

The Inheritance Tax & Estate Planning Series



## TRUSTS

## A trust is a way of managing money or other assets (for example land or property).

There are different types of trust which behave differently and are subject to different tax regimes. A trust can be set up for a number of different reasons, for example to protect family assets; to manage assets for someone who is too young or cannot manage their own assets because of a disability or to pass assets over to someone else during your lifetime or when you die. All trusts however involve:

**A Settlor** – The person who puts their assets or money into the trust

**Trustees** – The people who manage the trust; and

**Beneficiaries** – The person or people who benefit from the trust.



### What the Settlor does:

The Settlor decides how the assets in the trust should be managed. This is set out in a Trust Deed. The Trust Deed will usually appoint the trustees, specify the beneficiaries and specify who, when and how they can benefit. This is usually quite an in-depth document and it would be advisable to have this drawn up professionally as it will govern the trust throughout its lifetime.

### What the Trustees do:

The Trustees in effect “own” the assets in the trust. Their role is to manage the assets in accordance with the trust deed. This will usually involve dealing with the day to day management of the assets, declaring and paying any tax due on the trust, dealing with the investment of the trust assets, accounting to the beneficiaries and sometimes using their discretion to decide how best to manage the trust (if this is provided for in the trust deed).

### What the Beneficiaries do:

The beneficiaries benefit from the trust under the terms of the deed or at the trustees’ discretion. They may receive the income of the trust, or the capital, or both.

*“Understanding, clear and honest advice. Transparent with regard to costs. Excellent.”*  
MS M, Melksham

### Types of Trust

Each type of trust is managed differently and can be subject to different tax regimes so it is important to consider at the outset the right trust to cover the particular objectives of the settlor.

### Bare Trust

With this type of trust the beneficiary is entitled to all of the income and capital at any time once they are over 18. This is usually used to pass assets to children so that the trustee can look after the assets until the child is old enough.

### Interest in Possession Trusts

With this type of trust the beneficiary has the right to receive all of the income as it arises. The capital of the trust will pass differently. For example a trust could be set up containing a property. The terms of the trust state that beneficiary number 1 is entitled to the income of the trust and so they are entitled to receive any rental income from the property as it arises. They are not entitled to the property itself.

### Discretionary Trusts

With this type of trust the settlor allows the trustees to have the discretion as to how to use the income and capital. The trustees can have the power to decide what gets paid out of the trust; which beneficiary to make any payment to and when to make the payment. These sorts of trust are usually set up when the particular needs of each beneficiary is as yet uncertain.

## TRUST TAXATION

### Income Tax

For a Bare Trust the beneficiary is responsible for paying the income tax. For all other types of trust the trustees are responsible. Trustees are responsible for paying tax on the income received by a trust at the specific rate applying to trusts. Sometimes the trustees might “mandate” all the income to a specific beneficiary meaning the beneficiary in that scenario would be responsible for the income tax.

### Inheritance Tax

Inheritance Tax (“IHT”) might also be payable by the settlor when setting up a trust depending on whether any exemptions apply. IHT may also be payable by the trustees when the trust reaches its 10 year anniversary. The calculation can be quite complicated but, in very general terms, the amount that is charged to tax is based on the value of the trust fund immediately before the 10 year anniversary. IHT may also be payable by the trustees when assets leave the trust or the trust ends (exit charges). IHT is payable on “relevant property” such as houses, shares, money – this includes the assets in most trusts.



## Capital Gains Tax

Capital Gains Tax ("CGT") might be payable by the settlor on setting up a trust if the settlor is transferring or selling an asset to the trust which has gained in value since the settlor acquired it. This is an important factor to consider when setting up a trust.

CGT can also be payable when an asset leaves a trust or is sold within a trust. It would be the responsibility of the trustees to declare and settle any CGT payable on the trust. They would only have to pay CGT if the gain exceeds their annual allowance (currently half the individual allowance or a full allowance if the trust qualifies for special tax treatment – usually if it is set up for a vulnerable beneficiary).

Creating a trust is an important matter and has lasting legal and tax consequences. The trust, once created, is irrevocable and the trust assets must be held according to the terms of the trust. The trustees will be in control of the operation of the trust. For clear, friendly advice on all aspects of trust and estate planning, please contact our highly experienced private client specialists today.

## OUR OFFICES

### CALNE

The Strand, Calne  
Wiltshire, SN11 0JU  
Tel: 01249 812086

### CHIPPENHAM HIGH STREET

Mill House, 1 New Road  
Chippenham  
Wiltshire, SN15 1EJ  
Tel: 01249 444499

### CHIPPENHAM, GREENWAYS

Unit 5,  
Greenways Business Park  
Bellinger Close, Chippenham  
Wiltshire, SN15 1BN  
Tel: 01249 475880

### CORSHAM

23 Pickwick Road,  
Corsham,  
Wiltshire, SN13 9BH  
Tel: 01249 712193

### DEVIZES

Ramsbury House  
30 Market Place, Devizes  
Wiltshire, SN10 1JG  
Tel: 01380 726913

### MELKSHAM

5 Bath Road, Melksham  
Wiltshire, SN12 6LN  
Tel: 01225 703036

### TROWBRIDGE

2 Fore Street, Trowbridge  
Wiltshire, BA14 8HX  
Tel: 01225 762683



### HAVE YOU BEEN PUTTING OFF UPDATING YOUR WILL?

Get in touch today.



### CREATING A TRUST ISN'T AS COMPLICATED AS YOU MIGHT THINK.

Speak to your lawyer for more  
information.

**G** goughs  
solicitors  
www.goughs.co.uk