

Ireland

International estate planning guide

IBA Private Client Tax Committee

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I. Introduction

This introduction to Irish estate planning is intended as a guide on the fundamental principles of law, with a focus on general rules and concepts rather than the details and exceptions. Its purpose is to make accessible the basic elements of Irish estate planning to colleagues abroad to facilitate professional discussions on estate planning issues involving Irish interests.

This introduction deals with the legal and taxation position as of August 2025.

II. Wills and disability planning

A. *Will formalities and enforceability of foreign wills*

1. IRISH WILLS

The strict requirements for making a valid will in Ireland are set out in the Succession Act 1965, as follows:

- a will must be made in writing;
- it must be signed by the testator/testatrix at the foot/end of the will or by some other person in their presence and at their direction;
- the testator/testatrix's signature must be made or acknowledged by the testator/testatrix in the presence of two or more witnesses who are present at the same time, and each witness must either attest and sign the will or acknowledge their signature in the presence of the testator/testatrix; and
- the testator/testatrix must have intended by their signature to give effect to the will.

There is no provision for the witnessing of wills by persons online: the physical presence of the witnesses is required.

A will is revoked by the subsequent marriage or civil partnership registration of a testator. A will is not revoked by a divorce of the testator/dissolution of a civil partnership entered in to by the testator.

Typically, the wills of couples are made on a mirror image basis. It is possible for two people to make mutual wills (where each binds themselves as to how they will leave their assets), but these are not encouraged for various reasons and are extremely rare.

B. *Foreign wills*

Ireland recognises wills made in other jurisdictions in accordance with the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (the Hague Convention October 1961), incorporated into the Succession Act 1965.

A testamentary disposition is valid in regards to its form if it complies with the internal law:

- of the place where the testator/testatrix made it;
- of a nationality possessed by the testator/testatrix either at the time when they made the disposition or at the time of their death;
- of a place in which the testator/testatrix had their domicile either at the time when they made the disposition or at the time of their death;
- of the place in which the testator/testatrix had their habitual residence either at the time when they made the disposition or at the time of their death; or
- as far as immovables are concerned, of the place where they are situated.

Ireland is not a signatory to the President of the International Institute for the Unification of Private Law (UNIDROIT) Convention, providing a uniform law on the form of an international will.

The above relates only to the validity of foreign wills. The substantive application of private international succession law on the distribution of assets is outlined below.

C. Will substitutes

1. JOINT ASSETS

Property can be held jointly by two or more persons and such ownership can include the right of survivorship. Property that is jointly owned with a right of survivorship will pass automatically by operation of law to the surviving joint owner(s) upon the death of one joint owner without the need for a will.

Holding assets jointly for this purpose is popular between spouses, particularly in regard to bank accounts and the marital home. Indeed, holding the marital home in joint names is encouraged by the state by way of tax neutrality on the transfer into joint names from a sole name and through a registration fee waiver.

In the case of property held jointly where it is not clear if survivorship is intended, there are equitable presumptions that apply. The presumption of advancement and the presumption of resulting trust depending on the relationship of the joint owners to each other exist. It is therefore prudent to confirm upon the creation of joint ownership whether survivorship is intended to apply.

2. NOMINATIONS

It is possible to nominate certain assets to pass to nominees outside of the terms of a will, but this is limited to accounts with a certain value held with the Credit Union of Ireland.

Many insurance policies also provide 'nomination' upon the issuance of a policy, but this is in fact carried out in the form of the creation of a trust.

Similarly, a 'nomination' of pension benefits is in fact a mere letter of wishes to pension trustees to exercise their appointment of trust assets a certain way in the event of the death of a pension member.

3. GIFTS

There is no restriction on a person's ability to make a gift during their lifetime provided the person has mental capacity and is not under undue influence.

There are clawback provisions in the Succession Act 1965 to add back into the estate gifts made/vested within three years of a person's death, on death or later, if these gifts were made for the purposes of defeating or substantially diminishing the share of the donor's spouse or civil partner, whether as their legal right share, or on intestacy, or the intestate share of any child of the donor or in terms of leaving any child insufficiently provided for. The legal right share and rights of a child are outlined below as part of the discussion on forced heirship.

