

Occasions of Charge in respect of Trusts

Part 19-03-05

This document should be read in conjunction with sections 567, 576 and 577 of the Taxes Consolidation Act 1997

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Introduction

This manual provides for the treatment of trusts and the disposal of trust assets for the purposes of Capital Gains Tax (“CGT”). The manual outlines which occasions result in a charge to tax including life interests, life tenants and non-resident trusts.

5.1 Disposal of chargeable assets into a trust

When chargeable assets are put into trust, either on the formation of a trust or by way of addition to trust property, there is a disposal at market value by the disponent of the property to the trustees, with a consequent gain or loss to the disponent for CGT purposes notwithstanding that:

- (a) the gift is revocable; or
- (b) the disponent retains an interest in the property; or
- (c) the disponent is a trustee of the settlement.

The whole property is deemed to be disposed of at market value, notwithstanding that the disponent has some interest as a beneficiary in the settlement. For example, he or she might have disposed of a freehold property by gift to trustees but have reserved to himself or herself a share in the income accruing from it. Where, however, all that he or she owns is the lease of a house and he or she gives it to the trustees, the “whole property” is the lease.

5.2 Disposal of trust assets

Gains arising from the disposal of trust assets, whether of assets originally settled or acquired subsequently by the trustees, are chargeable to CGT on the trustees. (See [Tax and Duty Manual \(TDM\) Part 19-03-06](#), for provisions governing alternative assessment of beneficiaries under **section 574(2) TCA 1997**, and [TDM Part 19-03-03](#), in respect of certain losses incurred by trustees).

5.3 Bare trustee

On the occasion when a person becomes absolutely entitled to settled property as against the trustee, all that property is deemed to be disposed of by the trustee and immediately re-acquired by the trustee (as “bare trustee”) at market value. See, however, the next subparagraph where the occasion is the termination of a life interest by the death of the person entitled to that interest. Any gains which arise in consequence on chargeable assets are chargeable gains of the trustee, and the ordinary rules of computation will apply. The cost of acquisition of the assets in the hands of the beneficiary will be the same market value, and there will be no second charge on the trustees if the property is handed over to the beneficiary sometime later (see [TDM Part 19-03-03](#)).

If the occasion of a person becoming absolutely entitled is the termination of a life interest (as defined in [TDM Part 19-03-03](#)) by the death of the person entitled to that interest, there is no charge to CGT on the deemed disposal and there is no allowable loss. The deemed disposal and re-acquisition by the “bare trustee” is to be at the market value at the date of the death.

A beneficiary may become absolutely entitled as against the trustee by, for example, the termination of the trust, the termination of a prior life interest, the exercise by the trustee of a discretionary power to release capital, an Order of the Court, or the happening of a contingency.

Where a charity or one of the bodies listed in **section 611 TCA 1997** (National Gallery of Ireland, etc.), is the person becoming absolutely entitled as against the trustees, see [TDM Part 19-07-08](#).

If any part of the funds released represents invested accumulations of trust income (which, as such, has been liable to Income Tax), there will be no CGT charge in respect thereof.

5.4 Beneficiary or beneficiaries absolutely entitled

It is necessary for CGT purposes to determine the exact time when property, which has been settled property, should be treated as becoming property to which the beneficiary or beneficiaries are absolutely entitled as against the trustees within **Section 567(2) TCA 1997**, (see [TDM Part 19-03-03](#)), so giving rise to an occasion of charge under **Section 576(1) TCA 1997** on the trustees. The time of such an event should be determined in accordance with the following: -

- (a) **Property ceasing to be settled property following the termination of a life interest** - Where, on the termination of a life interest, settled property is due to pass absolutely to one or more beneficiaries who then have the exclusive right (subject only to satisfying any charge, lien or other right of the trustees to resort to the settled property for payment of duty, taxes, costs or other outgoings) to direct how any asset in its entirety (which was settled property) should be dealt with, the occasion of charge on the trustees under **section 576(1) TCA 1997** is at the time of termination of the life interest.

The preceding subparagraph should also be regarded as applying to tenants in common (see [TDM Part 19-03-07](#)), who, as beneficiaries under a settlement, jointly have such an exclusive right even though the asset may not be capable of division into proportionate parts.

