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The Bare Gift Trust

Adviser Guide

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IMPORTANT NOTE:
Fidelity Adviser Solutions cannot give advice regarding the legal or tax effects of the Trusts, and will not accept responsibility for any loss occurring from their use. Investors are strongly recommended to seek independent legal advice before completing the trust deed to ensure the Trust meets their needs. Once established, trusts may be difficult to unwind and gifting money or assets into certain trusts will mean you cease to have access to the money or assets.

1 The Bare Gift Trust – objectives and suitability

The aim of the draft Bare Gift Trust deed is to facilitate effective lifetime inheritance tax planning. Potential users of the Bare Gift Trust could be:

- New investors contemplating investment in unit trusts, OEICs or SICAVs or already holding such investments either on the Fidelity Adviser Solutions platform or as Fidelity funds off the platform (in this guide these investments are referred to as "investment funds"*); and/or
- Those investing in, or holding, one or more of the single premium life assurance investment bonds (here called "Bonds") offered via Fidelity Adviser Solutions.

It should be remembered that certain investments such as ISAs cannot be held in Trusts such as the Bare Gift Trust.

The investor using the Bare Gift Trust is called the Donor. By using the Bare Gift Trust with cash intended for an investment, a Bond or a holding in investment funds, the Donor will be making a gift. When the gift is of cash, the Trustees will collectively apply for the intended investment, be it Bonds or investment funds. When the intended investment is Bonds, the Trustees will normally make an application for the Bond(s) on the lives of the Donor and/or the Beneficiaries on a joint, or multiple, lives last survivor basis.

Where an investor creates a Bare Gift Trust using a cash gift, that cash gift will usually be a potentially exempt transfer (PET) for inheritance tax purposes to the extent it exceeds the Donor's available inheritance tax annual (£3,000) exemption. When an existing investment is made subject to a Bare Gift Trust, the gift will usually be a PET to the extent that the cash invested (or the market value of the existing investment) exceeds the Donor's available annual inheritance tax exemption.

To ensure that the Bare Gift Trust is effective for inheritance tax purposes, the Donor cannot benefit from the Trust assets in any circumstances. Indeed, with the Bare Gift Trust the only person(s) who can benefit is/are the Beneficiary(ies) named in the Trust Deed.

Full details of the UK tax implications of the Bare Gift Trust can be found in Section 5 of this guide. As well as being able to secure important tax benefits, the Bare Gift Trust offers important probate avoidance advantages. The asset that is subject to the Bare Gift Trust will not be an asset of the Donor's estate for probate purposes which means that on the death of the Donor, the Trustees can carry on dealing with the investment without waiting for probate or letters of administration on the Donor's estate.

To ensure that the need for probate or letters of administration in the event of the Donor's death is avoided, the legal ownership of the investment must be with a person or persons other than the Donor on his or her death. Therefore, this benefit will only be secured if there is at least one Trustee who survives the Donor. Under the Bare Gift Trust, the Donor is automatically one of the Original Trustees and further Trustees are appointed in the Trust Deed.

If any of the additional Trustees retires or dies before the Donor, a further Trustee or Trustees should be appointed.

The power of appointing Trustees vests in the Donor (whilst alive) and then the Trustees. If no additional Trustees are appointed, or if they have been appointed and resigned, died or been removed, so that there is no surviving Trustee on the death of the Donor, the Trust will nevertheless continue to exist.

The personal representatives of the deceased Donor will then assume the role of Trustee under the Trust. This means that, although the Trust investment will not be part of the Donor's estate for inheritance tax or probate purposes, securing probate or letters of administration to the Donor's estate will still be necessary to ensure that the personal representatives can act as Trustees under the Trust. Clearly then, it is very important that additional Trustees are appointed who are likely to survive the Donor, so as to ensure that any delays in being able to deal with the trust investments are avoided.

Provided the legal and tax implications of the Bare Gift Trust are acceptable to the Donor, the Bare Gift Trust can be used regardless of whether the gift is to be made by one Donor or two jointly, e.g. when cash is coming from a couple's joint account or an existing investment fund or Bond is jointly owned.

