



Matheson

# Non-Resident Trustees: Be Mindful of the Irish Connection



It is interesting to note the contrasting migration trends that may result in offshore trusts having an Irish connection. The first concerns the well documented emigration of Irish individuals to settle abroad. Many of those individuals have gone on to achieve success, with the requirement to manage their wealth in a controlled manner. In more recent years, Ireland's strong economy and favorable climate for foreign direct investment means that a wave of new migrants to the country has emerged. For various reasons, many of these individuals coming to Ireland have an interest in an offshore structure, sometimes as settlor, but often, as a beneficiary.

Offshore fiduciary service providers need to closely consider this Irish connection. An assumption might be made that where the relevant parties to the trust have long-since left Ireland and there are no Irish situs assets in the trust fund, the Irish tax implications of holding assets within a trust or distributing them to beneficiaries do not require consideration. However, we frequently see that offshore trusts have some legacy connection to Ireland, which results in an Irish tax exposure.

There are a number of Irish taxes to be mindful of – our gift / inheritance tax regime which is otherwise known as capital acquisitions tax (“**CAT**”), our discretionary trust tax (“**DTT**”) and the application of complex anti-avoidance provisions of our tax law, which purport to attribute the income and gains of offshore structures to Irish resident settlors or beneficiaries.

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### CAPITAL ACQUISITIONS TAX (CAT)

CAT is a beneficiary tax, in other words, the beneficiary is responsible for paying CAT. The current rate of CAT is 33%. In respect of value received from a trust, the imposition of the CAT charge depends on whether the trust was established pre or post 1 December 1999.



- If the trust was established and fully funded by an Irish domiciled settlor before 1 December 1999, the trust shall be within the charge to CAT, irrespective of the residence of the beneficiary at date of receipt or the situs of the value received.
- If the trust was established or funded on or after 1 December 1999, the imposition of the CAT charge will depend on a number of factors to include the situs of the asset received, the residence of the settlor at date of establishment / date of funding / date of death and the residence of the beneficiary.

### DISCRETIONARY TRUST TAX (DTT)

DTT is levied on the trustees of discretionary trusts. The term “discretionary trust” is specifically defined under Irish CAT law, and includes trusts where there is a power to accumulate and any structure that is “similar in its effect” to a discretionary trust (as defined). There is an initial charge to DTT that usually (although not always) arises on the death of the settlor, and an annual charge thereafter. The initial charge is currently 6% and the annual charge is currently 1%.

Again, the imposition of this charge depends on whether the trust / structure was established pre or post 1 December 1999, and the same considerations outlined in the bullet points above broadly apply, save that in the case of trusts established or funded on or after 1 December 1999, the residence of the beneficiary is not relevant.

### INCOME TAX AND / OR CAPITAL GAINS TAX (“CGT”)

Where you have an Irish resident beneficiary of an offshore trust, they may not only be exposed to a CAT charge on receipt of a gift or inheritance, but they may also be exposed to an income tax charge (notwithstanding that they have received a capital benefit from the trust) and, if they are domiciled in Ireland, they may be exposed to a CGT charge (albeit that they would not suffer both an income tax and a CGT charge). Depending on the nature of the distribution, this could result in effective tax rates of 55% or 67%. Further, if you have an Irish resident settlor, they could be taxed on the income and gains of the offshore trust on an arising basis.

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## ISSUES FOR NON-RESIDENT TRUSTEES TO CONSIDER

- We have encountered situations where settlors had established trusts at a time when they were Irish domiciled, but subsequently spent decades outside of Ireland by the time of their death, yet the entirety of the trust fund falls within the scope of CAT, notwithstanding the fact that it does not comprise any Irish situs assets.
- We have advised offshore trustees who were subject to a DTT charge on non-income producing real-estate assets, which are located outside of Ireland, simply because the settlor was once within the Irish tax net. Conversely, we have also seen offshore trustees subject to a DTT charge on Irish situs assets, even in circumstances where the settlor and beneficiaries had no connection to Ireland.
- It is frequently the case that value, held in trusts established or funded after 1 December 1999, by settlors who had no connection to Ireland whatsoever, becomes exposed to a CAT charge, income tax charge and / or CGT charge where it is distributed to beneficiaries who happen to be resident in Ireland at the date of receipt. In our experience, where beneficiaries of international family structures relocate to Ireland (temporarily or otherwise) their exposure to Irish taxes is often overlooked and capital distributions may often be considered to be outside the scope of Irish income tax or CGT on first principles. This is often due to a lack of knowledge about the application of Irish anti-avoidance provisions to offshore trusts.
- From time-to-time, we have seen offshore trustees faced with requests to extend the beneficial class of Irish proper law trusts, and in many cases, due to a) inadequate drafting in the trust deed or b) the absence of an express power of appointment, this requires an application to the Irish High Court pursuant to our statutory variation regime.
- Further, we have seen the number of non-resident trustees of a trust inadvertently increased, resulting in the trust becoming non-resident and crystallising a CGT exit charge.
- Trustees will be fully aware that the world has moved to an era of increased transparency. Ireland has legislated for beneficial ownership rules in compliance with the 4th and 5th EU Anti-Money Laundering Directives. An offshore trust may be subject to beneficial ownership reporting requirements pursuant to Irish beneficial ownership of trust regulations, where the assets of the trust are located or managed in Ireland, where the trust obtains services from professionals operating in Ireland or where the trust has a business relationship in Ireland (for example, owns an Irish investment bond).

It is important that offshore trustees are mindful that if a trust has an Irish connection, Irish tax advice should be sought to ensure that a) the trust is tax compliant from an Irish tax perspective, and b) beneficiaries considering relocating to Ireland (or already here) can receive timely value from the trust in a manner which is efficient. At Matheson, our Private Client Team has the expertise to provide offshore trustees with specialist tax and legal advice to address these issues. They can advise on potential planning that can be done prior to a beneficiary relocating to Ireland or post-entry planning.

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