4. TRUSTS AND OTHER VEHICLES

A person can transfer assets to a trust made during their lifetime, providing for the succession of the assets in the trust to be passed on in a certain way upon that person's death. A transfer

of assets by a person to a lifetime trust, even where that person retains an interest in it, either a discretionary interest, a revocable interest or a fixed interest, such as a life interest, is a disposal of such assets for tax purposes.

While *inter vivos* trusts can form part of a succession plan, they are not used in Ireland on a general basis. Typically, they are used if there is a cross-border element or there are likely to be successive trusts arising because of particular long-term protections required for a beneficiary, such as a beneficiary with special needs.

Discretionary trusts can be subject to mandatory disclosure rules in Ireland upon their creation or, indeed, based on the furnishing of advice around their creation.

Revocable trusts are not used in domestic situations.

There is a legal basis for making secret and half-secret gifts in wills. These are rare and a discretionary trust is the usual route for dealing with the non-specific identification of beneficiaries, with a letter of wishes as guidance. Domestically non-valuable tangible personal items can be left to a person to distribute 'in accordance with known wishes' using a letter of wishes.

A *donatio mortis causa* gift (a gift made in contemplation of death conditional on that death) is again rare and would likely arise in relation to non-valuable tangible personal items.

D. Powers of attorney, directives and similar disability documents

Persons with an Irish connection, such as those living in Ireland or holding assets in Ireland, who have capacity to give instructions are typically advised to have an enduring power of attorney (EPA) as part of their estate plan. The enduring power of attorney can give authority to the attorney to do anything that the attorney might lawfully do, or it may merely give authority for them to carry out specific acts on behalf of the donor should the donor lose full capacity in later life. The authority relates to both the property and affairs of the donor and personal welfare decisions of the donor, but not healthcare decisions around medical interventions, which are dealt with separately by way of an advance healthcare directive (AHD).

The law in the area of decision-making and capacity was originally based on legislation from 1996, which is no longer applicable for decision-based documentation made on or after 26 April 2023. However, many enduring powers of attorney made in the period between 1996 and 2023 are still effective and continue to be governed by the 1996 legislation, as amended. These EPAs are registered with the court by the attorney when the donor becomes incapable of managing their affairs.

A new enduring power of attorney regime came into effect on 26 April 2023, governed by the Assisted Decision-making (Capacity) Act 2015, as amended. The creation of the power is managed generally through an online process with the decision support service, which requires the registration of the power upon its creation and again when the donor loses capacity.

The question of capacity is based on a functional assessment of the person's capacity on a time- and decision-specific basis: in other words, a person's ability to make a decision is assessed based on the decision that has to be made at that particular time. The person will not therefore lose their capacity to make decisions in general on a full-time basis unless it is very clear that incapacity is complete and full time.

If a person has difficulty making decisions without help, the person can appoint someone they trust to act as a decision-making assistant through the use of a decision-making assistance agreement.

In turn, if a person has some capacity, but is not able to make certain decisions on their own, they can make a co-decision-making agreement, appointing someone to be their joint co-decision-maker.

Where a person has made an enduring power of attorney and loses full capacity and is unable to make any decisions at any time, even with someone else's support, the enduring power of attorney is then registered. The decision support service supervises and monitors the attorney during the operation of the enduring power of attorney.

Where a person has not made an enduring power of attorney and loses capacity, so is unable to make a decision at all even with someone else's support, the Irish court may appoint a decision-making representative (DMR) for that person, replacing the previous role of the wards of court. Court practice has built up since 2023 that the DMR must obtain specific court direction on specific functions at particular times, ie, the DMR does not have a general power to act in regard to certain matters.

Advance healthcare directives have also been governed by the 2015 Act since 26 April 2023. A person can appoint someone to act on their behalf, their designated healthcare representative, if that person loses the ability to make certain decisions. Based on the information in the specific AHD, they have the power to:

- advise on and interpret wishes, as set out in the AHD, to the healthcare professionals treating the person; and
- agree to or refuse treatment on the person's behalf.

They can only do this if the person themselves does not have the ability to make healthcare treatment decisions.

Ireland has ratified the Hague Convention on the International Protection of Adults, which came into effect on 1 September 2024. This Convention includes the recognition of orders of contracting states in regard to enduring powers of attorney and certain advance healthcare directives.