If, on the termination of the life interest, the conditions of the first subparagraph above are not then satisfied, there will be an occasion of charge on the trustees under **section 577(3) TCA 1997** followed by an occasion of charge under **section 576(1) TCA 1997** when those conditions are satisfied.

- (b) **Property ceasing to be settled property following a contingency (other than the termination of a life interest)** - Where settled property is due to pass absolutely to one or more beneficiaries on the happening of a contingency (other than the termination of life interest - see (a) above), the proper occasion of charge on the trustees under **section 576(1) TCA 1997** will ordinarily coincide with the date of the happening of the contingency. If, exceptionally, there appears to be no such coincidence, e.g., because the trustees have substantial prior charges to meet and the parties ask for a later date, a later date may be accepted.

Where there are successive contingencies affecting different parties, e.g., where a trust is in terms that property is to vest in A, B and C on their respectively reaching the age of 25, it is not possible to lay down any general rule about the time at which in strict law A, B and C become absolutely entitled as against the trustee; much may depend on the proper construction of the trust deed and/or the nature of the assets held in trust. In practice, the following treatment should be adopted:

- (i) Subject to (ii) below, the whole property should be regarded as remaining settled property until the last contingency (i.e. until C, the youngest, in the above example reaches the age of 25), unless prior to that date the trustees appropriate or agree to transfer specific assets to a beneficiary whose share has vested (in which case there is a **section 576(1) TCA 1997** occasion of charge in relation to those specific assets at the date of appropriation or transfer).
- (ii) Where it is claimed that, although there has been no appropriation or transfer of specific assets, successive occasions of charge under **section 576(1) TCA 1997** nevertheless arise at each contingency (on the basis that the relevant beneficiary, whose share vests on the contingency, then becomes entitled to a proportionate share in each of the trust assets and that thereafter the trustees hold each of those assets in part as “bare trustees” for him or her), the claim may be accepted provided that it is not inconsistent with the subsequent actions of the parties involved. (This treatment should be adopted whether or not a claim is made where, exceptionally, the trust property consists entirely of shares of the same class in one company.)
- (c) **Property ceasing to be settled property following an agreement to break up a trust** - Where a settled property is held under successive limitations, e.g., to A for life and to B and C absolutely, and all the parties are alive and under no legal disability (such as infancy), they may agree upon a scheme of distribution with the trustee(s) or may together direct the trustee(s) to distribute the property in a particular way. When agreement is reached, the property ceases to be settled property and a **section 576(1) TCA 1997** occasion of charge arises on the trustee(s) at the time when the scheme of distribution has been agreed.

Where, under (a) and (b) above, trustees sell assets after the occasion of charge under **section 576(1) TCA 1997** (including cases where they sell assets to meet their CGT liability under **section 576(1) TCA 1997**) but before assets are appropriated to the beneficiaries, charges on the beneficiaries should be computed under **section 567(2) TCA 1997** in proportion to their entitlement to the assets (see [TDM Part 19-03-03](#)).

Where, following the occasion of charge under **section 576(1) TCA 1997**, assets are distributed to two or more beneficiaries under a scheme of division otherwise than in accordance with their proportionate shares (see [TDM Part 19-03-03](#)), e.g. if A and B, being tenants in common with an equal share in the property, each take different selected assets and not a one-half share in each of the assets, there is a chargeable disposal by each beneficiary by way of an exchange of assets.

In practice, to avoid a further occasion of charge and provided that all the beneficiaries agree in writing, each beneficiary may be regarded as having become absolutely entitled on the occasion of charge under **section 576(1) TCA 1997** to those assets he or she subsequently receives.

Where, on the termination of a life interest, there are limited and absolute interests in the same field of settled property, e.g., where one of two life tenants die, the treatment outlined in (i) or (ii) in (b) above should be followed with the appropriate modifications.

5.5 Life tenant of settled property

Where an original life tenant of settled property makes a payment to the original reversioner in consideration for which the reversioner surrenders the reversionary interest to the life tenant, the life tenant becomes absolutely entitled to the property as against the trustees who are consequently chargeable under **section 576(1) TCA 1997** (see [para 5.3](#)).

