



Partnership

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## Tax Group Briefing

# Irish Trust Structures for Foreign Trusts

### Contents

|                   |    |
|-------------------|----|
| > Trust law rules | 01 |
| > Taxation        | 01 |
| > Contacts        | 02 |

## Trust law rules

Ireland can be a suitable location for trusts established by foreign settlors for the benefit of foreign beneficiaries. Irish trust law closely resembles English trust law, with which many practitioners are familiar. It is more common law based however as the main governing Irish statute is the Trustee Act 1893. Ireland does not currently have a statute permitting the variation of trusts, so it is important that trust deeds be carefully drafted to permit amendment and flexibility. As a result of legislation that will become operative on 1 December 2009, the rule against perpetuities will be abolished in respect of Irish trusts, so there will be no limit on their duration.

Irish tax rules for trusts established by foreign settlors, referred to in this note as “foreign trusts,” are very favourable notwithstanding that all the trustees are Irish resident.

## Taxation

### Capital gains tax (“CGT”)

If the trustees of a trust are resident in Ireland the usual rule is that they are liable to Irish CGT on the world-wide gains of the trust fund. Trustees are deemed to be tax resident in Ireland for CGT purposes unless:

- the general administration of the trust is ordinarily carried on abroad; and
- the trustees, or a majority of them, are not resident or ordinarily resident in Ireland.

However, there is an attractive exception that limits the tax liability of foreign trusts managed by Irish resident professional trustees. Professional trustees are deemed for CGT purposes not to be resident in Ireland if the following conditions are satisfied:

- the trustees are acting in the course of a business which consists of the management of a trust; and
- they are acting as trustees of the particular trust in the course of that business; and
- the whole of the property in the trust consists of or is derived from property provided by a person who was not domiciled, resident or ordinarily resident in Ireland at the time he provided the property.

If on the basis of these rules the trustees or a majority of them are non-resident, the general administration of the trust is also deemed to be carried on outside Ireland. The result is that Irish resident professional trustees are not subject to Irish CGT in respect of foreign trusts on gains accruing to such trusts from assets (other than Irish land, buildings and mineral rights and unquoted shares deriving more than 50% of their value from such Irish property). Where trustees of a foreign trust do not hold any Irish property, while resident in Ireland for tax purposes, they are not subject to an Irish CGT charge.

*This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.*

### Income tax

Irish resident trustees of a trust are liable to Irish income tax on the world-wide income of the trust fund. There is no similar income tax exemption for foreign trusts as exists for CGT purposes. However, it is possible to deal with any potential income tax issue in a number of ways. For example, where the trustees acquire shares in a holding company, that company could hold the underlying trust assets, and thus any income arising from the assets would accumulate in that company rather than in the hands of the trustees. No Irish income tax charge would arise on such income unless and until it was paid by the company to the trustees in the form of income.

Alternatively, the trustees could mandate that any income should be paid directly to foreign beneficiaries rather than to them. If those beneficiaries are not Irish resident, this would avoid an Irish income tax liability, although of course the tax treatment in the beneficiary's country of residence would need to be considered.

### Capital acquisitions tax ("CAT") (Irish gift/inheritance tax)

CAT should not be an issue in the case of most foreign trusts. Ireland imposes a CAT charge (subject to certain exempt

thresholds and exemptions/reliefs for certain assets) on benefits provided either by or to Irish residents or where the subject of the gift/inheritance comprises Irish property. There should, therefore, be no question of CAT applying in a case where the settlor and beneficiaries are all foreign resident, and the trust property transferred to them will be foreign property. Shares in a foreign company holding Irish land/buildings would also fall outside the CAT charge in the case of foreign domiciliaries, as no look-through provisions apply in that case.

### Stamp duty

There are specific exemptions in the Irish stamp duty code for the acquisition of foreign property and shares in foreign companies. Therefore the mere fact that foreign property is transferred to Irish trustees or by Irish trustees should not trigger any Irish stamp duty charge.

### Ireland's Double Tax Treaty network

Ireland has a comprehensive network of Double Tax Treaties (52 at present). The trustees or beneficiaries may, depending on the circumstances, be in a position to avail of any applicable treaty.

## Contacts

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