

# GUIDE TO TRUSTS

## INTRODUCTION

This booklet is intended as a practical guide for advisers who are considering the use of an offshore plan in conjunction with a trust to assist the planning and arrangement of their client's investment affairs. In particular, it will be of use to those wishing to enhance the benefits offered through the range of products designed to meet the needs of both UK domiciled and non-UK domiciled clients.

Significant and controversial changes to the Inheritance Tax treatment of trusts were contained within Schedule 20 of the Finance Act 2006. Subsequently, since 22 March 2006, trusts may be broadly divided between those trusts which come under the mainstream Inheritance Tax regime for 'Relevant Property' trusts and those which do not. 'Relevant Property' trusts are taxed as 'Discretionary Trusts'. The changes were made to ensure that the Inheritance Tax treatment of trusts were streamlined so that all trusts are treated in the same way, with some limited exceptions.

As a consequence of these changes, we offer the choice of establishing a trust on either a 'Bare Trust' basis or a 'Discretionary Trust' (flexible) basis, in order to accommodate the needs of a wider range of investors.

This guide will help advisers to understand not only the implications of choosing a particular trust but also to understand the reasons behind why an individual may need to create the trust on either a bare or discretionary trust basis.

All our trusts are 'Pre-owned Assets Tax' (POAT) friendly. They are all governed and construed according to the law of the Isle of Man. Therefore, the courts of the Isle of Man shall have exclusive jurisdiction to hear all disputes concerning these Trusts.

Our trusts are offered free of charge to our clients and ongoing support is provided by our Technical Team who will assist and provide support in respect of any trust and tax related queries.

The taxation information set out in this guide is based on our understanding of the general application of HM Revenue and Customs (HMRC) practice as at March 2021.

**The contents of this booklet and any trust wording provided by us should not be used as the basis of advice given to individual clients without independent legal advice being sought. We cannot be held responsible for any actions taken or refrained from being taken by individuals as a result of the information provided in this guide.**



## **WHAT IS A TRUST?**

Put simply, a trust is a legal arrangement where property/assets are held by someone, 'the trustees', on behalf of someone else, 'the beneficiaries', subject to the terms of the trust.

## **WHO ARE THE PARTIES TO A TRUST?**

### **Settlor**

The settlor is the provider of the funds for the trust. A settlor can also be a beneficiary of his or her own trust although this would represent a 'gift with reservation' and therefore would generally make the trust ineffective from an inheritance tax perspective. Although some of our trusts allow for joint settlors, this option should only be chosen where both parties are the providers of the funds, or joint plan owners in the case of an existing plan.

### **Trustees**

Trustees must be at least 18 years of age, of sound mind and should be not bankrupt. Beyond that, as the name implies, trustees should principally be people whom the settlor feels can be trusted. With

the exception of the Discounted Gift Trust, our trusts do not automatically appoint the settlor as a trustee. However, the settlor can appoint him or herself as a trustee and additional trustees could include family friends, family members, professional advisers or a trust corporation. Beneficiaries may also act as trustees although care should be exercised to avoid any potential conflicts of interest.

When accepting the role of trustee, it is important that the trustees fully appreciate the terms contained within the trust deed and the legal principles which govern the trust. The Isle of Man Trustee Act 2001 updated the statutory powers and duties of trustees contained in the Isle of Man Trustee Act 1961. Although the full provisions and implications of this Act are outside the scope of this guide, under this Act trustees have a statutory duty of care when carrying out their duties as well as a duty to act in the best interests of the beneficiaries.

### **Beneficiaries**

These are the beneficial owners of property held within the trust. If a client establishes a discretionary trust, the trust will appoint both

classes of discretionary and named beneficiaries. Alternatively, if a client establishes a bare trust, there will be no discretionary beneficiaries and instead the settlor will appoint one or more absolute beneficiaries. The differences between these three types of beneficiary are explained next.

### **Discretionary**

'Discretionary beneficiaries' is the name given to beneficiaries of a discretionary trust. They may only benefit from the trust funds at the trustees' discretion and could also be excluded from benefiting at a future date. The death of a discretionary beneficiary does not have any Inheritance Tax implications for the trust.

### **Named (where applicable)**

A named beneficiary has an entitlement to income but not capital. In the event that the trustees do not make an appointment of capital during the lifetime of the trust, the trust fund would default to those individuals who are named in the trust deed as named beneficiaries in the percentage shares stipulated in the trust deed.

### **Absolute**

An 'absolute' beneficiary is the name given to beneficiaries of a bare Trust. An absolute beneficiary will have an outright entitlement to capital from the trust and is able to demand payment of their share of the trust fund once they reach the age of majority.

If an absolute beneficiary dies, the portion of the trust fund belonging to him or her forms part of their estate for Inheritance Tax purposes.

Therefore, after the beneficiary's death, his or her share must be passed to his or her estate to be distributed in accordance with the terms of the will or via the laws of intestacy in their particular jurisdiction. If a client establishes a bare Trust it is not possible to change the absolute beneficiaries.