III. Estate administration

A. Overview of administration procedures

It is necessary to extract an Irish grant of representation (probate or administration) in regard to a deceased's Irish estate to release Irish situate assets, whether real property of any value or moveable property of a value determined by the institution holding the property (eg, banks), generally over a value set by that institution. In the case of moveable assets of lower value, an institution might release the asset to a beneficiary if the beneficiary is prepared to sign an indemnity.

The Irish grant itself only deals with the assets situated in Ireland. An executor(s) appointed under the will of the deceased is the person appointed under the grant of representation (the grant of probate) to administer the estate. Depending on the closeness of the survivors to the deceased, a relative known as an administrator will have the right to extract the grant of representation (the grant of administration) on intestacy. Collectively the executor and administrator are known as the personal representatives.

The Irish grant of representation allows the personal representative to collect the deceased's assets and to sell or release Irish situate assets to the heirs by deed of assent or otherwise by appointing the assets to the heirs. The grant forms part of the title to the real property of the deceased, where applicable.

Where a grant or its equivalent has already been extracted in a foreign jurisdiction where the deceased was domiciled, and there is a requirement to take out an Irish grant to release Irish assets, the Irish court will issue the grant on the production of a sealed and certified copy of the foreign grant (and will in regard to a testate estate), together with a legal opinion on the entitlement of the applicant to the grant from the foreign jurisdiction where the grant was first extracted and other procedural documentation. It should be emphasised that, as Ireland is not a party to the European Union's Brussels IV (Regulation on Succession Law 650/2012), the certificate of inheritance issued under that Regulation is not sufficient to prove the entitlement of the applicant to take out the Irish grant. The certificate of entitlement (grant or certificate of inheritance) issued by the relevant Member State as to the entitlement to extract the grant in the jurisdiction of the domicile of the deceased must be furnished with a legal opinion setting out the entitlement.

The estate of an individual consists of moveable and immoveable assets that were beneficially owned by the deceased at the time of their death and any assets over which the deceased held a general power of appointment.

The law of succession which governs whether Irish succession law applies to the distribution of the estate of the deceased follows private international conflict of laws rules. Irish succession law applies on a schismatic basis, as follows:

- moveable assets are governed by the succession law of the place of the domicile (*lex domicilii*) of the deceased; and
- immovable assets are governed by the succession law of the place where the immovable asset (*lex situs*) is located.

As Ireland is not a party to the EU's Brussels IV (Regulation on Succession Law 650/2012), despite being an EU Member State, the connecting factor of habitual residence contained within that Regulation is not relevant to Ireland. However, where an Irish national has elected to have Irish succession law apply to their entire estate and the EU Member State(s) that are party to that Regulation treat Ireland as the jurisdiction to which the entire succession should be governed by virtue of that election, it is anticipated that the Irish courts would accept jurisdiction of the succession of the entire estate accordingly.

B. Intestate succession

The rules for the distribution of an estate on intestacy are set out in the Succession Act 1965, as amended, as follows:

- Where a deceased dies intestate leaving a spouse/civil partner and no issue the spouse/civil partner will take the whole estate.
- Where a deceased dies intestate leaving a spouse/civil partner and issue, the spouse/civil partner will take two thirds of the estate and the remainder is distributed between the issue. If all the issue are in equal degree of relationship to the deceased, the distribution is in equal shares; if they are not, the distribution is made *per stirpes*.
- Where a deceased dies intestate leaving a civil partner and issue, the civil partner will take two thirds of the estate (subject to any application for provision made in court by a child of the deceased) and the remainder is distributed between the issue. If all the issue are in equal degree of relationship to the deceased, the distribution is in equal shares; if they are not, the distribution is made *per stirpes*.

- Where a deceased dies intestate leaving no spouse or civil partner, the estate is distributed between the issue. If all the issue are in equal degree of relationship to the deceased, the distribution is in equal shares; if they are not, the distribution is made *per stirpes*.
- Where a deceased dies intestate leaving neither spouse nor civil partner nor issue, their estate is distributed between their parents in equal shares if both survive the intestate. If only one parent survives, that parent takes the whole estate.
- Where a deceased dies intestate leaving neither spouse nor civil partner nor issue nor parent, their estate is distributed between their brothers and sisters in equal shares. If any brother or sister does not survive the intestate, the surviving children of the deceased brother or sister, where any other brother or sister of the deceased survives the deceased, takes in equal shares the share that their parent would have taken if they had survived the intestate.
- Where a deceased dies intestate leaving neither spouse nor civil partner nor issue nor parent nor brother nor sister, their estate is distributed in equal shares among the children of their brothers and sisters.
- Where a deceased dies intestate leaving neither spouse nor civil partner nor issue nor parent nor brother nor sister nor children of any deceased brother or sister, their estate is distributed in equal shares among their next-of-kin as defined.

