

Taxation of unit trusts for pension schemes and charities – Exempt Unit Trusts (EUTs)

Part 27-01-01

This document should be read in conjunction with section 731(5) Taxes Consolidation Act (TCA), 1997.

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Introduction

Section 731(5) TCA 1997 provides for the taxation of certain unit trusts, commonly referred to as Exempt Unit Trusts (“EUTs”). An EUT is a unit trust that is not an ‘authorised’ unit trust scheme within the meaning of the Unit Trust Act 1990 (if it was an authorised unit trust, then it would be an investment undertaking, as defined in section 739B¹). Investment in an EUT is confined to persons exempt from Capital Gains Tax (‘CGT’) (except for by reason of residence).

Through a combination of the requirement to be exempt from CGT and the requirement not to be an ‘authorised’ unit trust, unit holders in EUTs can only be certain pension funds and certain charities.

1. Background

Exempt unit trusts have existed since the 1960s and were specifically formed for investment by approved pension schemes and charities. At that time there was no taxation regime in place for unit trusts and they were exempted from income tax by concession. When CGT was introduced in 1975, specific provision was made in section 31 Capital Gains Tax Act 1975, to exempt such unit trusts from CGT. Exemption from income tax for unit trusts for pensions and charities continued as a concession. Section 71 Finance Act 2001 provided a legislative basis for that exemption from income tax and Deposit Interest Retention Tax (‘DIRT’). Section 47(1) of Finance Act 2005 provided an exemption from Dividend Withholding tax (‘DWT’) on dividends or distributions received by an EUT, subject to a declaration process.

2. Tax exemption

The tax exemption provided by section 731(5) TCA 1997, covers CGT, Income Tax and DIRT. Additionally, section 172C(2)(db) TCA 1997 provides an exemption from DWT, where the EUT has provided a declaration to the relevant person in accordance with paragraph 11 of Schedule 2A TCA 1997. This exempt treatment for the unit trust is conditional on all of the underlying unit holders in the trust themselves being persons who are wholly exempt from CGT otherwise that by reason of residence.

The holding of units by any other category of person will prejudice the “exempt” status of the unit trust. To ensure that such “exempt” status continues to apply, section 30 Finance Act 2010 introduced a reporting requirement whereby each unit trust must make an annual declaration and statement ([Form EUT1](#)) listing each unit holder in the unit trust.

¹ Please refer to Tax and Duty Manual [Part 27-01a-02](#) for more detail.

3. Form EUT1

Section 30 Finance Act 2010 amended Section 731(5) TCA 1997 to provide that the trustees of the EUT, or a person authorised to act on their behalf, must return a statement ([Form EUT1](#)) to the Revenue Commissioners for each year of assessment by no later than 28 February in the year following that year of assessment.

The Form EUT1 contains a declaration by the EUT that it meets the conditions to avail of the tax exemption outlined above in Paragraph 2. In addition, the Form EUT1 requires the disclosure of the nature of assets held by the EUT during the year of assessment. This panel should confirm the overall investment strategy of the EUT, which should include details regarding the type and general location of the investments.

An EUT may file the Form EUT1 on the basis of its accounting year or the calendar year, but it must be consistent year on year as to which basis it applies.

Section 731(5)(a)(iv) TCA 1997 provides that the trustees of an EUT (or any person duly authorised to act on their behalf) shall be liable to a penalty of €3,000 for failure to provide the required statement or for the making of an incorrect or incomplete statement.