, see Kidson V. McDonald, 1973, 49 T.C. 503).

(ii) when property which has been settled property within **Section 574** et seq., (see Tax Instruction Part 19-03-01 Par. 1 et seq.) has ceased to be so but has not yet been appropriated or distributed to the persons absolutely entitled. (As regards the time when absolute entitlement arises in these circumstances, see Tax Instruction Part 19-03-05 Par. 4).

In the above circumstances, the trustee is known as a "bare trustee". For Capital Gains Tax purposes, the definition is extended to include any person who would be so entitled but for the fact that the person is an infant or other person under legal incapacity (e.g. an insane person).

Where, within this extended definition, a person is so "absolutely entitled", gains should be computed and assessments made as if the property were vested in the beneficiary and all the trustee's acts were acts of the beneficiary, i.e., the trustee, and the existence of the trust, should be ignored.

This applies to nominees also. See the Example below.

Where there are two or more beneficial owners of property held by a "bare trustee" and there has been no agreed appropriation of the property, no one of the beneficial owners is strictly entitled to any particular asset. It follows that any assets which are disposed of by the trustees should be treated as having been disposed of by the beneficial owners in accordance with their proportionate shares in the property and that chargeable gains and allowable losses accrue directly to the beneficial owners accordingly.

Example:

On the death of his father in June, 2003, X (who is then aged 16 years) inherits absolutely 10,000 debentures in P Ltd. which had a market value at that date of €9,000. In December, 2006 the debentures are redeemed at par and the proceeds, €10,000, reinvested in shares in Q Ltd. which appreciate to a market value of €16,000 in May, 2008 (when X attains the age of 21 years and the trustee appointed by his father's will hands over the shares).

The gain of €1,000 in 2006 should be charged as a gain of X. The transfer of the shares in A Ltd., by the trustee to X is not a "disposal" but if X himself then sells the shares, the gain will be computed by reference to the acquisition price of €10,000.

3.2 Shares or securities disposed of by a "bare trustee" and any of the same "class" (Tax Instruction Part 19-04-01 Par. 6) remaining in his possession in the same trust, together with any of the same "class" held at the time of the disposal by the person for whom he acts as "bare trustee", are shares of the same class for the purpose of identifying shares acquired with shares subsequently disposed of.

3.3 Where a person uses his own money to buy an asset in the name of another, that other person should be regarded, in the absence of an express agreement to the contrary, as holding it as "bare trustee" for the purchaser. This does not apply, however, where that other person is the spouse or child of the purchaser; in such case, the purchaser may be presumed (in the absence of evidence to the contrary) to have made a gift to his spouse or child.

3.4 On the occasion when a beneficiary becomes absolutely entitled to any settled property as against the trustee, any losses (including losses brought forward) which -

(a) have arisen -

(i) on assets to which the beneficiary then becomes absolutely entitled (i.e. as a result of the charge under **Section 576(1)** on the trustee), or

(ii) on assets in which the beneficiary's share of the fund was previously invested, and

(b) cannot be deducted from gains accruing to the trustees on or before their deemed disposal of assets under **Section 576(1)** (following which the beneficiary acquires his property absolutely),

should be transferred to the beneficiary. Losses so transferred are no longer available to the trustees.

All losses which **can** be deducted from gains accruing to the trustees on or before the occasion of charge under **Section 576(1)** must be set off, without regard to which beneficiary may ultimately become absolutely entitled to particular assets.

3.5 For the purposes of **Section 577**, "life interest" -

(a) includes, the right to the income from property, or the use or occupation of the property, for the life of a person other than the person entitled to the right;

(b) does not include any right which is contingent on the exercise of the discretion of the trustee or some other person;

(c) does not include an annuity, (but see (d) below) notwithstanding that it is payable out of, or charged on, the settled property or the income from that property unless -

(i) some or all of the property is appropriated by the trustees as a fund out of which the annuity is payable, and

(ii) there is no right of recourse to any capital of, or income from, any settled property not so appropriated.

Where both conditions (i) and (ii) are satisfied so that there is a life interest in the appropriated property, the annuity is to be treated as a life interest and the appropriated property out of which it is payable is to be treated as settled property under a separate settlement for the purpose of determining the occasions and extent of the charge under **Section 577(2)** (see **Tax Instruction 19.3.5 Par. 8**).

(d) includes, for the purposes of **Sections 576(1)** and **577(3)**, an annuity which is not a life interest within **Section 577(1)**, but which is terminated by the death of the annuitant. Such an occasion is effectively treated as the termination of a life interest. As to the effect of this treatment see -

(i) Tax Instruction Part 19-03-05 Par. 4 second subparagraph, where on termination of the annuity the whole or any part of the settled property leaves the settlement (i.e. a person becoming absolutely entitled to it against the trustee), and

(ii) Tax Instruction Part 19-03-05 Par. 8, where the property remains in trust (i.e. a further interest, less than an absolute interest, in the settled property is created).

3.6 The following examples illustrate circumstances in which a life interest would (or would not, as the case may be) exist:-

Example 1

An interest which is primarily defined by reference to a life although it may terminate on the happening of an event during that life should be regarded as a life interest. An example of such an interest is where property is held in trust to pay income to a widow during her life or until she remarries.

A trust to pay income to A for ten years and then for B absolutely does not create a life interest; if A should die after five years his interest will not cease but will pass to his estate. Similarly a trust to pay income to A until B attains the age of twenty-five if A lives until then, does not create a life interest, as A's interest is not primarily defined by reference to a life.

Example 2

Where a will or trust deed provides for the income to be paid to A for the life of B, A has a life interest which will terminate on the death of B.

Example 3

Where a will or trust deed provides for the application in such manner and amount as the trustees may decide, of the income of settled property for the benefit of X for his life with remainder to Y absolutely, the interest of X is not a "life interest" in the property.

Example 4

Where property in trust is specifically appropriated to the payment of an annuity for life to A with remainder to B absolutely, the interest of A in the property is a "life interest" (see (c) of **Par. 5**). See also (d) of **Par. 5** where a life interest is terminated by the death of an annuitant.

3.7 Where a minor has an interest in capital or income (or both) under a will or trust deed and the interest is contingent on the happening of some event (e.g., the attainment of a specified age or marriage), he/she should normally during minority be regarded as not having a life interest in possession. If he/she does not become absolutely entitled on attaining the age of majority (e.g. because the specified age is twenty-five), he/she should not normally be regarded as having from that time a life interest in possession even though, under the terms of the relevant instrument, he/she becomes entitled to an absolute interest in income prior to the contingency date.

Where a minor has a life interest in settled property, he will on attaining the age of majority or earlier marriage become absolutely entitled to any accumulation of income retained by the trustees during minority. Such accumulation may have been invested and include chargeable assets.

Any objection to treatment on the above lines should be considered by reference to the specific facts.