

Residence of Trusts (other than Unit Trusts) and of Estates under administration

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Ireland and the United Kingdom

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Introduction

This manual sets out guidelines for determining the residence of trusts and estates under administration in accordance with the Double Taxation Convention (DTC) between Ireland and the United Kingdom (UK). These guidelines, which are designed to deal with the majority of cases, have been agreed with HMRC.

Guidelines

These guidelines apply for income tax purposes only.

References to trusts should be taken as including estates under administration and references to trustees as including personal representatives.

Revenue regards trustees as a body of persons; therefore, trustees are considered “a person other than an individual” for the purposes of Article 4(3) of the Ireland-UK DTC. Article 4(3) has been modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the “MLI”). Prior to the modification of the Ireland-UK DTC by the MLI, a trust was deemed resident where its “place of effective management” was situated.

The MLI introduced a new tie-breaker rule for the determination of treaty residence of persons, other than individuals, that are resident of more than one jurisdiction. Therefore, pursuant to Article 4(3), where by reason of the provisions of the DTC a person other than an individual is a resident of both Ireland and the United Kingdom, the competent authorities of both States shall endeavour to determine by mutual agreement the State of which such person shall be deemed to be a resident for the purposes of the DTC, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the DTC except to the extent and in such manner as may be agreed upon by the competent authorities of Ireland and the United Kingdom.

In accordance with this tie-breaker rule, the competent authorities shall endeavour to resolve cases of dual residence by mutual agreement. For the competent authorities to consider a particular case, taxpayers affected or potentially affected by dual residence must initiate the mutual agreement procedure with either competent authority, as provided for in Article 24 of the DTC.

The modified tie-breaker rule has effect in Ireland with respect to taxes levied by Ireland with respect to taxable periods beginning on or after 1 November 2019; and in the United Kingdom, from 1 April 2020 for corporation tax and from 6 April 2020 for income tax and capital gains tax.

For the purposes of the modified tie-breaker rule, and while other relevant factors will be taken into consideration, “place of effective management” is still an important factor. The following should be considered in that regard:

- If the trustees are all individuals residing in one country, only that country should be regarded as the place of effective management.
- If the trustees are all individuals but not all residing in one country -
 - (i) the country in which the individual resides who generally controls and supervises the work of administering the trust (i.e., keeps the accounts, conducts the correspondence, arranges the meetings of the trustees and puts into effect the decisions taken at such meetings) should be taken,
 - (ii) if there is no such individual, the dates and places of all meetings held should be established and the country in which the majority of the meetings were held regarded as the place of effective management.
- If a professional body is acting as trustee, either alone or in conjunction with individuals, the place of business of that professional body should generally be presumed to be the place of effective management of the trust.
- If the professional body acting as trustee is a United Kingdom bank with a branch or subsidiary in Ireland, and the work of administering the trust is carried out by that branch or subsidiary, Ireland should be regarded as the place of effective management, and vice versa in the converse situation.

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