## **WHY USE A TRUST IN CONJUNCTION WITH AN OFFSHORE PLAN?**

There are various reasons why an individual might wish to place their plan into a trust or invest through a trust into a plan. The most common reasons are listed below:

### **To avoid Isle of Man Probate**

Any plans issued in the Isle of Man are classed as Isle of Man assets and Isle of Man Probate will be required on the death of the last plan owner before either proceeds can be paid out or the plan is re-registered into the name of the new owner. Grant of Probate/ Letters of Administration refers to the situation where, on a person's death, the court must confirm that the executors are entitled to deal with the deceased's estate before any assets can be distributed.

If a plan is placed into trust, legal ownership lies with the trustees and Isle of Man Probate will not be required on the Settlor's death. Therefore, this can help to provide privacy, as unlike trusts, Grant of Probate/Letters of administration records are available to the public.

As long as there is a surviving trustee, proceeds of the plan can therefore be paid to the beneficiaries without delay.

### **To control family assets**

Trusts have an advantage over an outright gift as the donor can exercise a degree of control and can still have access to capital in some limited cases. Many investors wish to set aside assets for the future benefit of members of their family whilst restricting beneficiaries' access until it is thought appropriate that those assets should be distributed. If the plan is written in a discretionary trust, the trustees can be instructed to hold the plan until the beneficiaries reach a certain age or for future children or grandchildren.

### **Inheritance Tax planning for UK domiciled individuals**

For individuals who are domiciled or deemed domiciled in the UK, Inheritance Tax applies to their worldwide property and would therefore include offshore investments. By arranging for the offshore plan to be held under trust, all or part of the proceeds from the plan may be removed from the

settlor's estate for Inheritance Tax purposes depending upon the type of trust chosen.

As you will see later in this guide, we offer a range of trusts which can be used to mitigate UK inheritance tax.

### **Inheritance Tax planning for non-UK domiciled individuals**

An individual who has been a long term resident of the UK for income tax purposes but is not UK domiciled or deemed UK domiciled may wish to consider the establishment of an Excluded Property Trust in which to hold their offshore plan.

This is because non-UK domiciled individuals who are likely to remain in the UK in the medium to long term can avoid future liability to Inheritance Tax on non-UK assets if those assets are placed in trust prior to becoming resident in the UK for 15 out of the last 20 tax years (i.e. whilst the individual is still non UK domiciled).

The trust assets will remain excluded property for as long as they remain in trust and are situated outside the UK (e.g. an offshore plan).

If an individual wishes to establish an Excluded Property Trust then please refer to our Excluded Property Trust Guide.

## **INTRODUCTION TO INHERITANCE TAX**

Where an individual is UK domiciled or deemed UK domiciled for Inheritance Tax (IHT) purposes, their worldwide assets are potentially subject to IHT at a rate of 40%. Generally speaking, IHT is the tax payable on an individual's estate when they die if the value of their estate exceeds the inheritance tax threshold which is known as the nil rate band (currently frozen at £325,000 until April 2026).

An additional allowance may also be available which is called the Residence Nil Rate Band (RNRB).





This is available for deaths on or after 6 April 2017, where the deceased owned a home, or a share of a home which was lived in by the deceased and is inherited by their direct descendants.

The home or share of a home does not need to have been their main residence at the time they pass away.

The RNRB allowance for individuals is £175,000 and will be frozen at this level until April 2026.

If the value of the home is less than the RNRB allowance, the amount that the estate can claim is limited to the value of the home.

The RNRB tapers away by £1 for every £2 where the estate exceeds £2 million (i.e. will not be available for the 2021/22 tax year where the estate exceeds a total value of £2.35 Million).

If there is any RNRB allowance that hasn't been fully used when the first person in a marriage or civil partnership dies, the unused part can be transferred to the estate of the surviving husband, wife or civil partner when they die.

This still applies, even where the first spouse or civil partner died before 6 April 2017.

However, where the deceased has moved to a less valuable home, or ceased to own a home after 8 July 2015, a downsizing addition can be claimed if the former home would have qualified for the RNRB if it had been kept.

Lifetime gifts can generally be classed into three main categories – exempt transfer, potentially exempt transfer (PET) or a chargeable lifetime transfer (CLT).

An exempt transfer is free from inheritance tax. An example of an exempt transfer would be a gift made from one UK domiciled spouse to another UK domiciled spouse.



A PET is where a lifetime transfer is made outright to another individual or where the gift is being made to a bare Trust (also known as an 'absolute Trust') or a trust created for a disabled person (as defined under section 89(4) IHTA 1984). If a donor survives the potentially exempt transfer by seven years, it will be outside of their estate for IHT purposes.

A CLT is where an individual establishes a discretionary trust for the benefit of a wide range of beneficiaries. A CLT is not immediately chargeable to IHT providing there is an available Nil Rate Band against which it can be offset. Any amount of the CLT which exceeds the available nil rate band is chargeable immediately.

On the death of an individual, the seven year period prior to death is reviewed to see what gifts have been made. If during that period a CLT has been made, it is then necessary to review the seven years prior to the CLT in order to ascertain whether or not there was an available nil rate band available at the time of the CLT. This is why, potentially, there is a 14 year period under review when an individual dies.

