This document is intended for clients of financial advisers. It covers a complex subject and we recommend that you seek advice from your adviser.

The Bare Gift Trust

Fidelity Adviser Solutions
Investor Guide

Fidelity INTERNATIONAL

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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 What is the Bare Gift Trust?

A trust is a legal relationship which exists when an asset is held by a person or persons (called the Trustee(s)) for the benefit of another person or persons (called the Beneficiary(ies)). The Trustees have the control and legal ownership of the asset but must use it for the benefit of the Beneficiaries.

Based on this principle, the Bare Gift Trust provides a way of holding an investment, be it single premium life assurance investment bonds ("Bonds") and/or holding of shares or units in unit trusts, OEICs and/or SICAVs ("investment funds*") for the benefit of another individual or individuals. Some investments, such as individual savings accounts (ISAs) and personal pension plans cannot be held in a trust such as the Bare Gift Trust.

When an asset is made subject to a trust, the ownership of the asset is effectively split. The legal owners of the asset will be the Trustees. The Trustees collectively control all dealings with the investment on behalf of the Beneficiaries under the Trust – with a Bare Trust this effective control only lasts until the Beneficiary attains the age of 18 (16 in Scotland). The Beneficiaries under a trust are the beneficial owners and, as such, will be entitled to enjoy the benefits of the trust assets (once distributed from the Trust) and, in the case of some investment funds, income from the investment whilst it is held.

The original investor who creates the Bare Trust is called the Donor and cannot benefit in any way from the investments held in the Trust.

There can be more than one Donor, for example where a husband and wife jointly create a trust.

The Donor names, in the Trust Deed, one or more individuals as the Beneficiary(ies). The Beneficiaries are absolutely entitled to the Trust assets, which means that their entitlement cannot be taken away or changed in any way. It is therefore crucial that the Donor is certain about who he or she wants to benefit, as he or she will not be able to change his or her mind about this.

The main objectives of the Bare Gift Trust are to ensure that the investment placed in trust is held for the benefit of the chosen Beneficiaries outside of the taxable estate of the Donor and that the gift the Donor makes has no immediate inheritance tax consequences regardless of the amount gifted.

2 Why should you use the Bare Gift Trust?

You should consider using the Bare Gift Trust if you:

- wish to make a gift of an existing investment, or of a cash sum to be invested, during your lifetime, that is effective for inheritance tax purposes;
- do not need to retain access to the funds for your own benefit in the future; and
- are absolutely certain who is to benefit from your gift, i.e. you do not wish to retain any flexibility over the choice of your Beneficiaries or how much each will receive.

3 When should the Bare Gift Trust not be used?

The Bare Gift Trust should not be used:

- if you wish to retain access to all or part of the investment for your own benefit; or
- if you wish to make a gift but retain some flexibility or control (subsequent to the gift) over its final destination.

Once a bare trust is established, it is not possible to change or add a Beneficiary or alter the share of the trust fund that a Beneficiary will receive.

4 How is the Bare Gift Trust established?

The Bare Gift Trust can be used with either cash available for investment or with existing investments which are not already held in trust.

The Trust is established by the Donor(s) and his or her chosen additional Trustees completing the Bare Gift Trust deed and then passing the selected assets into the Trust.

When the asset is cash available for investment, the Donor would normally provide the Trustees with a cheque made payable to the investment company (e.g. Fidelity) with whom he or she intends to make the investment.

If the intended investment is a Bond, the Trustees will make an application for the Bond on the life or lives of the Donor(s) and/or the Beneficiaries. Alternatively, the Donor(s) can effect the Bond him or herself and then assign it to the Trustees (this can only be done once the Bond has issued).

In the case of an existing Bond, the Trust Deed incorporates an assignment of the Bond to the Trustees. A Notice of Assignment will then have to be given to the relevant life assurance company that issued the Bond.

For existing investment funds held on the Fidelity Adviser Solutions platform, the Donor gives or assigns the beneficial title to the Trustees (the legal ownership of the shares or units continue to remain with FIL Nominee (Shareholdings) Ltd and will have to complete a stock transfer form to ensure the beneficial title of the Trustees is registered with the nominee.

When the Donor owns investment funds outside the Fidelity Adviser Solutions platform, as is the case with Fidelity OEICs, for example, he or she will need to complete a stock transfer form and the shares or units will then be transferred into the name(s) of the Trustees.

The draft Bare Gift Trust deed provides for a maximum of four Trustees (including the Donor(s)). Once the investment is made subject to trust, any subsequent dealings with the investment will be between the Trustees (as the legal owners) and the relevant company.

