

WHAT CAN A TRUST DO FOR ME?

Factsheet



Good estate planning involves taking steps to ensure your estate is inherited by the people of your choice, in the manner and at the time you wish. Above all, it is about control; the desire to avoid certain outcomes whilst promoting others. A secondary factor is tax. If you make a gift and live seven years afterwards, its value is not added back to your estate on death, which should reduce the amount of inheritance tax (IHT) payable on your death. In the UK, trusts have been used for many generations as a tool to deliver these benefits.

How do I set up a Trust?

A trust must be set up using a formal document (the 'Trust Document'). For a trust set up in your lifetime, the terms of the trust will be set out in a trust deed. If the trust is being set up on your death then its terms will be set out in your Will.

What does the Trust Document need to contain?

The Trust Document will:

- Appoint Trustees, who will own the assets to be held in the trust and manage them during the lifetime of the trust;
- Identify the beneficiaries either by name or by description (for instance "my children and grandchildren");
- Set out whether beneficiaries are to have the right to receive money from the trust or whether the beneficiaries can only receive money at the discretion of the trustees; and
- Set the maximum period (the 'Trust Period' currently a maximum of 125 years) that the trust can last; and
- Identify the beneficiaries who will receive any funds left in the trust at the end of the Trust Period.

Why might I want to set up a trust?

Scenario 1: Grandparents wish to set aside funds for their grandchildren

One option is an outright gift to those grandchildren, in which case there is no control over when or how the funds are accessed because, once the grandchild reaches age 18, the funds belong to the grandchild. However, if the gift was made into a trust the trustees would control when funds are made available.

The advantage is that it may not be wise to pay out the full share to the grandchild at the time they are at university: the age at which a person develops the ability to handle finances sensibly is rather variable! Funds can be paid gradually over many years and could even be held for grandchildren not yet born.

There is also a protection angle here:

- The grandchild might have special needs.
- Placing a large amount of wealth in their hands may make them vulnerable to attracting the wrong sort of company, or enable them to fund a lifestyle which could ultimately harm them or which might not be sustainable.
- Many families have had experience of dealing with someone who has an addiction of some kind. The benefits here of using a trust are more obvious as the trustees can purchase items required by the beneficiary rather than pay out funds directly. This balances the desire to support the individual whilst not distributing cash which might otherwise be used to feed the addiction.

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Scenario 2: Life policies

Trusts can also be used with life policies to ensure the proceeds are paid out more speedily following your death and without the need for Probate. In addition, the policy proceeds would fall outside the estate of the individual for IHT in many cases.

Scenario 3: Owner-managed businesses

Those in partnerships and owner-managed businesses may also find that their succession planning strategy could benefit from a trust being used with life policies.

Other motives:

- Dealing with the unknown in terms of the destination of assets under a Will.
- Protecting against the possibility of divorce.
- Protecting against care home fees.
- In the case of second marriages, providing for your spouse whilst ensuring your share of a property passes down to the children of your marriage.

What are the IHT implications?

- The gift into a trust during your lifetime will be chargeable to IHT. Any amount in excess over your available nil rate band will be charged at 20%. Further tax may be payable if you die within seven years of making the gift and the existence of it will increase the rate of tax payable on the property in your estate on your death.
- If you survive the gift by seven years, the value drops out of your estate completely. Of course, had the gift remained within your estate, it would have been subject to IHT at 40% on the whole amount.
- If the trust is being set up under your Will on your death, then IHT may have been paid on your death.

- There will be a charge to tax on the tenth anniversary of the creation of the trust and on subsequent ten-year anniversaries. Broadly speaking, the rule is that the balance of value in excess of the nil rate band will be taxable at a flat rate of 6%.
- Tax may also be payable on distributions of capital out of the trust at a rate calculated by reference to the value of the trust property at the outset or on the preceding ten-year anniversary. Again, at current rates, the tax will not exceed 6% of the amount distributed.
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What Should I do now?

Please think about your requirements and contact us, for just a preliminary discussion by telephone or for a short meeting at no cost to you.

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