PETs and CLTs take their chronological position for cumulative purposes at the time

the gift was made at its value at that time.

Taper relief provides that if a donor survives for at least three years after making a PET or CLT only a reduced percentage of the full death rates will be used as follows:

Complete years between gift and death	Percentage of full charge at death rates
3-4	80%
4-5	60%
5-6	40%
6-7	20%

Although the taper relief reduces the amount of tax payable, it does not reduce the value of the gift.

It is important to remember that all transfers between UK domiciled spouses are completely exempt, unless the donor is domiciled in the UK but the donee is not, in which case the exemption is limited to £325,000. This is in addition to the £325,000 IHT NRB available to the estate of the UK domiciled spouse, so up-to £650,000 could be left to the non UK domiciled spouse.

Despite the changes announced in the Finance Act 2006, many lifetime gifts made from small to

medium sized estates will generally still fall within the nil rate band. In many cases therefore, lifetime inheritance tax planning using trusts can still be carried out without an immediate inheritance tax charge arising. Provided the donor survives for seven years and undertakes no further IHT planning during this period which would impact on the availability of his or her nil rate band, the full nil rate band will be available again.

One potential strategy which could be utilised, is for individuals to make lifetime gifts up to the value of the nil rate band every seven years. Any gifts made in between those years could be to utilise exemptions such as the annual exemption for gifts or the normal expenditure out of income exemption. It is of course also possible to establish a bare trust where no nil rate band is available at that time.

#### **THE INHERITANCE TAX TREATMENT OF BARE TRUSTS**

The creation of the trust constitutes a potentially exempt transfer (PET).

If the settlor survives seven years from the date of the PET then the gift becomes exempt from Inheritance Tax.

If the settlor dies within this period, the value of the initial gift would become potentially chargeable to

inheritance tax unless there was an available nil rate band with which to offset against the value of the gift.

Any growth on the value of the gift is immediately outside of the settlor's estate for inheritance tax purposes.

The value of the trust fund will form part of the named beneficiary's estate for IHT purposes.

#### **THE INHERITANCE TAX TREATMENT OF DISCRETIONARY (FLEXIBLE) TRUSTS**

The creation of the trust is a chargeable lifetime transfer (CLT).

It is possible to utilise the current year's annual exemption of £3,000 and the previous year's annual exemption where they are still available, in order to reduce the value of the gift.

If the amount of the gift is within the settlor's available nil rate band, there is no immediate charge to IHT.

A CLT is immediately subject to inheritance tax, if the cumulative value of gifts to discretionary trusts in the last 7 years exceeds the individual's available nil rate band at the time. This applies to the excess of the cumulative value of gifts over and above the available nil rate band.

If the trustees pay the tax, this is payable at a rate of 20%, however, if this is instead paid by the Settlor(s), the rate payable is grossed up to 25%, under the loss to the estate principle (i.e. by paying the tax, HMRC have lost out on inheritance tax due from the estate).

Where the nil rate band was exceeded on the creation of the trust, there would be further IHT to pay if the settlor died within the seven year period.

If a Settlor survives for seven years, the Chargeable Transfer drops out of their cumulation period.

As a result, the value of the gift will then be outside the settlor's estate for IHT purposes. All investment growth (if applicable) is immediately outside the Settlor's estate.

The trust will be assessed for IHT at every tenth anniversary at a maximum rate of 6% on the excess of the value of the trust fund over and above the nil rate band at that time.

Distributions from the trust may trigger an IHT exit charge.

There will be reporting requirements to HMRC.