2 The Bare Gift Trust and inheritance tax planning

Following the reform of the taxation of Trusts in March 2006, lifetime inheritance tax planning has been made considerably more difficult. Until 21 March 2006, most lifetime gifts to trusts were treated as potentially exempt transfers (PETs) for inheritance tax; now most lifetime gifts to Trusts are treated as chargeable lifetime transfers. As far as gifts into Trust are concerned, only gifts into Bare Trusts or into Trusts for the disabled are still treated as PETs. The Bare Gift Trust therefore offers one of the few remaining opportunities to secure the PET treatment on a gift.

To ensure that the Donor makes an effective gift for inheritance tax purposes, the Donor must not retain any benefit (actual or prospective) under the Trust. This is the case with the Bare Gift Trust, as the Donor is specifically excluded. The Trust is expressed as being irrevocable and the only persons who can benefit are those individuals named as Beneficiaries by the Donor in the Trust Deed. There is therefore no doubt about the inheritance tax effectiveness of this Trust.

The Bare Gift Trust is not suitable where:

- An investor requires some beneficial access to the investment; or
- An investor does not require access to the investment but nevertheless requires some control over the ultimate destination of the benefits.

In these cases, although the Bare Gift Trust will not be suitable, a different type of trust may be. Other trust wordings are available for the consideration of professional advisers.

For a detailed consideration of the inheritance tax implications of the Bare Gift Trust, please see Section 5.

3 The Bare Gift Trust provisions in detail

The Bare Gift Trust provides that the Beneficiary named in the Trust Deed is entitled absolutely to both the income and capital of the Trust. If there is more than one Beneficiary named, they benefit in the shares specified and neither the Beneficiaries nor their entitlements can be changed.

The Draft Bare Gift Trust

The following is a summary of the key provisions as they appear in the draft Bare Gift Trust deed.

*References to the income and capital gains taxation of 'investment funds' in this guide do not apply to offshore funds which do not hold HMRC reporting fund status. Offshore income and gains arising from such funds are taxed under the income tax regime.

Part 1 – Execution of the Deed and Trust declaration
The deed is executed by the Donor and the named additional Trustees.

Alternative provisions are applied depending on whether a new investment is contemplated or an existing investment is being transferred to the Trustees. The details of the asset(s) being transferred to the Trust are specified in the Schedule.

Part 2 – Definitions
In this part of the Trust Deed, the terms used throughout the Trust are defined to avoid repetition. The most important definition is that of the Beneficiaries.

The **Beneficiaries** are those named in the Trust Deed. To identify them, the Donor inserts their full names. If there is more than one, their shares also need to be specified, otherwise they benefit equally. It is essential that the cumulative shares add up to exactly 100%, else adverse tax consequences may arise to the Trust. Under a Bare Gift Trust, beneficiaries become absolutely entitled to the trust assets and cannot be changed.

Part 3 – Principal trust terms
In this part, the rights of the Beneficiaries are defined, i.e. that they are absolutely entitled to the trust capital and income. However, because the Beneficiaries will often be children under the age of 18 (16 in Scotland), the Trustees are also given powers to use the trust income (if it arises) and capital for the Beneficiary's maintenance, education or benefit. When the child reaches the age of full legal capacity, he or she will be able to demand his or her share of the Trust Fund.

Part 4 – Administrative provisions
The Trustees also have wide administrative powers to deal with the Trust Fund and to reinvest the proceeds of any investment in any way they wish. They also have the power to borrow funds, to make payments to parents or guardians of minor Beneficiaries (which is particularly relevant to this Trust) and to delegate certain powers.

Part 5 – Appointment, dismissal, retirement and remuneration of Trustees
The Trust contains comprehensive provisions applying to the Trustees.

The power to appoint new or additional Trustees is vested in the Donor during his or her lifetime and, after his or her death, in the Trustees. The Donor also has the power to dismiss any Trustee, provided at least one Trustee, other than the Donor, remains after such dismissal. There is no power to dismiss a Trustee after the death of the Donor, and it must be remembered that the Trustees must act unanimously.

If two persons are joint Donors, they exercise their powers jointly during their joint lives and, after the death of the first, the survivor exercises the Donor's powers alone.

