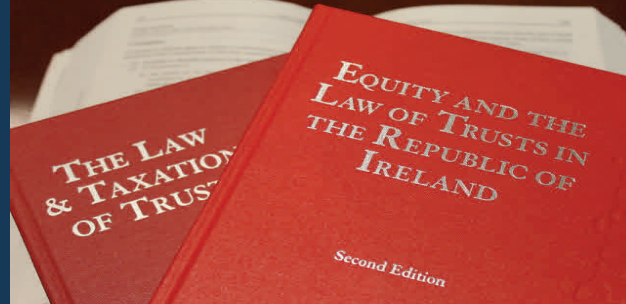


# Taxation of Trusts



Trusts involve legal arrangements under which trustees are responsible for looking after assets on behalf of beneficiaries. They need to manage the trust assets on a day to day basis and pay tax on any profits that arise in the process.

### Status of Trustees & Tax Return

For tax purposes trustees are a "body of persons" separate from the individual trustees, and as such they are liable to account for tax on trust profits, and file trust tax returns, which are completely independent from their own personal tax returns.

On taking over trust assets from the donor (or personal representative if the assets are passing into a Will trust) the trustees should notify Revenue of the existence of the trust by registering the trust for tax on a Form TR1, and getting a tax number allocated to the trust.

Trustees should return income, gains and charges annually to Revenue on a Form 1 return, which is due for filing on the income tax pay & file date (31 October each year).

On or before 31 October each year the trustees are required to:

- Pay preliminary income tax for the current tax year;
- File the tax return for the previous tax year;
- Pay any balance of income tax due for the previous tax year and
- Return capital gains made in the previous year

CGT on gains made in the period from 1 January to 30 November is due for payment by 15 December and CGT on gains made in December is due by the following 31 January.

### Income Tax

Trustees are liable to income tax at the standard rate (20% in 2012 and 2013) on trust income.

Section 805 of the Taxes Consolidation Act 1997 provides for a surcharge on undistributed income of certain accumulation and/or discretionary trusts.

If income arising to a discretionary trust has not been distributed within 18 months of the end of the year of assessment in which it arises, to a person who receives it, as income, it will be subject to a surcharge of 20%.

The tax treatment of accumulating trust income depends

on the rights of the beneficiaries. If a beneficiary has an interest which has vested in possession (a beneficiary who has the right to be paid the income of a trust as it arises) then he will be taxed as if the income is his as it arises.

Case law has established a principle that a beneficiary who has an interest vested in possession in a trust asset is subject to tax on any income that asset generates as if he had received the income himself when it arose.

However a beneficiary may only have a contingent interest in income (for example the beneficiary of a discretionary trust who only has the right to be considered when the trustees exercise their discretion on making payments) and in such cases the income will generally be accumulated by the trustees, who will be liable to income tax on it.

Accumulated income will generally be regarded as capital if it is paid out to the beneficiaries, but this is subject to the principle that a payment is characterised by its treatment in the hands of the beneficiary.

If funds are passed to the beneficiary of a trust in the form of regular periodic payments (such as a monthly sum) then this would normally be income in the hands of a beneficiary.

Where trustees make a payment from capital funds which is treated as income in the beneficiary's hands the trustees would have withholding tax obligations under Section 238 TCA 1997.

### Capital Gains Tax

Trustees are liable to CGT on any gains arising on the disposal of trust assets. In addition trustees may be deemed to have disposed of assets, as a result of which a capital gains tax liability may arise, in certain situations, for example where a beneficiary becomes absolutely entitled to the trust assets.

There is an exit charge on trustees of a settlement, which has been Irish resident or ordinarily resident, and which ceases to be resident or ordinarily resident in Ireland. S 579B TCA 1997 provides for a deemed disposal of "defined assets" at open market value immediately prior to the trustees becoming non-resident.

### Capital Acquisitions Tax

Capital Acquisitions Tax is a gift or inheritance tax. Assets passing out of a trust settled on or after 5 December 1999 will be within the charge to Capital

Acquisitions Tax where:-

- the disponent (i.e. the person providing the property) is resident or ordinarily resident in Ireland
- the donee or successor is resident or ordinarily resident in Ireland, or
- the property is situate in Ireland.

#### Summary re tax on appointments of trust funds:

Source of Funds	Type of Payment	Tax for Trustee	Tax re Benefit	Credit	Forms
Capital	Capital	CGT	CAT	None	None
Capital	Income	CGT	Income Tax *	Yes	R185*
Income	Capital	Income Tax	CAT	None	None
Income	Income	Income Tax	Income Tax *	Yes	R185*

\*The Form R185 should be given to the beneficiary receiving the payment from the trust.

\*Where an appointment is made from a trust which is subject to CAT, Revenue may also seek CAT on the benefit (net of income tax).

Where income is paid from capital the trustee should also make a payment to Revenue of 25% of the amount paid to the beneficiary (effectively grossing the payment up at the 20% standard rate of income tax).

If income (in the beneficiary's hands) is paid from income there is no further payment required to Revenue provided the trustees have paid their income tax when due.

#### Discretionary Trust Tax (DTT)

Discretionary trusts are subject to a once off charge of 6% of the capital value held in the trust, followed by an annual charge of 1% arising on 31 December each following year (except the year in which the 6% is paid). The 1% charge will not arise within 12 months of the initial 6% charge. The CAT territoriality rules outlined above apply to discretionary trust tax and the charges arise when:

- the disponent is dead,
- the assets are subject to the trust, and
- all of the principal objects of the trust (generally the settlor's spouse and children) have reached the age of 21 years.

The Finance Act 2012 provided that in the case of a Will trust the trust will be deemed to have been constituted

at the date of death so the charges will arise from that date (although the tax may not be due until the administration of the estate is completed). There is an exemption from DTT where the trust is set up for an incapacitated or disabled individual and it is advisable that Revenue confirmation is obtained where the exemption is utilised.

#### What records should be retained by trustees?

Bank statements showing assets and interest income

Dividend vouchers on shares

Stockbrokers reports re asset values and sales

Details of all expenses paid

Tax returns receipts and details of all expenses paid

For rental properties - copies of leases, and mortgage interest certificates

For discretionary trusts - records of income and capital payments to beneficiaries

If assets are sold - copy contracts and details of costs of sales should be retained

Minutes of trustee meetings

If relief is relied on in relation to a transfer (e.g. CGT principal private residence relief), information to support the relief (e.g. evidence of actual occupation of the property) should be retained

#### How long should records be held?

Tax records should be retained for at least 6 years

Tax records which support a relief claim (e.g. the PPR backing information referred to above) may need to be retained longer in case Revenue audit the relief.

#### Double Taxation Agreements

It is not unusual, given the movement in assets and taxpayers in recent years, for a trust to hold non-Irish assets, or to be set up on behalf of a non-Irish beneficiary. In such cases there may be a foreign tax liability because of the location of income or gains, or the location of the beneficiary. If trust income or gains are derived from a foreign source relief may be available under a double taxation treaty. Ireland's tax treaty network does not generally deal specifically with the position of trustees but Revenue practice seems to regard trustees as a body of persons qualifying for treaty relief where all of the trustees are resident in Ireland.

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**Caveat:** These notes are intended as a general guide to the taxation of trusts. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.