

# Trusts

A trust can be created by a will or lifetime gift. In the latter case, the terms of a trust are set out in the trust document and the trust begins on a chosen date. In the case of a trust created by a will, the trust begins on the date of the testator's death.

## WHAT IS A TRUST?

Trusts can be created by will or by deed. Where money or other assets are held by trustees on behalf of a person or group of people, this is a trust, providing the following conditions apply:

- **The person creating the trust** must make his or her intention clear.
- **The money or assets to be held on trust** must be clearly defined.
- **The person or group of people** who are to benefit from the trust must be clear.

You might, for instance, use your will to create a trust for your infant children. The executors and trustees of your will would be the legal owners of the property or investments and, under the terms of the will, would be obliged to look after the property or investments on behalf of the infant children until the children reached 18 (or 21), at which time the investments would be transferred to the children.

Another common type of trust established by will is where the executors and trustees of the will hold property or investments in trust and pay the income to a beneficiary for his or her lifetime

(known as the life tenant), after which the capital is to be paid to other beneficiaries (the remaindermen).

A variety of trusts can be created by a lifetime gift of assets or money, which will either be PETs, such as trusts for disabled beneficiaries, or untaxed because the amount given to the trustees is within the nil-rate band and, so, a possible way of avoiding IHT in the long term (for more on PETs, see page 31). As such, it is worth looking at any insurance or pensions policy you hold to see what happens to it if you die. There can be substantial IHT benefits if the money from the policy is paid into a discretionary trust rather than to your estate on your death.

## Fixed trusts

These trusts set out, in fixed proportions, who gets what. Some flexibility can be introduced by giving the trustees wider powers. They are easy to understand and relatively easy to administer.

## Discretionary trusts

These set out who the potential beneficiaries may be (for example, wife, children and grandchildren), but give the trustees the discretion to decide what

proportion of income and capital each beneficiary should receive (if any) and when they should receive it. The trustees do not have to pay anything out if they choose not to. Although the person creating the trust, the 'settlor', can tell the trustees how he or she would like them to exercise their discretion, the trustees are not legally bound by those wishes. The benefit of these trusts is in their flexibility, but the taxation provisions are somewhat complicated, so take advice.

### Protective trusts

These trusts are used to provide for beneficiaries who may be profligate or are liable to be made bankrupt. Often what happens is that the beneficiary receives the income from the trust, but the payment of capital is subject to the discretion of the trustees.

### Trusts for disabled beneficiaries

Special arrangements are permitted under the provisions of Section 89 of the Inheritance Tax Act 1984, which give favourable tax treatment to what are usually, in essence, discretionary trusts if the beneficiaries are, according to the Act, disabled, i.e. incapable of managing their affairs or in receipt of attendance allowance or disability living allowance.

### WHO LOOKS AFTER THE TRUST?

A trust puts the legal ownership of property into the hands of – and under the control of – trustees, who act for the benefit of the beneficiaries of the trust

and on the terms set out in the will or deed creating the trust. They are totally responsible for the administration of the property. So if you are creating a trust by deed or by will, think carefully about:

- **The choice of trustees** and any replacement.
- **The powers to be given to the trustees** and the duties imposed upon them.
- **Each trust has its own taxation regime**, so you must be aware of those that relate to the trust you have decided to establish.

The powers and obligations of trustees have, over the years, been carefully defined by law in order to protect the interests of the beneficiaries, but these can be varied by the deed or will (see also pages 47–8).



**The taxation of trusts is a subject in itself. If you are contemplating the creation of a lifetime trust, seek advice on the consequences of both IHT and CGT. Also investigate the Income Tax consequences.**