There are also powers dealing with the retirement of Trustees and corporate trustees.

Professional Trustees are permitted by the trust deed to charge normal professional fees.

Part 6 – Further trust provisions
These mainly deal with the Trustees' liability in relation to the Trust.

The liability of individual Trustees is limited so that they will not be held liable for any loss to the trust fund, provided they act in good faith. Trustees who are paid for their services are also liable for negligence.

The Trustees are permitted to take part in the transactions and Trustees' decisions in which they have a personal interest.

Part 7 – Governing Law
English law governs the validity of this Trust, and its construction, effects and administration.

4 The UK tax implications of the Bare Gift Trust

In the following section, it is assumed that the Donor, the Beneficiaries and the Trustees of the Trust are UK resident and domiciled. Special rules apply where this is not the case and appropriate professional tax advice should be sought. This section is only intended to provide a brief guide to taxation and precise taxation treatment will depend on types of trust investments and the tax circumstances applicable to an individual trust arrangement.

Inheritance Tax

Establishment of the Trust

- For inheritance tax purposes a transfer of value (a gift) takes place at the time the Trust is created.
- Where there are two Donors, each is treated as making a gift based on the amount actually transferred by him or her.
- When a new investment is to be made subject to trust with cash given to the Trustees, the value transferred will be the cash gift.

If the amount of the gift exceeds the Donor's available inheritance tax annual exemption, currently £3,000 for each Donor (£6,000 maximum for each Donor if the exemption for the previous tax year has not been used), it will be a potentially exempt transfer (PET). This means that, regardless of the amount of the transfer, no tax liability will arise at the time of the transfer.

A tax liability on the gift could only arise if the Donor dies within 7 years of making the transfer and even then only if the value of the gift together with any chargeable transfers made in the 7 years immediately preceding the gift exceeds the available inheritance tax nil rate band at the date of death. On the Donor's death within 7 years of making the gift, the value of the original gift will be taken into account in determining the inheritance tax liability on the Donor's estate.

- When an existing Bond is made subject to trust, the value of the gift will be the value of the Bond, or the amount of the premium originally paid, if greater.
- When existing investment funds are made subject to trust, the value of the gift will be the market value of the shares or units at the time of the gift.

Additions to the Trust by the Donor

- Any additional premium paid by the Donor into a Bond, or any additional amount paid to an investment fund, held by the Trust (e.g. under a monthly savings plan or a top-up to an existing investment) will be a further gift, and the tax implications will be as described above for the initial gift. To the extent that the additions are not covered by the annual exemption, the amount of the gift that will be treated as a PET will be equal to the amount by which the value of the investment is increased by the transfer.

Death of a Beneficiary

- The Beneficiaries are treated as owning the Trust property for inheritance tax purposes.
- On the death of a Beneficiary, the value of the Beneficiary's underlying interest in the Trust property (the Bond or the investment funds) will be included in his or her estate. So, if there is more than one Beneficiary, the value included in the deceased Beneficiary's estate will be the value of his or her share of the Trust Fund.
- If the Beneficiary is under the age of 18 (16 in Scotland), unmarried and not in a registered civil partnership, the assets will usually pass to the deceased Beneficiary's parents under the rules of intestacy.

Death of the Donor

- On the death of the Donor (or, where appropriate, either of the Donors) more than 7 years after establishing the Trust, the value of the trust investments will be outside of the Donor's estate for inheritance tax purposes.
- Inheritance tax could potentially be a problem where the value of the original gift to the Trust is not covered by any available exemptions and the Donor dies within 7 years of creating the Trust. This is because the original PET will become chargeable on the death of the Donor. Even then, as stated above, if the value of the original gift is within the available inheritance tax nil rate band, no liability will arise on the gift itself. However, the inheritance tax nil rate band available to determine the liability arising on the estate on the death of the Donor will be correspondingly reduced.

No other inheritance tax charges will arise under the Bare Gift Trust. In particular there will be no periodic charges or exit charges when payments are made to the beneficiary – such charges are only relevant to trusts that are relevant property settlements. The Bare Gift Trust is not such a settlement.