Since 16 November 2015, same-sex couples can legally marry, and the marriage is recognised in the same way as a heterosexual marriage. While there is no longer an entitlement for a couple to enter into a civil partnership, the relationship of a civil partner entered into prior to 2015 and not dissolved by a later marriage continues to be recognised.

C. *Forced heirship and clawback*

1. FIXED RIGHTS

Irish law provides that a spouse/civil partner of the deceased has a right to a share of the estate of the deceased. This is known as a legal right share. The legal right share comprises:

- one half of the net estate for the spouse/civil partner if the deceased dies testate and leaves a spouse/civil partner and no children;
- one third of the net estate for the spouse if the deceased dies testate and leaves a spouse and children; and
- one third of the net estate for the civil partner if the deceased dies testate and leaves a civil partner and children. This is subject to a right of claim by the child against this right.

If provision is already made for the spouse/civil partner in the will of the deceased, the spouse/civil partner has the right to elect to take the legal right share in lieu of the provision under the will.

2. DISCRETIONARY RIGHTS

A child of a testator/testatrix has the right to make a claim against the estate of their parent by applying to court, seeking the proper provision for the child because the parent failed in their moral duty to make proper provision for the child in accordance with their means. This right to a claim is not confined to minor children: many adult children have made claims against the estates of their parents under this legislation. The court has the discretion to order payment to the child out of the estate, as it thinks just.

Adopted or non-marital (illegitimate) children are treated the same as natural legitimate children in connection with this type of claim.

Cohabitants (cohabiting couples) are defined as two same-sex or opposite-sex adults who are not married to each other or in a registered civil partnership, are not related within the prohibited degrees of relationship and who are living together in an intimate and committed relationship. The relationship must be in place for two years if there is a child of the relationship or five years otherwise. Cohabitants do not possess the same legal rights and obligations as married couples or civil partnerships. However, a surviving cohabitant can make a claim against the estate of the deceased cohabitant by applying to the court for an order for proper provision in the circumstances of the case, but not exceeding the legal right share a spouse or civil partner would have been entitled to.

3. CLAWBACK

Any asset transferred, where the beneficial ownership of the property vests in a person within three years of the death of the person or on their death or later, can be clawed back into the estate of the disponent on application to the court based on proof that the transfer was made for the purpose of defeating or substantially diminishing the share of the disponent's spouse, civil partner or child in the context of each of their forced heirship rights on testacy or their rights on intestacy.

D. Marital property

There is no community property (marital property) regime in Ireland.

A trust created by a person which is considered an anti-nuptial or post-nuptial settlement (which is not specifically defined and can be widely interpreted) is open to being varied by the Irish court in family law proceedings to make provision from the trust for a spouse in the event of divorce or separation.

E. Tenancies, survivorship accounts and payable on death accounts

Assets in the joint names of the deceased and another person should be assessed to consider whether the assets are held based on a resulting trust for the estate of the deceased or whether they pass through survivorship to the surviving joint owner.

IV. Trusts, foundations and other planning structures

A. Common techniques

1. FOUNDATIONS

Ireland does not have domestic private foundations. A foundation is not a legal entity in its own right. However, it is expected that the fiduciary nature of a foundation entity established outside Ireland would be recognised under equity principles in Irish law.

Typically, a foundation supposedly created under Irish law is in fact a charitable trust or company with the word 'foundation' in its title.

A foundation is treated by Irish revenue commissioners for Irish gift/inheritance tax purposes as if it is a discretionary trust, although case law in this area by the lower tax appeals commission indicates otherwise.

