



Taxation of trusts

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Taxation of trusts

- ▶ **Trust 1 – The discretionary Will trust**
- ▶ **Trust 2 – The charitable trust**
- ▶ **Trust 3 – The family home exemption trust**
- ▶ **Trust 4 – The offshore trust**
- ▶ **Trust 5 – The lifetime family trust**

Taxation of trusts

- ▶ **Finance Act 2012 changes**
- ▶ **Reporting obligations**
- ▶ **Trustee tax traps**

Trust 1

The discretionary Will trust

The discretionary Will trust

- ▶ **Are you dealing with a discretionary trust?**
- ▶ **Typical structure**
- ▶ **Minimising DTT**
 - Appointments before 31 December
 - Valuations – section 24(1) CATCA 2003
- ▶ **Household charge**
- ▶ **NPPR?**

The discretionary Will trust

- ▶ **Income tax at 20% – not that simple!**
- ▶ **Surcharge on income**
 - Preliminary tax
 - Deductions
- ▶ **Appointments of income**

The discretionary Will trust

CGT/CAT credit

The discretionary Will trust

- ▶ **Discretionary trusts – still valid?**
- ▶ **Example – Estate valued at EUR2m**
 1. **Parent dies and leaves estate to child, aged 21**
 2. **Estate left to discretionary trust**
Assets appointed to child at age 30

The discretionary Will trust

Example

Total tax	Value of inheritance	Yr 9
EUR		EUR
'000		'000

Scenario 1 – no trust 754

2,010

Scenario 2 – trust 1,192

1,614

The discretionary Will trust

- ▶ Finance Act 2012
 - **DTT initial charge**
 - **Payable 4 months from valuation date**
 - **Revenue eBrief / CAT manual**
 - **Foundations and...**

Anstalts

Etablissements

Stiftungs

Anlagestiftungs

Familienstiftungs

Trust 2

The charitable trust

The charitable trust

- ▶ **Clients continue to make charitable donations**
- ▶ **Charitable trust created under Will**
- ▶ **Family members act as charitable trustees**
- ▶ **Revenue approval**
- ▶ **Consider lifetime charitable structure?**

The charitable trust

▶ Lifetime charitable trust

- Income and gains exempt from tax
- Must structure trust deed correctly
- Income tax deduction?
- DTT exemption section 17 CATCA – beware!
- Reporting

Trust 3

Family home exemption trust

Family home exemption trust

▶ Pre FA 2007 – typical structure

- Disponer/parent sets up trust
- Trust purchases property
- Child occupies property as main residence
- After 3 years – appoint property
- Dwelling house exemption claimed

Family home exemption trust

- ▶ **CGT and principal private residence relief**
- ▶ **Stamp duty**
- ▶ **Pre FA 2007 structure – what to do now?**
 - **Appoint to disponer now?**
 - **Retain in trust?**

Trust 4

The offshore trust

The offshore trust

▶ Typical structure

- Trust set up a number of years ago
- Trust is a discretionary trust
- Trust has Irish tax resident beneficiaries
- Tax rules have changed

The offshore trust

Tax issues

- Tax residence
- Capital gains tax
- Anti Avoidance rules
- Reporting obligations - extensive
- Finance Act 2012 – review existing structure?

The offshore trust

► Finance Act 2012

- Settlor tax status
- Non Irish resident beneficiaries
- Excluded beneficiaries

Trust 5

The lifetime family trust

The lifetime family trust

▶ Typical structure

- Discretionary trust set up during lifetime
- Trust tax resident in Ireland
- Assets (cash) settled on trust
- Longer term family investments
- Specific commercial transaction

The lifetime family trust

▶ Capital gains tax

- Transfer of assets into trust
- Is CGT clearance cert required?

▶ DTT and income tax

▶ Reporting obligations

The lifetime family trust

Finance vehicle - example

Finance vehicle example

- ▶ **TM trust assets EUR2m**
- ▶ **M wishes to purchase property for EUR1m**
- ▶ **Trustees advance EUR1m loan to M**
- ▶ **Interest free secured loan**
- ▶ **Property retained for 8 years and sold**

Finance vehicle - example

Year	Loan EUR	Annual gift* EUR	Gift exemption EUR	Threshold EUR	Tax EUR
1	1m	20,000	(3,000)	(250,000)	-
2	1m	20,000	(3,000)	(233,000)	-
3	1m	20,000	(3,000)	(216,000)	-
4	1m	20,000	(3,000)	(199,000)	-
5	1m	20,000	(3,000)	(182,000)	-
6	1m	20,000	(3,000)	(165,000)	-
7	1m	20,000	(3,000)	(148,000)	-
8	1m	20,000	(3,000)	(131,000)	-

* Assumes 2% interest rate if funds held on deposit

Finance Act 2012 – other changes

- ▶ **CAT rate and thresholds**
- ▶ **Agricultural relief**
 - deduction for debt – purchase, improvement, repair
 - 3 year residence rule abolished
- ▶ **CGT exemption for property**

Trustee tax traps

5 trustee tax traps

- ▶ **Losses**
- ▶ **80% Windfall tax**
- ▶ **CGT exit charge**
- ▶ **Death of life tenant**
- ▶ **6% DTT – 5 year rule**