Capital Gains Tax

Creation of the Trust

When existing investment funds are transferred to the Bare Gift Trust, this will be a disposal for CGT purposes. The gain will be calculated in the usual way and, subject to the Donor's available CGT annual exemption, taxed at the tax rate applicable to individuals for taxation on capital gains. CGT hold-over (deferral) relief is not available, except for certain business assets.

There are generally no CGT implications if a Bond is transferred to the Trust (unless the Donor is not the original owner of the Bond and it had been acquired for a financial consideration).

Trust capital gains

For capital gains tax purposes, the Trust is ignored and the Beneficiaries are treated as outright owners. This means that all capital gains arising when the Trustees sell shares or units in investment funds are assessed on the Beneficiaries, regardless of who the Donor is. The gain will be calculated in the usual way and apportioned in line with the Beneficiaries shares. Each Beneficiary, subject to their own available CGT annual exemption, will be taxed at the tax rate applicable to that individual for taxation on capital gains.

Income Tax

The income tax implications depend on whether the investment held by the Trustees is a Bond or investment funds.

Chargeable event gains under a Bond

The general rule is that any income tax liability due on a chargeable gain will be assessed on the Beneficiary (irrespective of age) at his or her marginal rate of income tax (after the application of any top-slicing relief), even if the chargeable event arises while the bond is still subject to the bare trust.

Exceptions to this general rule can arise where wider so-called 'anti-avoidance' legislation applies so as to treat income arising under a settlement as that of the Donor. HMRC take the view that "income arising under a settlement" includes amounts deemed or treated as income for the purposes of income tax, which includes chargeable event gains from insurance bonds. Therefore, in such circumstances the gain is assessed on the Donor rather than the beneficiary.

One of the main examples of this tax treatment is if the Beneficiary is the Donor's child and is aged under 18, unmarried and not in a registered civil partnership. If this is the case, any gain or income from other investments and any other gifts made to the child by the Donor will be assessed for income tax on the Donor at his or her marginal rate if the gross income attributable to that Beneficiary exceeds £100 gross per parental Donor in the tax year.

Income arising to the Trustees from investments in investment funds

The general rule is that any income arising to the Trust will be assessed on the Beneficiary (irrespective of age). Exceptions to this general rule can arise where wider so-called 'anti-avoidance' legislation applies so as to treat income arising under a settlement as that of the Donor. In such circumstances the income is assessed on the Donor rather than the beneficiary.

One of the main examples of this tax treatment is if the Beneficiary is the Donor's child and is aged under 18, unmarried and not in a registered civil partnership. If this is the case, any income from investment funds or other investments and any other gifts made to the child by the Donor will be assessed for income tax on the Donor at his or her marginal rate if the gross income attributable to that Beneficiary exceeds £100 gross per parental Donor in the tax year.

5 Notifying HMRC about a trust

Income tax and capital gains tax

HMRC operates an online Trusts Registration Service for Trustees. This has replaced the previous paper based 41G (Trust) form and the ad hoc process for Trustees to notify changes in their circumstances. Also, Trustees must ensure and confirm the Trust Register is accurate and up to date, guaranteeing their obligations under Money Laundering Directives are complied with. Any new Trusts with a UK tax consequence will be required to use the registration service to obtain a unique taxpayer reference (UTR). The requirement to register online includes those Trusts that have already registered with HMRC using the 41G(Trust) form. Trustees must update the register each year that the Trust generates a UK tax consequence.

You should consult the relevant guidance from HMRC for details concerning the requirement to register and report your individual trust as appropriate to the circumstances of that trust.

Inheritance tax

For Inheritance Tax purposes, gifts to a bare rust are treated as 'potentially exempt transfers'. This means that they are usually only subject to Inheritance Tax if the settlor who put the assets into the trust dies within seven years of doing so. In this case, since the capital and income of a bare trust belong absolutely to the beneficiary, the beneficiary is responsible for any Inheritance Tax that may be due. There is no reporting requirement at all unless the PET fails on the death of the transferor within 7 years.

6 Further information

Tax rates and allowances quoted are those for the tax year to 5 April 2024.

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