The property is deemed to have passed to the life tenant at market value but no allowance is due in respect of the life tenant's payment. The life tenant is not liable under **section 613(4)(b) TCA 1997** (see (d) of [para 5.11](#) below) because he or she becomes absolutely entitled to the property as the holder of both interests and not as the holder of the reversionary interest within the terms of **section 613(4)(b) TCA 1997**.

Although as a result of the transaction, the reversioner has disposed of the reversionary interest, no chargeable gain accrues (see [para 5.11](#)).

The above instructions also apply to a reversioner who, by making a payment to the life tenant, becomes absolutely entitled to the settled property.

5.6 Life or reversionary interest becomes absolutely entitled

Where a person, who has acquired a life or reversionary interest in settled property for a consideration in money or money's worth subsequently acquires the other interest (also for a consideration in money or money's worth) and so becomes absolutely entitled as against the trustees to the settled property there is an "occasion of charge" on-

- (a) the trustees under **section 576(1) TCA 1997** (see **para 5.3**) and
- (b) the person acquiring the interest under **section 613(4)(b) TCA 1997** (see **para 5.11**)

Example 1

A person (N) has a life interest in settled property in succession to another life tenant (M). Before N's interest terminates (not due to death), N acquires from the reversioner (X), for a consideration in money or money's worth, the reversionary interest in the property. (M, N and X are all original beneficiaries.)

When M's interest terminates, N will become absolutely entitled to the settled property as against the trustees thereof, and there will be an "occasion of charge" on-

- (i) the trustees (see **para 5.3**), and
- (ii) N (see **para 5.11**).

Example 2

The facts are the same as in Example 1 except that the reversioner X, for a consideration in money or money's worth, acquires the life interest of N.

When M's interest terminates, X will become absolutely entitled to the settled property, as against the trustees thereof and the trustee will be chargeable under **para 5.3**. X, however, will not be chargeable under **para 5.11** because, when he or she becomes absolutely entitled to the property when M's interest terminates, he or she is regarded as still being the original beneficial owner of the reversion. Consequently, no allowance will be due for the payment for the advancement of the ultimate benefit of that interest.

5.7 Release of life interest to any remainderman

The instructions in **para 5.3** apply where a life tenant releases his or her interest in favour of any remainderman who then becomes entitled to an absolute interest as against the trustees.

5.8 Termination of a life interest

- (a) **Section 577(3) TCA 1997** imposes a charge on the trustees on the termination of a life interest in possession (see [TDM Part 19-03-03](#)) in all or any part of settled property. When such an interest terminates, all the assets forming part of the settled property (except any which vest at that time) are deemed for CGT purposes to be disposed of and immediately re-acquired by the trustees for a consideration equal to their market value. There is a consequent deemed chargeable gain or allowable loss to the trustees. If assets in which a life interest terminates are henceforward held for the benefit of a charity or one of the bodies listed in **section 611 TCA 1997** (National Gallery of Ireland, etc.), see [TDM Part 19-07-08](#).

The assets which cease to be settled property on the termination of the life interest are within **section 576(1) TCA 1997** (see **para 5.3** and **5.4**) not **section 577(3) TCA 1997**. These assets are separately chargeable at that time under **section 576(1) TCA 1997**.

In the event of later disposals (or deemed disposals) of trust assets, the computation of gains should be made by reference to deemed acquisition expenditure equal to the market value attributed to them on the termination of the life interest.

- (b) No charge under **section 577(3) TCA 1997** will arise on the termination of a life interest in possession in any asset which forms part of settled property where that asset is a heritage asset which is exempt from inheritance tax by virtue of **sections 77 and 78 of the Capital Acquisitions Tax Consolidation Act 2003**. If, however, the exemption from capital acquisitions tax ceases to apply in a year of assessment, the CGT liability, which but for that exemption would have arisen, will arise in that year of assessment.
- (c) The acquisition by a life tenant of the reversionary interest is not a termination of the life interest but an enlargement of that interest to an absolute interest. For example, where a beneficiary who has a life interest in possession becomes absolutely entitled on reaching a specified age ([TDM Part 19-03-03](#)) there is no termination of the life interest and **section 576(1) TCA 1997** not **section 577(3) TCA 1997** applies.
- (d) Where there is a life interest in the settled property of an undivided trust carrying an entitlement to less than the full income of the property and assets are appropriated to distinct funds to meet the criteria of **section 577(4)(b) TCA 1997 (para 5.10)**, there may in strict law be a termination of the life interest in part of the settled property. In practice, however, a charge under **section 577(3) TCA 1997** need not be sought on an appropriation of assets in such circumstances. **section 577(4) TCA 1997** provides that a life interest which is a right to part of the income of settled property is treated as a life interest in the corresponding part of the settled property, i.e. if the life interest was one-quarter of the income, then one-quarter of each asset

