

PART 27 Unit Trusts and Offshore Funds

CHAPTER 1 Unit trusts

Chargeable gains accruing to unit trusts. CGTA75 s31; FA77 s34; FA79 s37(1); FA93 s19; FA94 s64 731.—(1)
In this section, “capital distribution” means any distribution from a unit trust, including a distribution in the course of terminating the unit trust, in money or money's worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

(2) For the purposes of the Capital Gains Tax Acts and without prejudice to section 567 and sections 574 to 578, chargeable gains accruing to a unit trust in any year of assessment shall be assessed and charged on the trustees of the unit trust.

(3) The trustees of a unit trust shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the State unless the general administration of the unit trust is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State.

(4) Where a person receives or becomes entitled to receive in respect of units in a unit trust any capital distribution from the unit trust, such person shall be treated as having in consideration of that capital distribution disposed of an interest in the units.

(5) (a) Where throughout a year of assessment all the issued units in a unit trust are assets such that if those units were disposed of by the unit holder any gain accruing would be wholly exempt from capital gains tax (3)), gains accruing to the unit trust in that year shall not be chargeable gains.

(b) For the purposes of any assessment to capital gains tax, paragraph (a) shall not apply as respects a unit trust to which subsection (6) applies.

(6) Gains accruing on the disposal of units in a unit trust shall not be chargeable gains for the purposes of the Capital Gains Tax Acts where—

(a) the trustees of the unit trust have at all times (but not taking into account any time before the 6th day of April, 1974) been resident and ordinarily resident in the State, and

(b) the unit trust is a scheme which is established for the purpose or has the effect, solely or mainly, of providing facilities for the participation by the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever and which is administered by the holder of a licence under the Insurance Act, 1936, and for participation in which, in respect of units first issued after the 14th day of June, 1973, a policy of assurance on human life is required to be effected (but so that the units do not become the property of the owner of the policy either as benefits or otherwise).

(7) (a) Subject to paragraph (b), where there is a disposal in any year of assessment of units in a unit trust—

(i) not being an undertaking for collective investment) which began carrying on business on or after the 25th day of May, 1993,

(ii) all the assets of which were throughout the year of assessment 1993-94 assets, whether mentioned in section 19 of the Capital Gains Tax Act, 1975 , or in any other provision of the Capital Gains Tax Acts, to which that section applied, and

(iii) the person disposing of the units acquired the units before the 6th day of April, 1994, then, the chargeable gain on the disposal shall be computed as if the units had been sold and immediately reacquired by that person on the 5th day of April, 1994, at their market value at that date.

(b) Paragraph (a) shall not apply in relation to the disposal of units—

(i) if as a consequence of the application of that paragraph a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if that paragraph did not apply, or

(ii) if as a consequence of the application of that paragraph a loss would so accrue and either a smaller loss or a gain would accrue if that paragraph did not apply,

and accordingly in a case to which subparagraph (i) or (ii) applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to this subsection (other than this paragraph) but, in a case where this paragraph would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the units were acquired by the person disposing of them for a consideration such that neither a gain nor a loss accrued to that person on making the disposal.