



## Guide to Trusts

### What is a Trust?

A trust is a private legal arrangement between a **Settlor** and **Trustees** for the Trustees to hold certain assets which previously belonged to the Settlor and to use those assets to benefit one or more **Beneficiaries**.

The details of the arrangement are contained in a **Trust Deed** or a **Will** and the assets held are referred to as the **Trust Fund**.

### Who is the Settlor?

The settlor is the person who has put money or property into the trust. Property is normally put into the trust when it is created, but it can also be added at a later date.

### Who can be a Trustee?

Trustees can be trusted family members or friends of the settlor or can be professionals such as a solicitor or accountant. Any number of trustees can be appointed but it is usual to have between two to four trustees and it is often useful to have a mix of family and professionals. The family member/friend will personally know the beneficiaries and the professional will be familiar with the legal aspects of running the trust such as investment and tax issues. This mix often provides the best means to make decisions that are in the beneficiaries' best interests.

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Trustees are the legal owners of the trust property. They are legally bound to look after the property of the trust and to administer the trust in accordance with the Trust Deed or Will.

The trustees might change over time as they can retire and new trustees be appointed in their place.

## What are the Trustees responsibilities?

This depends on the type of. The settlor may have given instructions that trustees carry out various functions, and trust law may impose further obligations.

For taxation purposes the trustees are responsible for

- registering the trust with the Inland Revenue
- keeping records of the income and capital gains of the trust
- completing an annual tax return
- paying any tax due on the income or capital gains of the trust
- supplying certificates to the beneficiaries to show how much income they have received from the trust in the tax year and how much tax the trustees have deducted.

## What is a 'beneficiary'?

A beneficiary is anyone who benefits from the property held in the trust. There can be one or more beneficiaries, such as a whole family or a class of people, and each may benefit from the trust in a different way.

For example, a beneficiary may benefit from

- the income only, or
- the capital only, or
- both the income and capital of the trust.



## Types of Trust

Trusts can be set up during the Settlor's lifetime – **Inter vivos trusts** or by a Will – **Testamentary trusts** and these will only take effect on the Settlor's death.

### The different sorts of trusts:

There are a number of different sorts of trusts, but usually they fall into one of the following categories

- bare trusts
- interest in possession trusts
- discretionary trusts

- accumulation and maintenance trusts

## What is a 'bare trust'?

A bare trust, also known as a 'simple trust', is one in which each beneficiary has an immediate and absolute right to both capital and income. The beneficiaries of a bare trust have the right to take actual possession of trust property.

The property is held in the name of a trustee, but that trustee has no discretion over what income to pay the beneficiary. In effect, the trustee is a nominee in whose name the property is held and has no active duties to perform.

## What is an 'interest in possession trust'?

This type of trust exists when a beneficiary, known in this case as an 'income beneficiary', has a current legal right to the income from the trust as it arises. The trustees must pass all of the income received, less any trustees' expenses and tax, to the beneficiary.

The capital will usually pass to a different beneficiary, or beneficiaries, at a specific time in the future or after a specific future event. Depending on the terms of the trust, the trustees might have the power to pay capital to a beneficiary even though that beneficiary only has a right to receive income.

## What is a 'discretionary trust'?

Most trusts are discretionary trusts which provide the widest possible powers and flexibility to the Trustees as to how they manage the trust and the financial benefits they give to the beneficiaries.

Trustees of a discretionary trust generally have 'discretion' about how to use the income of the trust. They may be required to use any income for the benefit of particular beneficiaries, but the trustees can decide

- how much is paid
- to which beneficiary or class of beneficiaries payments are made
- how often the payments are made
- what, if any, conditions to impose on the recipients.

The trustees may, or may not, be allowed to 'accumulate' income within the trust for as long as the law allows rather than pass it to the beneficiaries. Income that has been accumulated becomes part of the capital of the trust.

The Settlor can also exert some measure of influence over the actions of the Trustee through the use of a **Letter of Wishes**. This is not binding on the Trustees. It contains the current wishes of the Settlor concerning the administration of the Trust – it may deal which beneficiaries should be financially supported first, the nature of the investments of the Trust Fund, or a host of other matters.

## What is an 'accumulation and maintenance trust'?

An accumulation and maintenance trust is one in which the beneficiaries will become entitled to the property or at least the income when they reach a certain age (no more than 25). The trustees can use the income for the maintenance of the beneficiary before the date on which that beneficiary becomes entitled to the property or to an interest in possession in that property.

Trustees of an accumulation and maintenance trust are given power to 'accumulate' the income of the trust until a certain date, at which time the beneficiary, or beneficiaries, are entitled to the property of the trust or to the income arising from that property.

In England and Wales, the beneficiary (unless the terms of the trust say otherwise) becomes entitled to the income from the property held in the trust when he or she reaches age 18 and an interest in possession trust is created at that point.

## Why set up a Trust?

There are a whole range of reasons to make a trust. These might include taking steps to reduce Inheritance Tax payable when you die or when your partner or children die or to provide flexible, financial protection for those important to you and to benefit future generations in a tax efficient way.



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