

[19.3.4] Trustees

4.1 The trustees of a settlement are to be treated as a single and continuing body of persons (i.e., as a “person”), notwithstanding changes in individual trustees. Where part of the property comprised in the settlement is vested in one set of trustees and part in another (in particular, where settled land within the meaning of the Settled Land Act, 1882, is vested in the tenant for life and investments representing capital monies derived from the sale of part of the settled land are vested in the trustees of the settlement), they are to be treated as a single body of trustees, even if they act separately.

4.2 Trustees (other than professional trustees - see **Par. 3**) are to be treated as resident and ordinarily resident in the State unless -

- (a) the general administration (see **Par. 4**) of the trust is ordinarily carried on outside the State, and
- (b) the trustees, or a majority of them for the time being (i.e., at the date on which the disposal occurs), are not resident or not ordinarily resident in the State.

If, for example, there are four trustees two of whom are not resident or not ordinarily resident, the trustees are resident and ordinarily resident in the State because those two do not constitute a “majority”.

4.3 In order to avoid discouraging foreign settlers from putting their affairs into the hands of Irish banks and professional trustees, it is necessary to ensure that a foreign trust does not become chargeable to Capital Gains Tax merely because it entrusts the management of its affairs to such a person. It is therefore provided that a person (e.g., a bank or a solicitor), who carries on a business which includes the management of trusts and acts as trustee in the course of that business is to be treated in relation to that trust as not resident in the State if the whole of the settled property derives from a person who was not, at the time of the settlement (or, in the case of a will trust or an intestacy, at the time of the death) domiciled, resident or ordinarily resident in the State.

Where under a trust there are other trustees in addition to a professional trustee (who under this paragraph is regarded as not resident in the State), the residence status of the trustees as a body should be determined in accordance with **Par. 2**.

- 4.4** For the purpose of (a) of **Par. 2**, the general administration of a trust is carried on at the place at which the acting trustees carry out their general duties as trustees. In the case of a professional trustee coming within **Par. 3**, however, the administration (or such trustee's share of the administration) of the trust should be regarded as carried on outside the State even though it is in fact carried on in the State.

The activities of an agent appointed by the trustees to manage the day to day affairs of the trust should not normally be taken into account in determining where the general administration of the trust is carried on, provided that, where a trust claims to be non-resident, there is no reason to doubt that the general administrative duties which would normally fall within the responsibility of trustees (as opposed to any agent appointed by them) are in fact carried on outside the State by the trustees.

Cases of doubt (in particular any cases in which a trust with an Irish settlor and Irish beneficiaries claims to be non-resident but it is thought that the non-resident trustees may be acting merely as nominees while the administration is in practice carried on in the State) should be carefully considered.

- 4.5** Where the trustees are a bank (or other professional "person"), fees charged by them against (and received from) the trust funds may be allowed, in so far as these fees fall within **Tax Instruction 19.2.10 Par. 5** and are on a normal scale, i.e., that habitually charged to customers or clients at arm's length.