

The Gift Trust

Introduction

The Gift Trust is designed to enable the Settlor(s) to pass property by way of an Inheritance Tax efficient gift to the trustees, for the benefit of beneficiaries.

The trust form is designed for use with policies issued by RL360° and is designed to allow payment of the policy proceeds to the trustees without the need for a grant of probate/letters of administration/confirmation.

The Settlor(s) has the option of establishing the trust as either a Bare Trust or a Discretionary Trust. There are important differences between the two trust provisions in their Inheritance Tax treatment.

If the Bare Trust form is selected, then unless an exemption such as the annual exemption or the normal expenditure out of income exemption is available, the Settlor will make a potentially exempt transfer for Inheritance Tax purposes. Each Appropriate Share will form part of the estate of the relevant Named Beneficiary.

By contrast, if the Discretionary Trust form is selected, then unless an exemption is available the making of the Trust will be a chargeable transfer of value by the Settlor for Inheritance Tax purposes, and Inheritance Tax at lifetime rates will be immediately payable on the value of the policy transferred to the Trustees to the extent that this exceeds the nil rate band, having regard to any previous lifetime transfers of value made by the Settlor within the preceding seven years. In addition, the Trust Fund will be

treated as being “relevant property” for Inheritance Tax purposes, with periodic charges to tax at 10 yearly intervals and tax on property exiting the Trust or possibly on the termination of the Trust, if the value of the Trust Fund at the relevant time exceeds the nil rate band.

Whichever form of trust is chosen, any increase in the value of the Trust Fund will be outside the Settlor’s estate for Inheritance Tax purposes.

For this reason, therefore, the Settlor must not be named as a beneficiary. If he/she is, then this will prejudice the tax effectiveness of the trust. Regardless of which version of the trust is chosen, the trust will avoid Manx Probate assuming there is a surviving trustee at the time of the death of the last life assured on the policy.

For further information regarding the Gift Trust and the implications of establishing it on either a Bare or Discretionary basis, please refer to our *Guide to Trusts*.

Case study

Charlotte, who is resident and domiciled in the UK, has received an advance of £500,000 for her next three books. She is already financially secure having authored a number of books over the past twenty years. She divorced her husband some years ago and has two adult sons (Jamie and Simon) both of whom are married, each having one child (Audrey and Jeremy respectively).

Charlotte contacts her financial adviser as she is aware of her potential

Inheritance Tax liability and wishes to reduce this. She wants some of her wealth to be used for the benefit of her children and grandchildren but is not sure which particular family members are to benefit, how much each should receive and precisely when payments should be made to them. After researching the market her financial adviser recommends a RL360° offshore bond.

Charlotte decides to invest £275,000. As she will never need access to this investment, her adviser recommends the use of a Gift Trust. Establishing this trust will trigger a UK inheritance tax chargeable transfer but as she has never previously made a chargeable transfer, the availability of her nil rate band means that no inheritance tax is payable.

Charlotte has decided to be one of the trustees and her solicitor has also agreed to act as trustee.

Five years pass and Charlotte’s grandchildren, having shown artistic and academic promise, want to go to independent schools. Charlotte discusses the academic promise of her grandchildren with the other trustees and all agree that they should receive some capital.

The trustees execute a part-surrender of the policy to realise £40,000 and pay school fees and associated expenses of £20,000 for each grandchild. There is no UK tax liability arising from the part-surrender of the policy as the proceeds are within a cumulative annual limit of 5% of the premium.

Four years later, Jeremy drops out of school and takes up with the 'wrong crowd'. Charlotte discusses the situation with the other trustees. Having carefully considered the matter, the trustees exercise their power of appointment (irrevocably) to exclude Jeremy from benefit.

Important notes

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

If the 'relevant person' is UK resident at the time of their death and they were the last remaining life assured on the bond, then any income tax liability would fall on that individual at his or her highest marginal rate. If the death of the UK resident 'relevant person' does not bring the policy to an end, then subsequently if the policy is surrendered in trust, there may be an income tax liability on the trustees if they are UK resident or on any UK resident beneficiaries where the trustees are non UK resident.

Finally, please note that every care has been taken to ensure that the information provided is correct and in accordance with our understanding of current law and practice with Her Majesty's Revenue and Customs (HMRC) as at July 2012. You should note however, that we cannot take on 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.