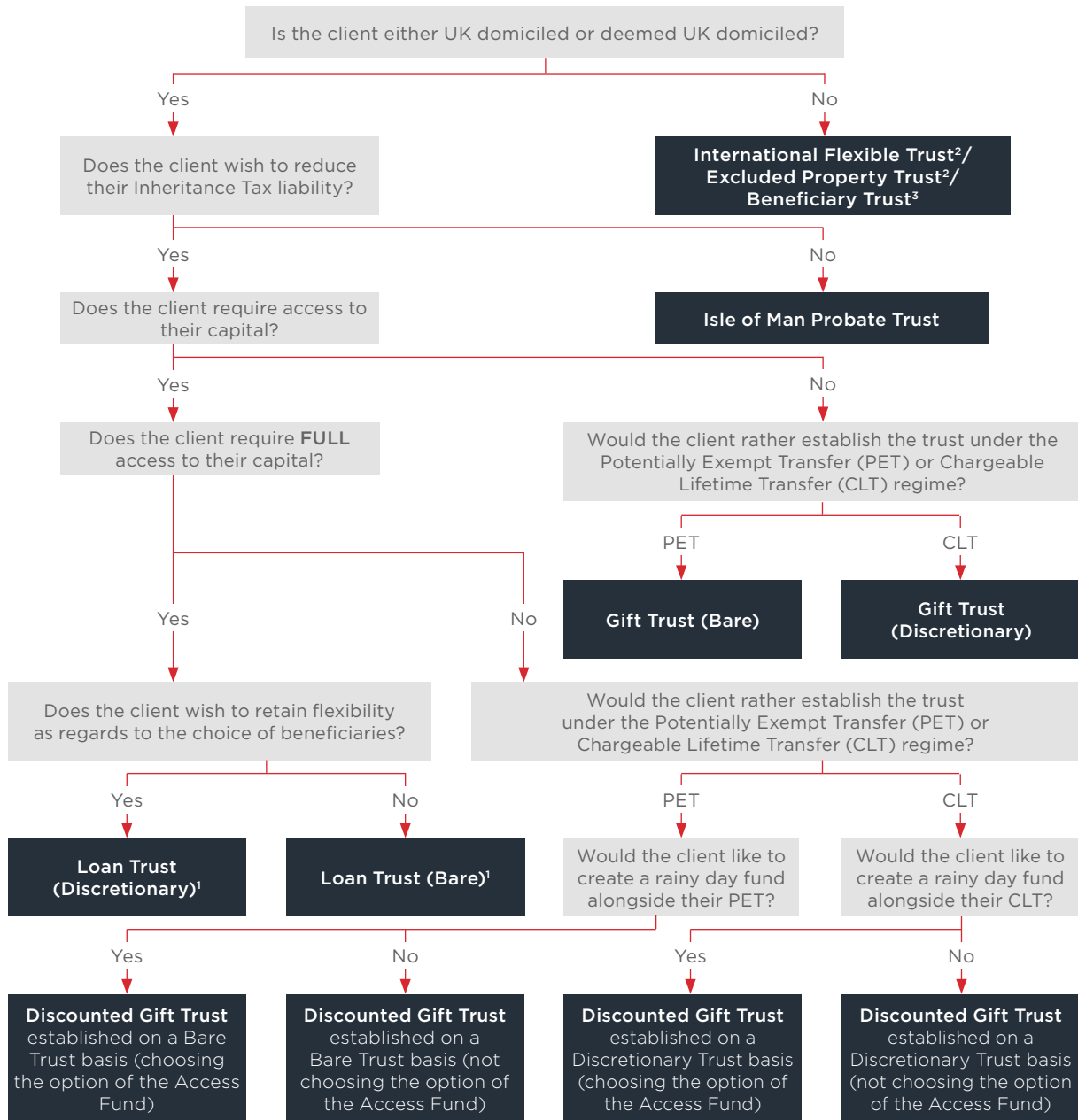
#### **CHARGEABLE LIFETIME TRANSFER REPORTING TO HM REVENUE AND CUSTOMS**

It is sometimes necessary for a CLT to be reported to HMRC. The relevant statutory instruments are the Inheritance Tax (Delivery of Accounts) (Excepted Transfers and Excepted Terminations) Regulations 2008 and the Inheritance Tax (Delivery of Accounts) (Excepted Settlements) Regulations 2008.

It is also necessary to submit an account to HMRC every ten years and also where monies leave the trust fund. The rules can be found in full on the HMRC website.



