What is a Trust?

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A trust is an obligation binding a trustee (which can be an individual or a company) to deal with assets - such as land, money, shares or even antiques - for the benefit of one or more 'beneficiaries'. The people who run the trust, and in certain circumstances make decisions about how the assets in the trust are to be used, are known as **'trustees'**. Trustees carry out the wishes of the person who has put assets into the trust. This person is known as the **'settlor'.** The settlor's intentions for the trust are usually expressed in a legal document called a 'trust deed' or in their will.

What is the purpose of a Trust?

A Trust offers a means for people to pass their wealth on to other people they have chosen. Trusts are often set up to control and protect family assets.

Trusts can be set up at anytime and in some cases a will establishes a trust, which allows people to pass on their assets in accordance with their wishes when they die.

A trust might be created in various circumstances:

- When someone is too young to handle their affairs
- When someone can't handle their affairs because they are incapacitated
- To pass on money or property while you are still alive
- Under the terms of a will - referred to as a 'will trust'

Please note: there are other types of 'non-family' trusts. These are set up for a variety of reasons - for example to operate as a charity, or to provide a means for employers to create a pension scheme for their staff.

What is trust property?

'Trust property' is a phrase commonly used for the assets held in a trust. It can include:

- Money
- Investments
- Land or buildings
- Other assets, such as paintings, furniture or jewellery sometimes referred to as 'chattels'

The cash and investments held in a trust are also called the 'capital' or 'fund' of the trust. This capital or fund may produce income, such as interest or dividends. The land and buildings may produce rental income. The way income is taxed depends on the type of income and the type of trust.

Who are Trustees?

Trustees are the legal owners of the property held in a trust. Their role is to:

- Deal with trust property in accordance with the trust deed

- Administer the trust on a day-to-day basis and pay any tax due on the income or chargeable gains of the trust

- In certain circumstances decide where to invest the trust's assets and/or how the property in the trust is to be used - although this must always be in accordance with the trust deed

The trust can continue even though the trustees might change. However, there must normally be at least one trustee. It is recommended that there should be a minimum of two trustees. Although some may say that one should be a professional trustee, in many cases this is not necessary, although ongoing advice should be sought in most cases when managing trust funds. Typically the Trustees are family members.

Who are the beneficiaries?

A beneficiary is anyone who benefits from the property held in the trust. There can be one or more beneficiaries, such as a whole family or a defined group of people, and each may benefit from the trust in a different way.

For example, a beneficiary may benefit from:

- The income only - for example, they may receive rental income from a house or flat held in a trust.

- The capital only - for example, they may become entitled to shares held on trust when they reach a certain age

- Both the income and capital of the trust

Who is the settlor?

A settlor is a person who has put property into the trust. This is often referred to as 'settling' property. Property is normally put into the trust when it is created, but it can also be added at a later date. The settlor sets out in the trust deed how the property in the trust and any income received from the trust property should be used. In some trusts, the settlor can also benefit from the property he or she has put in. These types of trust are known as 'settlor-interested' trusts and they have their own tax rules.

The following are the most commons from of Trusts.

- Bare Trusts
- Interest in Possession Trusts
- Discretionary or accumulation trusts
- Settlor-Interested Trusts

Bare Trusts (Absolute Trust)

A bare trust (sometimes known as a 'simple trust') is one where the beneficiary - the person who benefits from the trust - has an immediate and absolute right to both the trust capital and the income received by the trust from that capital. Someone who sets up a bare trust can be certain that the assets they set aside will go directly to the beneficiaries they intend, because, once the trust has been set up, the beneficiaries cannot be changed.

The trust assets are held in the name of a trustee (the person administering the trust), but the trustee has no discretion over what income or capital to pass on to the beneficiary or beneficiaries. Bare trusts are commonly used to transfer assets to minors. Trustees hold the assets on trust until the beneficiary is 18 in England and Wales, or 16 in Scotland. At this point, beneficiaries can demand that the trustees transfer the trust fund to them

Interest in Possession Trusts

An interest in possession trust is one where the beneficiary of a trust has an immediate and automatic right to the income from the trust as it arises. The trustee (the person running the trust) must pass all of the income received, less any trustees' expenses, to the beneficiary. A beneficiary who is entitled to the income of the trust for life is known as a 'life tenant' or as 'having a life interest'.

A beneficiary who is entitled to the trust capital is known as the 'remainderman' or the 'capital beneficiary'. The beneficiary who receives income (the 'income beneficiary') often doesn't have any rights over the capital of such a trust - instead the capital will normally pass to a different beneficiary or beneficiaries in the future. Depending on the terms of the trust, the trustees might have the power to pay capital to a beneficiary even though that beneficiary only has a right to receive income.

Discretionary and accumulation trusts

In a discretionary trust, the 'trustees' are the legal owners of any assets - known as 'property' - held in the trust. They are responsible for running the trust for the benefit of the beneficiaries.

The trustees have 'discretion' about how to use the income received by the trust. They may also have discretion about how to distribute the trust's capital. In many such trusts the trustees can also accumulate income.

Trustees can decide:

- How much is paid out
- To which beneficiary or class of beneficiaries payments are made
- How often the payments are made
- What, if any, conditions to impose on the recipients

Under the terms of the deed that creates the trust, there may be situations when the trustees are required to use income for the benefit of particular beneficiaries. However, they may still retain discretion about how and when to pay. The extent of the trustees' discretion depends on the terms of the trust deed.

Sometimes the person who sets up the trust 'the settlor' will use a discretionary trust to set aside capital for a future need that may not yet be known, for example a grandchild that may require more financial assistance than other beneficiaries at some point in their life, beneficiaries who are perhaps not capable or responsible enough to deal with money by themselves

Settlor-interested trusts

If any of the following people benefit from income or gains from money or other assets in a trust, it is regarded as settlor-interested:

- The settlor
- The settlor's spouse or civil partner

Settlor-interested trusts aren't a type of trust in their own right - they will be one of the following types of trust:

- Interest in possession trusts - where the settlor, the settlor's spouse or civil partner may be entitled to all the income

- Accumulation trusts - where trustees can retain and accumulate income on behalf of the settlor, the settlor's spouse or civil partner

- Discretionary trusts - where trustees can make payments to the settlor, their spouse or civil partner

This document gives just a brief guide to Trusts and the different types. We have deliberately not provided information concerning the taxation of trusts because it is an area of extreme complexity and outside the scope of this document, if you wish to know more about how Trusts could benefit please contact us on 01372 343940.