would be deemed to have been disposed of and re-acquired by the trustee at market value at that date. On a subsequent disposal, the trustee would have for each asset a composite "cost" consisting of three-quarters of the original cost plus one-quarter of the market value at the date of the deemed disposal and re-acquisition.

Where the termination of an annuity by the death of the annuitant is treated as the termination of a life interest ([TDM Part 19-03-03](#)), the corresponding part of the underlying assets (see the previous sub-paragraph) should be treated as the proportion of the whole which the amount of the annuity bears to the income of the trust. Income for this purpose should normally be taken to be the trust income of the twelve months immediately preceding the termination or, at the trustee's option, the last trust accounts year ending before the termination. Cases of widely fluctuating income or difficulty should be examined. If some part of the trust is appropriated as a separate fund out of which the annuity is payable, then by virtue of **section 577(1)(a)(iii) and (b) TCA 1997**, only the assets of that fund are involved ([TDM Part 19-03-03](#)).

5.9 Assignment by a beneficiary

Where a life interest is assigned by the original beneficiary, the assignee acquires an interest for the life of another (commonly called an interest "pur autre vie" or a "p.a.v." interest). Such an assignment should not be regarded as the termination of a life interest for the purpose of **section 577(3) TCA 1997**. Similarly, on any subsequent assignment, **section 577(3) TCA 1997** does not apply. See, however, **para 5.11** as regards an assignment by a beneficiary whose interest was acquired by purchase.

5.10 Segregation of the assets of a fund

Where there is -

- (a) a life interest (including an annuity) in part of the settled property of a trust, and
- (b) no right of recourse to the remainder of the settled property or the income from it, that part of the settled property is to be regarded as being under a separate settlement for the purpose of determining the occasions and extent of the charge under **section 577(3) TCA 1997** (see **para 5.8**). See, also, **para 5.8** where a life interest consists of the right to part of the income of the trust and where an annuity constituting a life interest is terminated by the death of the annuitant.

The segregation of the assets of a fund within the trust must, however, be complete before it is admitted that the provisions of **section 577(4)(b) TCA 1997** apply. For example, where there are (say) four life tenants of a mixed trust fund comprising land and stocks and shares, and stocks and shares are divided and specifically appropriated to the separate interests respectively, but the land remains undivided,

only the segregated parcels of stocks and shares should be treated as within the provisions of **section 577(4)(b) TCA 1997**. As regards the termination of a life interest in part of settled property on the appropriation of assets to distinct funds, see **para 5.8**.

Although, for certain purposes, funds within the same trust are treated as separate settlements under **section 577(4)(b) TCA 1997**, any allowable losses arising on one fund are available for set-off against chargeable gains arising on another fund within the same trust.

Provided that the trustees do not object, a separate assessment need not be made, even though the fund is treated as a separate settlement for computation purposes. If, however, the trustees insist, separate assessments should be made, and a Form 1 return should be issued annually for each fund.

It should be borne in mind that separate settlements may exist in law even though they have been created by the same trust instrument and have the same body of trustees (see [TDM Part 19-03-03](#)), but a separate settlement can only exist where separate funds are held on separate trusts. Where this is so, **section 577(4)(b) TCA 1997** has no relevance except for each separate settlement and losses of one separate settlement cannot be set off against another.

