

Non-resident trusts. CGTA75 s37 579.—(1) This section shall apply as respects chargeable gains accruing to the trustees of a settlement where the trustees are not resident and not ordinarily resident in the State, and where the settlor or one of the settlors is domiciled and either resident or ordinarily resident in the State, or was domiciled and either resident or ordinarily resident in the State when such settlor made the settlement.

(2) (a) Any beneficiary under the settlement who is domiciled and either resident or ordinarily resident in the State in any year of assessment shall be treated for the purposes of the Capital Gains Tax Acts as if an apportioned part of the amount, if any, on which the trustees would have been chargeable to capital gains tax under section 31, if domiciled and either resident or ordinarily resident in the State in that year of assessment, had been chargeable gains accruing to the beneficiary in that year of assessment.

(b) For the purposes of this section, any amount referred to in paragraph (a) shall be apportioned in such manner as is just and reasonable between persons having interests in the settled property, whether the interest is a life interest or an interest in reversion, and so that the chargeable gain is apportioned as near as may be according to the respective values of those interests, disregarding in the case of a defeasible interest the possibility of defeasance.

(3) For the purposes of this section—

(a) where in any of the 5 years ending with that in which the chargeable gain accrues a person has received a payment or payments out of the income of the settled property made in exercise of a discretion, such person shall be regarded, in relation to that chargeable gain, as having an interest in the settled property of a value equal to that of an annuity of a yearly amount equal to 20 per cent of the total of the payments so received by such person in those 5 years, and

(b) where a person (in this paragraph referred to as “the recipient”) receives at any time after the chargeable gain accrues a capital payment made out of the settled property in exercise of a discretion, being a payment which represents the chargeable gain in whole or in part, then, except in so far as any part of the gain has been attributed under this section to some other person who is domiciled and resident or ordinarily resident in the State, the recipient shall, if domiciled and resident or ordinarily resident in the State, be treated as if the chargeable gain or, as the case may be, the part of the chargeable gain represented by the capital payment, had accrued to the recipient at the time when the recipient received the capital payment.

(4) In the case of a settlement made before the 28th day of February, 1974—

(a) subsection (2) shall not apply to a beneficiary whose interest is solely in the income of the settled property and who cannot, by means of the exercise of any power of appointment or power of revocation or otherwise, obtain for himself or herself, whether with or without the consent of any other person, any part of the capital represented by the settled property, and

(b) payment of capital gains tax chargeable on a gain apportioned to a beneficiary in respect of an interest in reversion in any part of the capital represented by the settled property may be postponed until

that person becomes absolutely entitled to that part of the settled property, or disposes of the whole or any part of his or her interest, unless he or she can, by any means described in paragraph (a), obtain for himself or herself any of it at any earlier time,

and, for the purposes of this subsection, property added to a settlement after the settlement is made shall be regarded as property under a separate settlement made at the time when the property is so added.

(5) In any case in which the amount of any capital gains tax payable by a beneficiary under a settlement in accordance with this section is paid by the trustees of the settlement, such amount shall not for the purposes of income tax or capital gains tax be regarded as a payment to such beneficiary.

(6) This section shall not apply in relation to a loss accruing to the trustees of the settlement.