2. TRUSTS

Trusts are recognised under Irish common law. Trust law is based on the Trustee Act 1893, as amended, and case law developed by the equity courts of Ireland. The most common types of trusts in Ireland are:

- discretionary trusts, wherein the trustees hold the property in trust for the benefit of a class of beneficiaries and have full discretion as to when, who and how much and in what manner trust property should be appointed to the beneficiaries;
- bare trusts, wherein the trustees hold the legal title to trust property on the beneficiary's behalf, while the beneficiary holds the beneficial interest;
- fixed trusts, wherein the beneficiary has a fixed entitlement to the trust property, such as the income for a lifetime or a particular period of years, and the trustees have no discretion in regard to the payment of that income to the beneficiary;
- statutory trusts, wherein there is no trust created by the disponent, but the legislation provides for a trust to come into effect, eg, for minors based on intestacy;
- constructive and reversionary trusts, based on principles of equity, wherein, again, there is no formal trust instrument in place;
- charitable trusts, wherein the trust holds the assets for charitable purposes (and wherein the trust must register with the charities regulatory authority);
- pension trusts, wherein Irish pensions are usually managed through the use of pension trust structures;
- unit trusts, a form of UCITS (undertakings for collective investments in transferable securities) open-ended investment fund established in Ireland, authorised under EU legislation and managed by the Central Bank of Ireland; and
- employee share ownership trusts (ESOTs), wherein employees hold certain shares in their employer company subject to specific trusts in a tax-advantaged manner.

Trusts governed by the law of another jurisdiction are generally respected in Ireland if they comply with the essential elements of a trust as set out in Irish law, in regard to the following:

- certainty of intention;
- certainty of subject matter; and
- certainty of objects of the trust.

Irish property law also applies to real property situated in Ireland held in trusts. The acquisition of real property held in trust must be evidenced in writing and signed. There is no perpetuity period rule in Ireland.

Express trusts administered in Ireland (including offshore trusts that have a business relationship in Ireland) must register the beneficial owners of such trusts with the Irish Revenue's central trust register (CRBOT), in accordance with the anti-money laundering legislation introduced by the EU, if they are not already registered in another EU jurisdiction.

Trust assets are not subject to forced heirship. Legal right shares apply only to estates not held in trust. However, the clawback provisions mentioned above may apply to a gift into a trust if the property gifted is vested within three years of the death of the donor, on their death or later, including any appointment that occurs later from a discretionary trust.

Property for a minor is held by a parent or guardian on their behalf by way of trust. This incapacity ends when the person reaches the age of 18. An individual who has not reached the legal age of 18 years old and who is not or has not been married is a minor. If the child marries then the child is no longer a minor.

Trusts may be varied under the Land and Conveyancing Law Reform Act 2009, according to court-approved arrangements for beneficiaries. Otherwise, there is no general provision for

the variation of trusts other than with the consent of all beneficiaries under general equity principles or as provided in the trust instrument and then only in relation to administrative provisions.

3. OTHER INSTRUMENTS

Family partnerships (fps) are common in Irish wealth planning. They allow parental control of benefits passing to younger beneficiaries in a tax-efficient manner. General and limited partnerships are used.

Private companies are used to hold family wealth and assets. These are governed by company registration office rules and public filings.

B. Fiduciary duties

1. TRUSTEES

The duties of a trustee are imposed according to a combination of the nature of their office and the terms of the trust, based on case law, statute and equity.

A trustee has a duty to ensure that the terms of the trust are performed and that they act in the best interests of the beneficiaries. The standard duty of care is that which would be expected from a prudent person of a business, but a higher standard of care is expected from a professional trustee.

When considering whether a trustee has fulfilled their duties, there is a distinction between obligations and discretions. A trustee may sometimes have an obligation to exercise a discretion or to consider whether to exercise a discretion. If a trustee fails to do something, it is obliged to do or fails to do it with the necessary degree of care (or fails to exercise a discretion with the necessary degree of care), then this is a breach of trust for which the trustee may be liable to the beneficiaries of the trust. In contrast, the Irish courts will not review the manner in which a trustee has exercised a discretion itself.

A trustee's duties include the duty to keep accounts, which are essential to allow beneficiaries to monitor the performance of the trustees, wherein even discretionary beneficiaries are entitled to see the accounts of the trust. However, the extent to which any other trust information must be available to beneficiaries and, in particular, beneficiaries of discretionary trusts, is a contentious matter.

The duties of trustees may be modified and excluded by the express terms of the trust. Typically, the trustees' liability may be excluded in instances where they have been negligent or have wilfully acted in breach of the trust provided only that the default was made in good faith. Nevertheless, an exclusion of liability for fraud, dishonesty or conscious wrongdoing would be null and void.