**WHICH TRUSTS ARE AVAILABLE FOR SINGLE PAYMENT PLANS?**

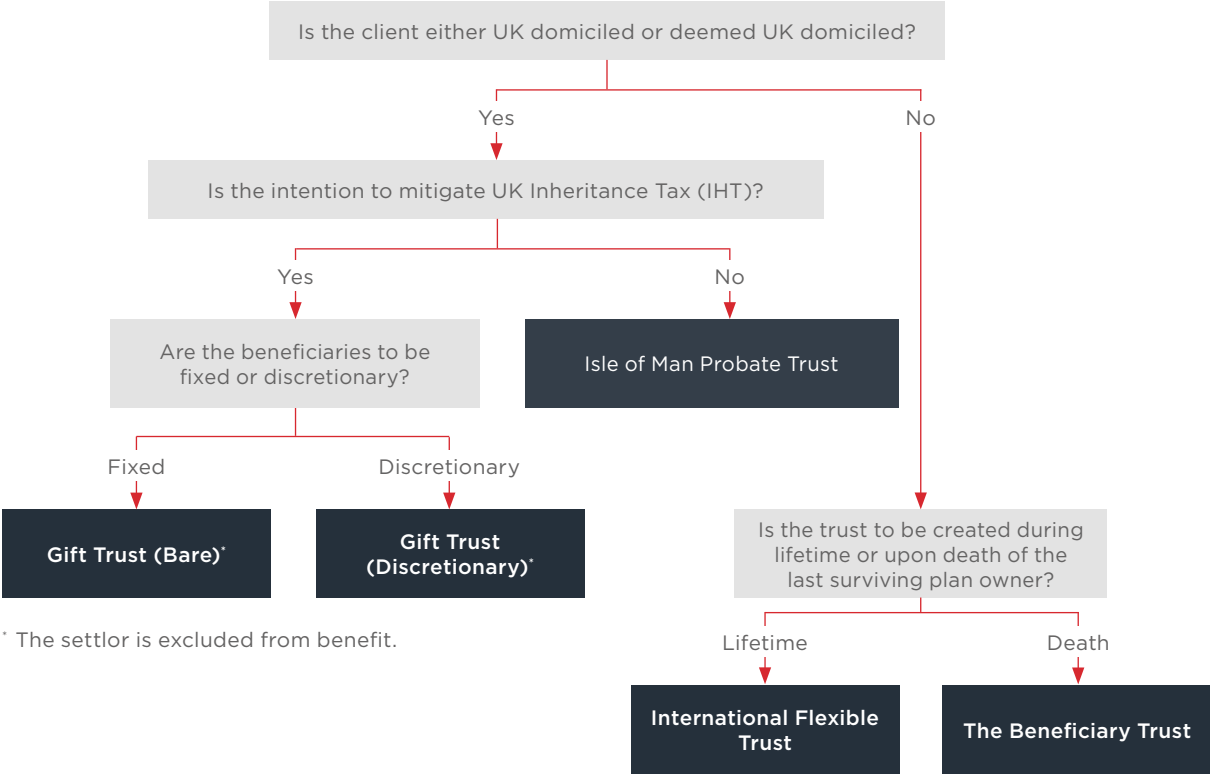


<sup>1</sup>Please note that the Loan Trust cannot be used for existing plans.

<sup>2</sup> Trust to be created during the settlor(s) lifetime.

<sup>3</sup> Trust to be created upon the death of the last surviving plan owner.

**WHICH TRUSTS ARE AVAILABLE FOR REGULAR PAYMENT PLANS?**



**THE ISLE OF MAN PROBATE TRUST**

This is a simple bare trust which allows the settlor access to their investment during their lifetime. The sole purpose of the trust is to avoid Isle of Man Probate.

**General features of the trust**

- The trust can have up to two Settlers.
- The trust can be used for existing plans.
- The trust can accept increments to the Trust fund.
- Since the Settlor is the sole beneficiary, the establishment of the trust is a ‘gift with reservation’ and therefore the value of the trust fund will remain within the settlor’s estate for IHT purposes.
- The trust avoids Isle of Man Probate.

**Key points to note**

- The creation of the trust is neither a Potentially Exempt Transfer or a Chargeable Lifetime Transfer.
- The beneficial owner is the sole beneficiary.
- If the offshore plan is written on a sole life assured basis, it allows the plan proceeds to be paid to the beneficial owner’s estate without the need for Isle of Man Probate. Alternatively, if the plan was written on more than one life assured, or as a capital redemption plan, the ownership can be transferred into the name of a chosen beneficiary (named in the beneficial owner’s will or via the laws of intestacy) without the need for Isle of Man Probate on the death of the beneficial owner.
- The trust will come to an end upon the death of the beneficial owner.

- The trust should not be used as an excluded property trust for non-UK domiciled individuals.

**The Isle of Man Probate Trust would be suitable for individuals who:**

- want to retain access to their investment.
- wish to avoid Isle of Man Probate and ensure plan proceeds can be paid without further cost and delay.
- do not wish to create a Chargeable Transfer or a Potentially Exempt Transfer.

## THE GIFT TRUST

The Gift Trust represents the simplest form of Inheritance Tax planning in that the Settlor passes property by way of a gift to the trustees for the benefit of chosen beneficiaries.

Some individuals will have an aversion to making substantial gifts directly to their children. For example, they may want the children to inherit the money at a later age when they are more financially mature or they may want to gift away money without it affecting the spouse's access to the funds. This trust will allow an individual to make a gift without relinquishing full control over the monies.

### General features of the trust

- The trust can be established with single or joint settlors.
- The settlor is not automatically included as a trustee.
- The settlor is not a beneficiary.
- The trust can be used for existing or new RL360 plans.
- The trust can accept increments to the Trust fund.
- The trust avoids Isle of Man Probate.



### The Gift Trust is suitable for individuals who:

- are UK domiciled or deemed UK domiciled for IHT purposes.
- can afford to gift away capital with no requirement for future access.

### Establishing the trust as a Bare Trust would be suitable for individuals who:

- wish to create a potentially exempt transfer for IHT purposes.
- wish to avoid reporting requirements to HMRC.
- have specific beneficiaries in mind.

### Establishing the trust as a Discretionary (Flexible) Trust would be suitable for individuals who:

- wish to create a chargeable lifetime transfer for IHT purposes.
- wish to retain flexibility regarding their future choice of beneficiary.

### Example

James is a UK resident property owner and wishes to invest £500,000 in an offshore plan. He has no intention of using this capital in the future and requires no income from the investment. He ultimately wishes the investment to pass to his two sons or their respective estates should they have pre-deceased him at the time of his death. James has two options. He can either:

1. place the plan into a Gift Trust established as a bare trust and nominate his two sons as the beneficiaries;
- or
2. decide against the use of a trust and leave the plan to his sons in his will instead.

What would be the difference in Inheritance Tax, should James die just over 5 years later? For this example we assume that the plan has grown in value at 5% per year, so is now valued at £638,141, with the remainder of his estate (including the property), being £600,000.