5 Key provisions of the Bare Gift Trust

- The Beneficiaries named in the trust deed are entitled to the benefits absolutely. This means that once a Beneficiary attains the age of 18 (16 in Scotland) he or she can demand that the Trustees pay over his or her share of the benefits.
- Neither the Donor(s) nor anybody else, other than the named Beneficiary(ies), can benefit from the Trust in any circumstances.
- The Donor(s) names, as Beneficiary(ies), the individual or individuals who are to benefit from the trust fund and, if more than one, the shares in which they are to benefit. Generally, for tax purposes each of these Beneficiaries is treated as owning the relevant share of the trust property.
- If there is more than one Beneficiary, and the Donor does not state the shares in which they are to benefit, they will benefit equally. In order to ensure that no adverse tax consequences arise in the future, it is absolutely essential that the cumulative shares for each Beneficiary add up to 100%.

6 Governing Law

English law governs the validity of this Trust, and its construction, effects and administration.

*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. Further details are available from your financial adviser.

7 The Trustees

The Donor (or each of them in the case of joint Donors) is automatically one of the Original Trustees. At least one additional Trustee should be appointed at outset. The additional Trustees execute the Trust Deed with the Donor. No more than four Trustees (including the Donor(s) should be appointed at outset.

Trustees must be aged 18 or over, of sound mind and willing to act as a Trustee.

The Donor (both Donors jointly) can appoint further Trustees later on and the Donor may also dismiss a Trustee provided at least one Trustee, other than the Donor, remains.

The Trustees must act unanimously.

Unresolved disagreements may be referred to the courts, so it is important to choose your Trustees carefully.

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. Professional Trustees are permitted by the Trust Deed to charge normal professional fees. The Trustees are permitted to take part in transactions, and Trustees' decisions, in which they have a personal interest.

8 Tax implications of the Bare Gift Trust

In all cases, it is assumed that the Donor(s) and the Trustees are UK resident and domiciled – special rules apply where this is not so and appropriate professional advice should be sought. The following is an outline of the key provisions. Further detail on the taxation of trusts is available from your financial adviser.

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, and if further amounts are added to the Trust.

- Where there are two Donors, each is treated as making a gift of 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 fully used), it will be a potentially exempt transfer (PET). This means that, regardless of the amount of the transfer, no immediate tax liability will arise at the time of the transfer.

A tax liability on the gift could arise if the Donor dies within 7 years of making the transfer, but 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 Donor's available inheritance tax nil rate band at the date of death.

On the Donor's death within seven 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 value of the shares or units at the time of the gift. The inheritance tax implications will otherwise be as set out above.

Please also refer to "Further information" on page 5.

Additions to the Trust by the Donor(s)

- Any additional amount paid by the Donor(s) into a Bond or investment funds (e.g. under a monthly savings plan or amounts paid to top up the existing investments) 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 Donor's inheritance tax annual exemption, the amount of the gift treated as a PET will be equal to the amount by which the value of the investment is increased by the transfer.

Please also refer to "Further information" on page 5.

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 Bonds and/or investment funds) will be included in his or her estate. So, if there is more than one Beneficiary, the value included in the deceased's estate will be the value of his or her share.
- If, as will often be the case, 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 intestacy rules.

Please also refer to "Further information" on page 5.

Death of the Donor

- On the death of the Donor (or, where relevant, 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 (or a further gift) to the Trust is not covered by any available inheritance tax exemptions and the Donor dies within 7 years of making the gift. This is because the original PET becomes a chargeable transfer on the death of the Donor. Even then, as stated above, if the value of the original gift is within the available current inheritance tax nil rate band at the date of death, 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.

Under current legislation, no other inheritance tax charges will arise under the Bare Gift Trust. In particular there will be no periodic charges or charges when payments are made to the Beneficiary – such charges are only relevant to other types of trust called relevant property settlements. The Bare Gift Trust is not such a settlement.

Capital gains tax (CGT)

Creation of the Trust

When existing investment funds are transferred to the Bare Gift Trust, this will be a disposal for capital gains tax purposes and a liability to CGT may arise. Your financial adviser can give you further details on how this may apply to your particular circumstances.

There are no CGT implications if a Bond is transferred to the Trust, unless the transferor is not the original owner of the Bond and the Bond had been acquired for a monetary value.

Trust gains on investment funds

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 the 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 asset held by the Trustees is a Bond or investment fund.

Gains made under an Insurance 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.

9 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 trust are treated as 'potentially exempt transfers'. This means that they are usually only subject to Inheritance Tax if the Donor 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 transfer or within 7 years.

10 Further information

This guide should be read in conjunction with the literature available for the relevant Fidelity Adviser Solutions and Fidelity investment contracts to be held within the Bare Gift Trust.

Tax rates and allowances quoted are those for the tax year to 05 April 2024.

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