2. DIRECTORS

Directors (whether executive or non-executive) of companies incorporated in Ireland owe statutory duties to the company (not to individual shareholders, creditors or third parties) and only the company may take action for breach of duty against a director. On liquidation, this power may be exercised by the liquidator. In limited circumstances, shareholders may be able to bring derivative actions on behalf of the company. Where a company is insolvent, the directors should consider that the interests of the creditors are equated to the interests of the company.

The Companies Act 2014 sets out the principal fiduciary duties of a director, as follows:

- to act in good faith in terms of what the director considers to be in the interests of the company;
- to act honestly and responsibly in relation to the conduct of the affairs of the company;
- to act in accordance with the company's constitution and to exercise their powers only for the purposes allowed by law;
- not to use the company's property, information or opportunities for their own benefit, or that of anyone else, unless this is permitted expressly by the company's constitution or the use has been approved by a resolution of the shareholders made during a general meeting;
- not to agree to restrict the director's power to exercise an independent judgement, unless this is expressly permitted by the company's constitution or the director agreeing to this has been approved by a resolution of the shareholders made during a general meeting. However, where a director considers in good faith that it is in the interests of the company for a transaction or engagement to be entered into and carried into effect, the director may restrict their judgement to exercise an independent judgement in the future by agreeing to act in a particular way to achieve this;
- to avoid any conflict between the director's duties to the company and the director's other (including personal) interests, unless the director is released from their duty to the company in relation to the matter concerned, whether this is through the company's constitution or a resolution of the shareholders made during a general meeting;
- to exercise the care, skill and diligence that would be exercised in the same circumstances by a reasonable person having both the knowledge and experience that may reasonably be expected of a person in the same position as the director and the knowledge and experience that the director has; and
- to have regard to the interests of the company's employees in general and its shareholders and, in instances where the directors become aware of the company's insolvency, have regard to the interests of its creditors.

A nominee director (a director who has been appointed, or nominated for appointment, by a shareholder under the company's constitution or a shareholders' agreement) can have regard to the interests of the appointing/nominating shareholder, so long as to do so is not inconsistent with the director's duty to act in good faith in regard to what the director considers to be the interests of the company.

3. FOREIGN TRUSTS AND FOUNDATIONS

Ireland is not a party to conventions such as the Hague Administration of Estates Convention 1973, the Hague Matrimonial Property Regimes Convention 1978, the Hague Convention on the Law Applicable to Trusts and their Recognition 1985, the Hague Succession Convention 1989 and the UNIDROIT Convention (which introduces a form of international will).

The tax treatment of trusts involving Irish resident and non-Irish resident trustees (or both) can be very different.

Where there are Irish resident disponents or beneficiaries, it is preferable to use vehicles that are recognised and understood within Ireland, such as trusts, partnerships and companies. There is no Irish law foundation, and foreign foundations are not specifically recognised by Irish law. If alternative structures are used, such as foundations, *stiftungs* and *anstalts*, then there may be unclear or unexpected tax consequences.

V. Taxation

Liability to taxation in the Republic of Ireland is determined by reference to residence, ordinary residence and domicile. The tax year in Ireland is the calendar year from 1 January to 31 December.

A. *Domicile and residency*

1. DOMICILE

The concept of domicile is broadly based on the English concept of domicile, although the law of dependant domicile of a wife has never been applied in Ireland.

In broad terms, an individual's domicile is where they have a home, and they intend to live there permanently and indefinitely. An individual acquires a domicile at birth, being their domicile of origin, and this is normally that of the individual's father. This domicile can change if the child under age 18 moves with their parents to another country and they acquire a new domicile, whereby the child's domicile is a domicile of dependency. A domicile of origin can also be displaced by a domicile of choice if the individual is over 18 and moves to another country with the intention of residing there permanently and indefinitely.

2. RESIDENCE

An individual is resident in Ireland if they spend:

- 183 days in Ireland in that year; or
- 280 days in aggregate during that tax year and the preceding tax year.

Notwithstanding the latter point listed above, if an individual is present in Ireland for 30 days or less during a tax year, they will not be treated as resident for that year.

An individual is considered present in Ireland for a day if they are present in Ireland at any time during that day.

3. ORDINARY RESIDENCE

An individual is ordinarily resident in Ireland from the commencement of the fourth tax year if they have been resident for each of the preceding three tax years.

An individual leaving Ireland will not cease to be ordinarily resident until they have been non-Irish resident for three continuous tax years.