### Option 1

Inheritance Tax arising on the Potentially Exempt Transfer on the creation of the Gift Trust:

Amount of initial investment into trust	£500,000
Less current year's IHT annual exemption	£3,000
Less last year's IHT annual exemption	£3,000
Less Inheritance Tax nil rate band of £325,000 <sup>1</sup>	£325,000
Chargeable to IHT	£169,000

Taper relief of 60% available as James died between years 5 and 6. So 40% of the death rate of 40% = 16%.

16% of £169,000 = £27,040

Tax on remainder of estate at death:

Value of estate	£600,000
Less inheritance tax nil rate band (already used)	£0
Less Residence Nil Rate Band (RNRB) <sup>2</sup>	£175,000
Chargeable to Inheritance Tax	£425,000
Tax at 40%	£170,000
<b>Total tax due on estate &amp; trust</b>	<b>£197,040</b>
<b>£170,000 + £27,040 =</b>	

### Option 2

Inheritance Tax on estate at death where the plan was not written under trust.

Plan value	£638,141
Balance of estate	£600,000
	£1,238,141
Less IHT NRB1 of £325,000 & RNRB of £175,000 <sup>2</sup>	£500,000
Chargeable to Inheritance Tax	£738,141

Tax at 40% = £295,256

**Total tax due on estate - no trust used** = **£295,256**

Placing the plan under the trust would save the estate a total of **£98,216** in Inheritance Tax.

<sup>1</sup> The IHT nil rate band has been frozen at £325,000 until April 2026.

<sup>2</sup> The Residence Nil Rate Band (RNRB) has been frozen at £175,000 until April 2026.



## THE LOAN TRUST

The Loan Trust enables the Settlor to make a gift of the growth of their initial investment and still retain control over it.

### General features of the trust

- The trust **cannot** be used for existing plans.
- The trust allows for single or joint settlor. However, as you cannot loan money to yourself, there needs to be an additional trustee that is not a settlor.
- The settlor is not a beneficiary but is entitled to repayment of their loan.
- The creation of the trust is neither a potentially exempt transfer nor a chargeable lifetime transfer.
- Any growth on the value of the initial investment is immediately outside of the settlor's estate for inheritance tax purposes.
- Any outstanding loan on the settlor's death will form part of their estate for inheritance tax purposes.
- Assuming the level of loan repayments does not exceed the cumulative 5% per plan year, there is no immediate liability to Income Tax.
- If the settlor has taken loan repayments then, to the extent that they have spent the money on disposable items, their taxable estate will be further reduced. Spending or gifting the loan repayments is therefore absolutely critical to the success of the planning to avoid them increasing the value of the settlor's estate.
- The settlor can make an express bequest of the outstanding loan balance in their will or in a codicil. If the bequest is in favour of the settlor's UK domiciled spouse it will fall within the spouse exemption for Inheritance Tax and will enable the spouse to continue to receive loan repayments.
- Although deferring income is possible and will enhance the growth potential of the plan the



full amount of the loan will remain as an asset of the settlor's estate.

- The trustees are responsible for repaying the loan to the Settlor. It is likely therefore that suitable trustees would include the settlor's spouse/partner and or other family members rather than professional trustees. In practical terms it will often make sense to appoint the same person who has been named as executor(s) of the settlor's will.
- Although there is nothing to stop the trustees making a distribution to a beneficiary during the lifetime of the settlor, the trustees should never lose sight of the fact they are responsible for repayment of the loan and the trust fund provides their only means of doing this.
- Since the settlor's entitlement is only in respect of the loan, it is important that the trustees

monitor the position closely and ensure all repayments are recorded to avoid any breach of trust occurring through excess payment.

- The trust avoids Isle of Man Probate.

### Discretionary Trust – key points to note

- Although the trust will normally include the settlor's spouse as a discretionary beneficiary, care should be taken if any payments are made to them during the life of the settlor. If the payment can be seen in any way to benefit the settlor, it could be deemed to be a gift with reservation.
- For the purposes of the ten yearly calculations in respect of potential inheritance tax charges, the value of the trust fund will be reduced by the amount of any outstanding loan.

**The Loan Trust would be suitable for individuals who:**

- are UK or deemed UK domiciled for Inheritance Tax purposes.
- can afford to gift away future growth on their capital.
- require full access to initial capital.
- require flexibility as regards to frequency and amount of capital repayments.
- do not wish to create either a Potentially Exempt Transfer or a Chargeable Lifetime Transfer.

**Creating the trust as Bare Trust would be suitable for individuals who:**

- have specific beneficiaries in mind.
- wish to avoid ten yearly charges or charges when distributions are made from the trust.
- wish to avoid future reporting requirements to HMRC.

**Establishing the trust as a Discretionary Trust would be suitable for individuals who:**

- Require flexibility as regards future beneficiaries.

**Example**

Gerald, who does not own any property, wishes to invest £100,000 in an offshore plan. He calculates that he will require an annual income of £5,000 from the investment and wishes only his current grandchildren to benefit from the investment on his death.

Gerald has two options, he can either:

1. establish a Loan Trust on a bare trust basis and name his grandchildren as the beneficiaries. He lends the trust £100,000 which is invested in an offshore plan. The trustees withdraw £5,000 per annum and pass this to Gerald as repayment of his loan;

or

2. decide against the use of a trust and withdraw £5,000 from the plan each year. The investment is left to his grandchildren in his will.