5.11 Disposal of an interest in a settlement

No chargeable gain accrues on the disposal of an interest in a settlement (including an annuity or life interest or reversionary interest) where the disposal is by -

- (a) the original beneficiary, or
- (b) a person who acquired the interest from the original beneficiary otherwise than by purchase. (**section 613 (4) TCA 1997**)

The purchaser of an interest (or a person deriving an interest from a purchaser) is chargeable on a gain made -

- (c) on disposal of the interest by the purchaser (or such person), or
- (d) on the purchaser (or such person) becoming absolutely entitled as against the trustee to the property, the consideration for the disposal being the market value of the property as diminished by any CGT charged on the trustee under **Section 576(1) TCA 1997** in respect of the property.

In a case within (d) the trustee is also chargeable under **section 576(1) TCA 1997** except where the absolute entitlement arises from the termination of a life interest due to the death of the person entitled to that interest (see **para 5.3**).

5.12 Acquisition of life interest and wasting asset

Where a life interest has been acquired from the original beneficiary for money or money's worth, it is not to be regarded as a "wasting asset" (see [TDM Part 19-02-16](#)) until the predictable life of the life tenant is fifty years or less.

5.13 Life tenant and Section 604 relief

A life tenant entitled under a settlement (or in certain circumstances permitted by the trustees) to occupy a house as his or her residence may qualify for exemption or relief under **section 604 TCA 1997**. The conditions for relief are described fully in [TDM Part 19-07-03](#). If a life tenant who qualifies for relief under [TDM Part 19-07-03](#), subsequently becomes the absolute owner in possession of the residence, no chargeable gain or loss will arise on that event under **section 576(1) TCA 1997**.

5.14 Personal representatives and legatees

Personal representatives are liable in respect of their chargeable gains less allowable losses and when they dispose of assets -

- (a) by sale, any allowable expenses should be deducted in computing their gains or losses;
- (b) by transfer to legatees, any allowable expenses should be deducted in the computation of the gain or loss on a subsequent disposal by the legatee.

When property is transferred to a person absolutely entitled to that property as against the trustees of a settlement, then on subsequent disposal of the property-

- (c) the person to whom the property is transferred should be allowed a deduction for the costs of the transfer if he or she has borne them (see [TDM Part 19-02-10](#)), and
- (d) if those costs have been borne by the trustees they should be allowed as a deduction if no claim has been made by the trustees.

5.15 Assessment accruing to trustees

An assessment on capital gains which accrue to trustees may be made upon all of the trustees or upon any one or more of the trustees.

Subject to the preceding sub-paragraph, a CGT assessment on a trust should normally be made on the acting trustee and should distinguish the estate concerned, e.g., AB trustee for the estate of CD, or AB trustee of the CD Children's Settlement.

5.16 Recovery from beneficiaries of tax due by trustees

Where -

- (a) the tax on a chargeable gain accruing to trustees is not paid within six months of the due and payable date, and
- (b) while the tax is still outstanding, the asset (or any part of the proceeds of sale of the asset) on which a gain arose is transferred by the trustees to any beneficiary who is absolutely entitled to it,

the tax outstanding may be assessed on that person in the name of the trustees at any time within two years from the date when it became payable by the trustee.

5.17 Trustees and annual exempt amount

Except in a case where a beneficiary is absolutely entitled as against the trustee (see [TDM Part 19-03-03](#)) to the property disposed of, the gains on disposal of trust property are the gains of the trustee and are not to be regarded as the gains of any other person. The exemption for gains of €1,270 ([TDM Part 19-07-01](#)), cannot, therefore, be applied.

Section 568(2) TCA 1997 also denies to trustees the remittance basis on gains accruing on the disposal of assets situated outside the State and the United Kingdom ([TDM Part 02-03-01](#)).

5.18 Anti-avoidance and non-resident trusts

The purpose of **section 579 TCA 1997** is to prevent tax avoidance by the device of putting assets into non-resident trusts.

Where trustees are not resident and not ordinarily resident in the State, they are not assessable, but where -

- (a) the settlor (or one of the settlors) is domiciled in the State (or was when he or she made the settlement), and
- (b) the settlor is resident or ordinarily resident in the State (or was when he or she made the settlement), and
- (c) the beneficiary is domiciled in the State during the year of assessment, and
- (d) the beneficiary is resident or ordinarily resident in the State during the year of assessment,

the beneficiary should be charged on his or her proportionate share of the gains accruing to the non-resident trustees, i.e., on the net chargeable gains less allowable

losses which would have been treated as accruing to the trustees if, given the same facts and circumstances, they had been domiciled and either resident or ordinarily resident in the State. (The chargeable gains for this purpose include gains deemed to be chargeable as in **para 5.3** and **5.8**.)

