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Tax Stream

Trusts, Tax and Legal Consequences

Presenter:

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Trusts Tax and Legal Consequences

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Trusts Tax and Legal Consequences

Parties to a Trust:

1. Settlor
2. Trustees
3. Beneficiaries

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Types of Trusts:

1. Bare Trust-property is vested in Trustees as nominees
2. Discretionary Trusts
3. Fixed Trust

A Trust can be created as an Inter-Vivos Trust – whilst the settlor is alive
or as a Will Trust which is created on the Settlor's death.

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Taxation of a Bare Trust:

Intervivos Trust :

1. CGT Settlor
2. CAT Beneficiary_s
3. SD Beneficiary
4. Annual Income – assessed on beneficial owner

Will Trust:

1. CAT Beneficiary
2. Annual Income – ased on beneficial owner

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Taxation of Discretionary Trusts:

Inter Vivos:

Tax on Creation of a Trust:

1. CGT on the settlor – consider any CGT Reliefs or settle Cash
2. Stamp Duty : Payable by the Trust

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Taxation of Discretionary Trusts:

Will Trust

Tax on Creation of a Trust:

None

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Taxation of Discretionary Trusts:

Tax on Life of a Discretionary Trust:

1. Income Tax @ 20%- No Credits / USC / PRSI etc.
2. Surcharge at 20% on undistributed Trust Income – 18 months to Distribute Income
3. 6% DTT Tax
4. 1% Annual DTT tax

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Taxation of Discretionary Trusts:

6% DTT:

1. One off 6%
2. Can get 50% of 6% DTT refunded.
3. When does the 6% become payable:
The later of:
 - a) Date trust set up and assets put in Trust
 - b) Date of death of disponent
 - c) Date youngest principle object of Trust reaches 21.

NB: an application can be made for an exemption from the 6% - where the beneficiary because of a physical / mental / legal incapacity is incapable of managing their affairs

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Taxation of Discretionary Trusts:

Tax on Appointment out of a Trust:

1. CGT Trust – Losses/CGT.CAT offset
2. CAT Beneficiaries – NB – Reliefs Available?

No SD on appointments

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Taxation of Discretionary Trusts:

Payments to Children:

1. Appointments made for Support/Education and Maintenance of Children – may be exempt from CAT if the child is a minor or under 25 in full-time education or permanently incapacitated.
2. For the exemption to apply both parents have died and the expenditure who have been normal expenditure of the parents pre-death.

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Taxation of Fixed Trusts: Each beneficiary has a fixed entitlement to trust assets.

A life Interest Trust is the same as a Fixed Trust.

The tax implications of fixed trusts differ depending on the nature of the fixed trust used – the basic difference would be if

- a) The trustees can accumulate wealth in the fund OR
- b) The Trustees are compelled to pay out income to the beneficiaries

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Taxation of Fixed Trusts:

Power to Accumulate Wealth:

When the trustees have the power to accumulate wealth the trust is deemed to be a Discretionary Trust for CAT and IT purposes Sec 2(1) CATCA2003.

The only difference between this trust and a Discretionary Trust is the trustees do not have the power to amend the trust.

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Taxation of Fixed Trusts:

No Power to Accumulate Wealth:

Revenue view is that the child is deemed to inherit an interest in possession on the death of the parent.

The inheritance is taxed as a life interest. Lets assume the assets will be appointed to the child at 25. If the child was 18 at the parents date of death then = the period certain is 7 years and then apply the life interest rules per Schedule 1 Para 1, Sub Para 6 CATCA2003

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Taxation of Fixed Trusts:

No Power to Accumulate Wealth:

E.G Child is 18. Dad dies and places 1m commercial property into a Fixed Trust to be paid to child on his 25th Birthday. Property will have a Market Value in 7 years of 1.2m

CAT today – 1m x life interest factor – 7 years => 1m x .3770 = 377000-
class A -335000 = 42000 tax 33%

Inheritance in 7 years time = 1.2m and class threshold is used up.

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Taxation of Fixed Trusts:

No Power to Accumulate Wealth:

The trustees are assessed to IT and CGT for the life of trust, Child is assessed to IT but will get a credit for tax paid by Trustees.

Appointment from the Trust at 25 years of age – will give rise to CGT

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