

## Trustees

### Part 19-03-04

This document should be read in conjunction with section 574 of the Taxes Consolidation Act 1997

Document last reviewed December 2024

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## Introduction

Under the ordinary meaning of disposal, the creation of a trust (other than a case within section 567(2) of the Taxes Consolidation Act 1997 (“TCA 1997”)) constitutes a disposal for the purposes of Capital Gains Tax (“CGT”) and the settlor should be charged to tax by reference to the market value of the assets as at the date of settlement.

### 4.1 Treatment of trustees as single and continuing body of persons

The trustees of a settlement are to be treated as a single and continuing body of persons (i.e., as a “person”), notwithstanding changes in individual trustees. Where part of the property comprised in the settlement is vested in one trustee or set of trustees and part in another trustee or set of trustees, they are to be treated as a single body of trustees, even if they act separately.

### 4.2 Treatment of trustees as resident and ordinarily resident

Trustees (other than professional trustees - see **para 4.3**) are to be treated as resident and ordinarily resident in the State unless -

- (a) the general administration (see **para 4.4**) of the trust is ordinarily carried on outside the State, and
- (b) the trustees, or a majority of them for the time being (i.e., at the date on which the disposal occurs), are not resident or not ordinarily resident in the State.

If, for example, there are four trustees, two of whom are not resident or not ordinarily resident, the trustees, as a continuing body of persons, are considered to be resident and ordinarily resident in the State because those two do not constitute a “majority”.

### 4.3 Professional Trustees

In order to avoid discouraging foreign settlors from putting their affairs into the hands of Irish banks and professional trustees, it is necessary to ensure that a foreign trust does not become chargeable to CGT merely because it entrusts the management of its affairs to such a person. It is therefore provided that a person (e.g., a bank or a solicitor), who carries on a business which includes the management of trusts and acts as trustee in the course of that business is to be treated in relation to that trust as not resident in the State if the whole of the settled property derives from a person who was not, at the time of the settlement (or, in the

case of a will trust or an intestacy, at the time of the death) domiciled, resident or ordinarily resident in the State.

Where, under a trust, there are other trustees in addition to a professional trustee (who under this paragraph is regarded as not resident in the State), the residence status of the trustees as a body should be determined in accordance with **para 4.2**.

#### 4.4 Place of general administration of a trust

For the purpose of (a) of **para 4.2**, the general administration of a trust is carried on at the place at which the trustees acting in that capacity carry out their general duties as trustees. In the case of a professional trustee coming within **para 4.3**, however, the administration (or such trustee's share of the administration) of the trust should be regarded as carried on outside the State even though it is in fact carried on in the State.

The activities of an agent appointed by the trustees to manage the day to day affairs of the trust should not normally be taken into account in determining where the general administration of the trust is carried on, provided that, where a trust claims to be non-resident, there is no reason to doubt that the general administrative duties which would normally fall within the responsibility of trustees (as opposed to any agent appointed by them) are in fact carried on outside the State by the trustees.

Cases of doubt (in particular any cases in which a trust with an Irish settlor and Irish beneficiaries claims to be non-resident but it is thought that the non-resident trustees may be acting merely as nominees while the administration is in practice carried on in the State) should be carefully considered.

#### 4.5 Fees charged by professional trustees

Where the trustees are a bank (or other professional "person"), fees charged by them against (and received from) the trust funds may be allowed, in so far as these fees fall within [Tax and Duty Manual Part 19-02-10](#) and are on a normal scale, i.e., that are habitually charged to customers or clients at arm's length.