

SETTING UP TRUSTS IN THE ISLE OF MAN

1 INTRODUCTION

CCW Trust Limited gives advice on setting up trusts in the Isle of Man and provides the services of trustees to administer trusts in the Isle of Man.

Trusts are tailored to suit the specific requirements of each client. The residence and domicile, or place of belonging, of the settlor and beneficiaries of a trust will have considerable bearing on the taxation position.

The following is a brief summary of the types of trusts available and an outline of some of the United Kingdom and Manx tax implications.

2 TRUSTS

A trust is created when assets are transferred by a person (the settlor) to one or more persons (the trustees) with instructions that they are held for the benefit of others (the beneficiaries). A trust may be set up during a person's lifetime and have immediate effect, in which case it is usually evidenced by a formal trust deed and commonly referred to as a settlement. Alternatively a trust may be created by a person's will and be known as a Will Trust. The unique characteristic of a trust is the separation of the trustee's legal ownership of the trust assets from the beneficiaries' beneficial enjoyment of them. It is this concept which often gives rise to recognition problems in Civil Law countries but which to a certain extent has been mitigated by the Hague Convention on Trusts.

There are several advantages in setting up a trust:

- Protection of trust assets from divorce, litigation, profligacy, creditors, forced heirship
- Succession planning
- Passing on assets now for future generations
- Tax mitigation

3 WHAT TYPES OF TRUST ARE THERE?

Though trusts can take many different forms, they normally fall into one of four categories. These are:-

Simple (interest in possession) Trusts. A beneficiary (or beneficiaries) is entitled to the trust income as it arises and the trustees have no power or discretion to withhold payment except to meet trust expenses. Similarly the trustees have no power to allocate income to one beneficiary rather than to another. Such a trust is usually known as either a Life Interest or an Interest in Possession Trust. The trustees may have discretion over the application of trust capital.

Discretionary Trusts. The trustees have unfettered power to distribute income or capital as they think fit between beneficiaries, and may also have power to accumulate income. No beneficiary has any right to income or capital, but merely has an expectation that the trustees may make distributions to him. The trustees may also have a power to appoint additional beneficiaries and in administering such a trust the trustees are often guided by a "Letter of Wishes" from the settlor.

Charitable Trusts. A charitable trust is set up for charitable purposes. It will generally give the trustees discretion over income and capital payments.

Purpose Trusts. A purpose trust has no certainty of objects (i.e. beneficiaries) but must be for a purpose which is legal, certain, reasonable and possible.

4 NON-RESIDENT TRUSTS AND UK CAPITAL GAINS TAX

Capital Gains will be calculated using UK principles, but there will be no charge to Capital Gains Tax (CGT) on the non-resident trustees.

However, if the settlor is UK resident and domiciled, and the settlement can benefit any of the following –

- the settlor
- the settlor's children
- the settlor's grandchildren
- the spouse of any of the above
- any company controlled by any of the above

the gains will be taxable on the settlor as they arise.

Therefore, where the settlor (i.e. the original owner of the property) is still alive and is a UK resident and domiciled individual, in order to enjoy CGT deferral the trust will need to be for the benefit of nephews or nieces or other relatives or friends, or alternatively the trust should come into being only on the death of the settlor.

Where the settlor is neither UK resident nor UK domiciled when the settlement is made but later becomes UK resident and domiciled, the rules set out above will still apply. This means that if, for example, a settlement is created now by a non-UK resident individual for the benefit of his children or grandchildren and the settlor subsequently moves to the UK and becomes UK resident and UK domiciled, any capital gains arising to the trust thereafter will be assessed on the settlor. Gains made in the interim will also be calculated and may be stockpiled to be matched against future capital payments, or may be assessed on the settlor in the year he becomes UK resident, depending on the length of time he has been non-resident.

5 NON-UK DOMICILED SETTLORS AND UK CAPITAL GAINS TAX

Gains on all non-resident settlements must be calculated using UK CGT principles.

Capital payments made to UK resident and domiciled beneficiaries will be matched with trust realised gains and will be liable to UK CGT in their hands. The supplementary charge may apply.

Capital payments made to UK resident but non domiciled beneficiaries will not be liable to UK CGT, even if remitted to the UK, and even if the beneficiary was also the settlor.

6 INHERITANCE TAX – UK DOMICILED SETTLOR

A gift into any Settlement made after 22 March 2006 during the settlor's lifetime is an immediately chargeable transfer, at life time rates. In addition, the trust will be liable to 10 year anniversary charges and exit charges.

7 INHERITANCE TAX – NON-UK DOMICILED SETTLOR

Providing the assets transferred are not situated in the UK, the assets transferred will be "Excluded Property" and will not come within a charge to inheritance tax.

The trust property will continue to be "Excluded Property" for inheritance tax purposes if the trust property is invested outside the UK at the "relevant time" i.e. on 10 year anniversaries etc.

Care needs to be taken to ensure the settler is not considered to be 'deemed' to be domiciled for UK tax purposes. If deemed domiciled in the UK the charges in (6) above will apply.

8 MANX TAXATION POSITION

There will be no liability to Isle of Man tax providing:-

- (i) none of the beneficiaries is resident in the Isle of Man and
- (ii) no income arises in the Isle of Man. (Banking and Building Society interest arising in the Isle of Man is exempt for these purposes where none of the beneficiaries is Manx resident).

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