B. *Gift and inheritance taxes*

1. GIFT TAX

Lifetime gifts outright or placed into a trust are subject to Irish tax on an acquisitions basis, ie, when the benefit is taken by the individual beneficiary.

Irish gift tax arises on a benefit taken:

- from a disponent who is resident or ordinarily resident in Ireland, at the date of the disposition making the gift, other than in the case of a gift taken from a discretionary trust;
- in the case of a gift taken from a discretionary trust (created on or after 1 December 1999), from a disponent who is resident or ordinarily resident in Ireland, at:
 - the date of the disposition;

- at the date of the gift; or
- (if the gift is taken after the donor has died) at the date of death of the donor;
- in the case where the donee (beneficiary) is resident or ordinarily resident in Ireland, at the date of the gift; or
- in respect of property situated in Ireland, at the date of the gift.

An individual is treated for these purposes as not being resident or ordinarily resident in Ireland if that individual is not Irish domiciled and has not been resident in Ireland for five consecutive tax years preceding the year in which the date of the gift falls.

Gifts taken from discretionary trusts created before 1 December 1999 are charged on the basis of the domicile of the donor (at the date of disposition, date of the gift or date of death) being in Ireland and, otherwise, when the location of the assets is in Ireland.

After the application of tax-free thresholds, which depend on the relationship between the donor and the beneficiary, gift tax (together with inheritance tax, known as capital acquisitions tax) is payable on gifts received at a rate of 33 per cent.

The threshold is calculated after the aggregation of all of the gifts/inheritances received by the beneficiary from persons in the same group threshold since 5 December 1991. For instance, in 2025, generally a child can receive over their lifetime (since 1991) gifts/inheritances to the total value of €400,000 from their parents (between them), €40,000 from their siblings/aunts/uncles and €20,000 from those not falling into the first two thresholds.

Various exemptions/reliefs are available, such as a provision for spouses/civil partners, a provision for children under 18 (or 25 in restricted circumstances), dwellinghouse relief, business property relief and agricultural property relief. There is also a small gifts exemption available of €3,000 per annum.

2. INHERITANCE TAX

Irish inheritance tax arises on a benefit received:

- from a donor who is resident or ordinarily resident in Ireland, at the date of the disposition under which a successor takes an inheritance;
- in the case where the successor (beneficiary) is resident or ordinarily resident in Ireland, at the date of the inheritance; or
- in respect of property situated in Ireland, at the date of the inheritance.

Inheritances taken from discretionary trusts created before 1 December 1999 are charged on the basis of the domicile of the donor at the date of their death being in Ireland and, otherwise, when the location of the assets is in Ireland (with apportionment rules applying).

Once again, an individual is treated for these purposes as not being resident or ordinarily resident in Ireland if that individual is not Irish domiciled and has not been resident in Ireland for five consecutive tax years preceding the year in which the date of the gift falls.

Similar to gift tax, after the application of tax-free thresholds, which depend on the relationship between the donor and the beneficiary, inheritance tax (together with gift tax, known as capital acquisitions tax) is payable on gifts received at a rate of 33 per cent. The threshold is as outlined for gifts above. Various exemptions/reliefs are available for inheritances as outlined for gifts above, except for the small gifts exemption.

Double taxation relief for inheritance tax (but not for gift tax) may be available under United Kingdom or United States treaties. Otherwise, there is limited unilateral relief from double taxation for gift tax payable in any other country and for inheritance tax in countries other than the UK and the US.

There is a further charge to tax, known as the discretionary trust tax/levy, in respect of benefits retained in discretionary trusts either created by a disponent during their lifetime and continuing after the death of the disponent or created on the death of the disponent. The levies comprise a one-off charge of six per cent of the assets under the trust, plus one per cent per annum for every 31 December the trust remains discretionary. These levies will arise if there is no child of the disponent within the class of beneficiaries under the age of 21 after the death of the disponent. There are certain exemptions from this tax, such as in regard to trusts exclusively made for charities and/or for persons with disabilities.

The definition of a discretionary trust is broadly drafted and includes trusts that accumulate income, *anstalts*, *stabilissements*, foundations, *stiftungs*, *anlagestiftungs* and *familienstiftungs*. A foundation is, therefore, treated by Irish revenue commissioners for Irish gift/inheritance tax purposes as if it is a discretionary trust, although case law in this area issued by the lower Tax Appeals Commission indicates otherwise.