What would be the difference in Inheritance Tax should Gerald die 10 years later? For this example we assume that the value of the plan is £100,000 with the remainder of his estate being £508,000.

**Option 1**

Tax position when the plan is written under a Loan Trust	
Loan remaining in Gerald's estate	£50,000
Balance of estate	£508,000
Total estate or IHT purposes	£558,000
Less nil rate band*	£325,000
Chargeable to Inheritance Tax	£233,000
<b>Tax due at 40%</b>	<b>£93,200</b>

**Option 2**

Tax position when the plan is not written under trust

Value of plan at Gerald's death	£100,000
Balance of estate	£508,000
Total estate for IHT	£1,238,141
Less nil rate band*	£325,000
Chargeable to Inheritance Tax	£283,000
<b>Tax due at 40%</b>	<b>£113,200</b>

If Gerald had written his plan under a trust he would have saved IHT of £20,000 because the growth in the plan of £50,000 would have been outside of his estate for IHT purposes.

\* Frozen at £325,000 until April 2026.

## THE DISCOUNTED GIFT TRUST (DGT)

Our DGT is a trust where the individual gifts one of our offshore plans into a trust for the ultimate benefit of the trust's nominated beneficiaries.

The trust allows for both a Gifted and an Access Fund to be created. The settlor carves out a right to capital sums which are payable to the settlor for as long as the settlor survives or the trust fund is exhausted, if that should happen earlier.

Once the trust has been created it is not possible to amend the amounts of these capital sums payable to the settlor.

The creation of the Access Fund is optional and is essentially a 'rainy day' fund which provides the settlor with access to capital should unforeseen circumstances arise. If in the future, the settlor decides they no longer require access to this fund, it can be gifted to the trust to be held for the benefit of their nominated beneficiaries.

The value of the amount gifted initially into the Gifted Fund is reduced for Inheritance Tax purposes should the settlor die within seven years of creating the trust. This is because in the case of a gift made subject to retained rights, the amount of the transfer equals the gift less the value of those retained rights.

As this arrangement is trust based as opposed to product based, this provides flexibility if the trustees should decide to change the underlying assets.

### General features of the trust

- It can be established with single or joint settlors and be used for new applications and can also be used with existing plans.
- The settlor is automatically included as a trustee.
- The trust can accept increments to the trust fund whilst the settlor is still alive and these

can be used to top-up income. Furthermore, these further gifts can also be discounted subject to a satisfactory underwriting outcome.

- The trust allows the settlor the option of creating an Access Fund.
- The trust avoids Isle of Man Probate.

### The DGT would be suitable for individuals who:

- are UK domiciled or deemed UK domiciled for Inheritance Tax purposes.
- are looking to reduce the value of their estate for Inheritance Tax purposes and are prepared to make a gift so long as their standard of living can be maintained.
- can afford to gift away any potential growth on their existing capital.
- are in good health.
- require an immediate reduction in Inheritance Tax.
- require access to pre-determined capital payments from the trust.
- are not confident about gifting away all of their disposable capital and would like the ability to retain access to some of it should unforeseen circumstances occur.

### Establishing the trust as a Bare Trust would be suitable for individuals who:

- wish to create a discounted potentially exempt transfer for inheritance tax purposes.
- wish to avoid reporting requirements to HMRC.
- have specific beneficiaries in mind.

### Establishing the trust as a Discretionary Trust would be suitable for individuals who:

- require flexibility regarding their choice of beneficiaries and would like to cater for as yet unborn family members.

### Example

Mr Young is aged 65 and is a UK resident and domiciled individual.

After speaking to his financial adviser, he sets up a RL360 Discounted Gift Trust using liquid assets of £250,000.

Mr Young's combined index linked pension and investment income is currently £20,000 per year and he has decided that he would like to take his maximum 5% withdrawals from the plan, as this is the amount he can withdraw each year without creating an immediate income tax liability. Based on £250,000, Mr. Young will be able to withdraw £12,500 per annum from his plan in order to supplement his existing pension and investment income.

Whilst Mr. Young is prepared to invest all of his liquid capital, he does want to retain the possibility of access to £100,000 of this money as he would like to be able to cover any unexpected future spending requirements. He therefore decides to place £150,000 in the Gifted Fund and £100,000 in the Access Fund. Proportionate withdrawals from both funds will provide him with annual payments of £12,500 for the remainder of his life or until such time as the trust fund is exhausted.

Mr Young currently has three children and one grandchild but he would like a trust which caters for the possibility of having further grandchildren in the future and decides therefore to create the trust on a flexible basis. Because the amount being invested in the plan is below his available nil rate band there will be no immediate inheritance tax charge.

Following underwriting, Mr. Young is found to be in good health and we calculate the discounted value of the transfer to the Gifted Fund as being £52,979. Therefore, if Mr. Young should die within the next seven years, this reduces the gift for inheritance tax by £97,021, resulting in a saving of £38,808 in inheritance tax.