Time should not be spent enquiring about gains arising from foreign currency appreciation in the hands of non-resident trusts unless the amounts involved seem likely to be material.

The proportion attributable to the beneficiary is to be arrived at in such manner as is just and reasonable between the persons having interests in the settled property, according to the respective values of their interests. The valuation is to ignore the fact (where it exists) that an interest is a defeasible interest (i.e., an interest which can be destroyed by the happening of some event, such as the birth of children or the exercise of a power of appointment).

Example 3

In 1976, A, who is both domiciled and resident in the State, settles assets on trustees for the benefit of B for his or her life and for C absolutely thereafter.

The trustees are non-resident and not ordinarily resident and the trust is administered abroad. The trust makes a chargeable gain of €5,000. B is resident in the State and the value of his or her life interest at the time the gain is made is €50,000. The value of C's interest in the reversion is €25,000 and the amount of the gain chargeable on B is –

$$\begin{array}{rcccl} \text{€5,000} & \times & \frac{\text{€50,000}}{\text{€50,000} + \text{€25,000}} & = & \text{€3,333} \end{array}$$

Example 4

If, in Example 3 above, A had made his or her settlement before 28 February, 1974 there would have been no liability on B in respect of the gain (provided that B had no power to obtain any of the capital for himself or herself) (see **para 5.20**).

If, in Example 3, C is resident in the State for the year in which the gain of €5,000 is made, C also is chargeable in respect of part of the trust's chargeable gain (whether or not the settlement was made prior to 28 February, 1974). The amount of the gain so chargeable is–

$$\begin{array}{rcccl} \text{€5,000} & \times & \frac{\text{€25,000}}{\text{€25,000} + \text{€50,000}} & = & \text{€1,667} \end{array}$$

Payment of the tax on the €1,667 may, if the conditions in **para 5.20** are satisfied, be postponed.

5.19 Discretionary interest

In the case of a discretionary interest -

- (a) where the discretionary interest is in income, the average of the income received in consequence of the exercise of the discretion in the five years ending with that in which the chargeable gain accrues should be treated as if it were an annuity for the period of the trust (or the period of expectation of life of the beneficiary, whichever is the less) of that average amount, and the discretionary interest valued accordingly;
- (b) where a discretionary payment of capital is received after a chargeable gain accrues, the beneficiary is to be charged on part or all of the payment (as if the gain had accrued to him or her) if the payment represents the chargeable gain in whole or in part, except to the extent the gain has been charged on some other resident beneficiary.

5.20 Settlement made before 28 February, 1974

Where a settlement was made before 28 February, 1974 -

- (a) a beneficiary is not chargeable if he has an interest only in income and cannot obtain for himself or herself any part of the capital of the trust;
- (b) in the case of a beneficiary with a reversionary interest in capital who cannot obtain any part of the capital at an earlier date, payment of the tax may be postponed until he or she becomes absolutely entitled to the property or disposes of his or her interest in whole or in part.

Where property or money is added after 6 April, 1974 to a settlement made before that date, the added assets should be regarded as a separate settlement, in which case a beneficiary will not be entitled to the exemption under **section 579(4) TCA 1997**).

5.21 Non-resident trusts

Where the trustees of a non-resident trust pay CGT which is due from a beneficiary, the payment is not to be treated for tax purposes as a payment to the beneficiary.

5.22 Losses and non-resident trusts

No part of the net loss of the trustees of a non-resident trust may be allocated to a beneficiary.

5.23 Other cases

Cases may arise in which -

- (a) the trustees have no power, or are unwilling, to exercise a discretion to pay the tax on gains, and
- (b) the beneficiary (by reason, for example, of a life interest with long expectation which attributes to him or her a high proportion of the value of the settled funds) is chargeable on a high proportion of the gains of the trust, so that the tax chargeable in any year may exceed the beneficiary's receipts from the trust.