C. Taxes on income and capital

On the making of a gift of non-cash assets, capital gains tax for the donor could arise if the market value of the assets gifted stand at a gain. In addition, stamp duty may become payable.

Trusts may be liable to income, capital gains, inheritance tax and stamp duty depending on the trustees' residence and the location of the assets and the trust's activities.

Capital gains tax and income tax will be payable by the personal representatives of the deceased on any gains realised or income accrued during the administration of the estate, unless an application is made to assess these gains and income by the beneficiary of the asset, where that beneficiary is an Irish tax resident.

There is no wealth tax in Ireland. Irish domiciled individuals may, however, be liable to a domicile levy irrespective of their tax residence if:

- their worldwide income exceeds €1m;
- their Irish property is valued in excess of €5m; and
- their Irish income tax paid in a year is less than €200,000 (where the amount of Irish income tax paid in a year is offset against the domicile levy).

1. INCOME TAX

The worldwide income of an individual who is Irish resident, Irish ordinarily resident and Irish domiciled is taxable in Ireland.

The worldwide income of an individual who is not resident but is ordinarily resident in Ireland and is Irish domiciled is also taxable in Ireland, except in the case of income from a trade/profession, no part of which is carried on in Ireland, or in regard to an office/employment, the duties of which are performed outside Ireland.

Where an individual is not Irish domiciled but is resident/ordinarily resident in Ireland, they are liable to Irish income tax on only the portion of their foreign income that is remitted to or deemed remitted to Ireland, unless the income relates to income from the performance of duties of an office/employment carried out in Ireland.

Finally, as mentioned above, an Irish domiciliary with substantial ties to Ireland is liable to a domicile levy, which is €200,000 per annum. However, income tax paid in Ireland is credited against this levy. Substantial ties are that the individual holds Irish property valued in excess of €5m on 31 December of the tax year and also that they have worldwide income of more than €1m and pay less than €200,000 in Irish income tax.

Income tax is chargeable at a standard rate of 20 per cent and a higher rate of 40 per cent. In addition, a universal social charge applies to gross income at rates between 1.5 per cent and eight per cent. There is also pay-related social insurance (PRSI) payable by employees (0.5 per cent to 10.75 per cent) and self-employed (four per cent). There are various credits available, before these rates are applied.

Trustees can be assessed in regard to income tax in respect of income earned by the trust if the trustees are regarded as being resident in Ireland for tax purposes. If the trustee is an Irish resident, they are taxed on their worldwide income; if they are non-resident, they are taxed only on their Irish-source income. Anti-avoidance legislation applies to deal with income earned offshore where a disponent and/or a beneficiary is an Irish resident or an ordinary resident.

Ireland has an extensive network of double taxation treaties that relate to income tax.

2. CAPITAL GAINS TAX

An individual who is Irish domiciled and resident or ordinarily resident in Ireland for a tax year is liable for capital gains tax (CGT) on chargeable gains made on the disposal of assets worldwide.

An individual who is not Irish domiciled but is resident or ordinarily resident in Ireland for a tax year is liable for CGT on chargeable gains made on the disposal of assets outside Ireland only to the extent the chargeable gains are remitted to Ireland.

An individual who is neither resident nor ordinarily resident in Ireland for a tax year (irrespective of their domicile) is liable for CGT on chargeable gains made on the disposal of:

- land or buildings in Ireland;
- assets of a business carried on in Ireland;
- minerals in Ireland;
- exploration or exploitation rights in the continental shelf; and
- unquoted shares deriving the greater part of their value from such assets listed above.

CGT is payable on chargeable gains at a rate of 33 per cent. There are various reliefs and exemptions from this tax, such as for spouses/civil partners, for principal private residences, for farms when restructuring and for owners of businesses on their retirement.

On death, there is an uplift for CGT purposes to the market value of the deceased's assets passing through their estate.

Trustees can be assessed in regard to CGT in respect of the disposal of assets held by them in the trust if the trustees are regarded as being resident in Ireland for tax purposes or if the assets consist of certain specified assets held by non-resident trustees. Anti-avoidance legislation applies to deal with offshore gains where a disponent and/or beneficiary is an Irish resident or an ordinary resident.

Ireland has an extensive network of double taxation treaties in regard to CGT.