In addition, if Mr. Young survives seven years, then the full value of the trust fund will be outside his estate for inheritance tax.



## **INTERNATIONAL FLEXIBLE TRUST**

This is a simple trust which allows a settlor to nominate a person(s) who in the event of the last plan owner's death should be paid the proceeds of the death claim without the need for obtaining Isle of Man Probate.

### **General features of the trust**

- The trust can have up to two settlors.
- The trust can be used for existing plans.
- The trust can accept top-ups.
- The trust avoids Isle of Man Probate.

### **Key points to note**

- The trust should only be used by individuals who are non-UK domiciled for IHT purposes. This is because, for individuals who are UK domiciled, the creation of the trust would be a chargeable transfer as well as a gift with reservation.
- The settlor is a beneficiary of the trust.
- For a non-UK domiciled settlor, who may move to the UK at a later date, the trust can be used as an Excluded Property Trust. However, we do also have an Excluded Property Trust which is specifically designed for Non-UK domiciled individuals moving to or already resident in the UK.

- For non-UK domiciled persons already resident in the UK, this is only effective where the person is not yet deemed UK domiciled for UK IHT purposes, i.e. worldwide assets are then subject to UK IHT. (See our Excluded Property Trust Guide for further details).

### **The International Flexible Trust might be suitable for non-UK domiciled individuals who:**

- wish to retain access to their investments.
- wish to ensure that their plan passes to a nominated beneficiary upon death.





## **EXCLUDED PROPERTY TRUST**

A discretionary trust which enables Non-UK domiciled individuals to protect their Non-UK assets (e.g. a single payment offshore plan with ourselves) from UK inheritance tax (IHT).

### **General Features of the Trust**

- The trust can have up to two settlors.
- The trust can be used for new applications and for existing plans.
- As long as the individual is still deemed non-UK domiciled for inheritance tax purposes, then the trust can accept top-ups.
- The trust avoids Isle of Man Probate.

### **Key Points to Note**

- Just like the International Flexible Trust, the trust should only be used by individuals who are non-UK domiciled for IHT purposes. This is because, for individuals who are UK domiciled, the creation of the trust would be a chargeable transfer as well as a gift with reservation.
- The settlor is a beneficiary of the trust.
- Please see our Excluded Property Trust Guide for further details.

The Excluded Property Trust might be suitable for non-UK domiciled individuals who:

- wish to retain access to their investments.
- wish to protect their investment from UK inheritance tax.
- wish to ensure that their plan passes to a nominated beneficiary upon death.



## **THE BENEFICIARY TRUST**

This trust has been designed for plan owners who are non-UK domiciled and who want the plan's benefits to go to one or more beneficiaries in the event of death. Whilst there is nothing to prevent UK domiciled plan owners from also using the trust, it is important to understand that there would be no IHT planning advantages in doing so.

The Beneficiary Trust comes into being on the death of the 'Relevant Person'. The 'Relevant Person' is the person on whose death the benefits of the plan become payable. Where there are joint plan owners, the plan will not pass into trust until both owners are deceased. It is important to note however that where the plan is written on a joint life first death basis, the trust will not work because, on the death of the first life assured, the plan would simply pay out to the surviving plan owner.

The trust will be of particular interest to those individuals who want the plan to remain in their own name during their lifetime but would like the plan to pass into trust after their death. This will mean that, assuming at least one of the nominated trustees is still alive on the death of the last surviving plan owner the costs and delays associated with obtaining Probate would be avoided.

### **How does it work?**

When the sole or last surviving plan owner dies and this simultaneously brings the plan to an end by virtue of them also being the sole or last remaining life assured, then the proceeds of the plan may be paid to the trustees. Alternatively, assuming the beneficiaries are 18 or over and our requirements have been met in terms of obtaining satisfactory client and address verification requirements we could make payment directly to the beneficiaries.



If the beneficiaries are under the age of 18, because the trust has powers of reinvestment, the proceeds of the plan could be reinvested under the terms of the trust until such time as the beneficiaries reach the age of 18.

Where the sole or last surviving plan owner dies and there is still a life assured in existence, the plan automatically passes into trust and is held by the trustees until such time as the trustees wish to distribute the trust fund either by surrendering or assigning the plan out of the trust to a beneficiary.

The trust can be revoked at any time leading up to the death of the last plan owner by the plan owner(s) simply writing to us and informing us that they no longer wish to use the trust or by completing a new Beneficiary Trust which would simply replace the previous version. This would be relevant where the plan owner(s) has a change of heart over his or her intended beneficiaries of the trust.

## **IMPORTANT NOTES**

For financial advisers only. Not to be distributed to, nor relied on by, retail clients.

Please note that every care has been taken to ensure that the information provided is correct and in accordance with our current understanding of the law and HM Revenue and Customs (HMRC) practice as at April 2024. You should note however, that we cannot take upon ourselves the role of an individual taxation adviser and independent confirmation should be obtained before acting or refraining from acting upon the information given. The law and HMRC practice are subject to change. Legislation varies from country to country and the plan owner's country of residence may impact on any of the above.