



Trusts in Trouble?

Revenue Investigation

On 1 September 2009 Revenue will launch an investigation into trusts and similar structures with a view to collecting any unpaid tax from settlors, trustees or beneficiaries.

Before the investigation starts taxpayers have a disclosure "window" and they can go to Revenue with outstanding tax issues, and settle without publication or prosecution, with reduced penalties and a favourable interest treatment.

The disclosure option is not available to taxpayers who failed to make disclosures in earlier investigations (e.g. the offshore assets investigation).

Pre-emptive Disclosure

The Revenue deadline for disclosure is **1 September 2009**. A brief Notice of Intention form must be filed by that date (www.revenue.ie/en/practitioner/investigations/trusts/index.html).

A Notice of Intention needs to be followed by full tax calculations and a tax payment, both due on or before **31 October 2009**.

The key points to note are:

1. The investigation will be wide ranging and the term "trusts and offshore structures" covers all categories of trusts (e.g. foreign stiftung, and anstalt).
2. Standard Irish trusts such as Will Trusts are also covered.
3. The Revenue will investigate all historic years for which there are tax issues.

Irish Trusts

The fact that a taxpayer is not aware of all the tax implications of a settlement will not be a defence if tax is due. Certain tax triggers can easily be missed and the following examples carry tax liabilities which may be overlooked.

Non-Irish Trusts which hold Irish Assets: Discretionary trusts set up on/after 1 December 1999 and which have non-resident settlors, and beneficiaries, but hold Irish assets, are within the charge to Irish Discretionary Trust Tax.

Grandchildren Trusts: A discretionary trust set up for grandchildren by a settlor is subject to 6% DTT when the eldest grandchild is 18.

Non-Irish Trustees & Life Tenant dies: If an Irish remainderman of a trust with non-Irish trustees receives an absolute interest on the death of the life tenant there is a deemed CGT disposal.

New Non-Irish Trustees Appointed: If non-Irish trustees replace Irish trustees the trust moves residence (migrates) and there is a deemed disposal for CGT of the capital assets it holds.

Life Tenant Dies & Trust Continues: If trust property remains settled on the death of a life tenant there is a disposal for CGT purposes.

Breakup of Settlement: If a settlement breaks up, and on division of the assets a beneficiary receives more than his interest is worth, tax may be due.

Irish Trusts with Income/Gains: Annual tax returns should be filed for trust income and gains.

Offshore Trusts

Up to 1999 Offshore Trusts could be used to shelter profits from Irish tax. In 1999 the legislation changed dramatically to render offshore structures largely tax transparent.

If taxpayers did not bring offshore trusts home after 1999 there may be historic income tax and CGT issues, even if the trustees are still holding the trust assets.

Sources of Information for Revenue

F(No2)A08 introduced s.896A TCA (third party reporting for settlements with non resident trustees). Revenue are collecting information from a number of sources, such as:-

- ⇒ Third party reports
- ⇒ Trust investigation disclosures
- ⇒ Estate tax returns
- ⇒ DIRT returns from financial institutions
- ⇒ Income tax & CGT returns

Caveat: This note is general in nature and should not be relied on in specific cases. OHT recommends obtaining formal tax advice before taking any steps with tax implications.

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