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 Discretionary Gift Trust

Fidelity Adviser Solutions Investor Guide

Fidelity INTERNATIONAL

Contents

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 Fidelity Adviser Solutions Discretionary 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 Discretionary 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 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 Discretionary 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 asset on behalf of the Beneficiaries under the Trust. The Beneficiaries under a trust will be entitled to enjoy the trust assets (once distributed from the trust) or, where the trust assets consist of certain investment funds, income from the investment. Under a Discretionary Trust, no Beneficiary is entitled to any benefit until the Trustees decide who, from the classes of Beneficiary specified in the Trust Deed, should benefit from the Trust assets, by how much and when.

The original investor who creates the Discretionary Gift Trust is called the Settlor and cannot benefit in any way from the investments held in the Trust.

There can be more than one Settlor – for example where a husband and wife or registered civil partners jointly create a trust.

If the Trustees make no appointments by the end of the Trust period then the individual or individuals named by the Settlor as Default Beneficiaries will benefit.

The main objectives of the Discretionary Gift Trust are to ensure that the investment is held for the benefit of the Beneficiaries outside of the (inheritance) taxable estate of the Settlor and to provide maximum flexibility as to who benefits, by how much and when.

Care should be taken if there is an intention for the Settlor's spouse, or registered civil partner, to be included as a Beneficiary, as this can affect the tax treatment of the Trust. Relevant professional advice should be sought before the Trust is established to ensure that the taxation implications are fully understood.

Once a Discretionary Gift Trust is established it may be difficult or costly to unwind so investors should be sure they understand the full consequences before proceeding. A Settlor may not benefit from the Trust under any circumstances.

2 Why should you use the Discretionary Gift Trust?

You should consider using the Discretionary 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 not certain who is to benefit from your gift, i.e. you wish to retain flexibility over which of your Beneficiaries will ultimately benefit from the trust fund, by how much and when.

3 When should the Discretionary Gift Trust not be used?

The Discretionary 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 to a specific Beneficiary absolutely.

4 How is the Discretionary Gift Trust established?

The Discretionary 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 Settlor, and his or her chosen additional Trustees, completing the Discretionary Gift Trust deed and then passing the selected assets into the Trust.

When the asset is cash available for investment, the Settlor would normally provide the Trustees with a cheque made payable to the investment company with whom they intend to make the investment, e.g. Fidelity.

If the intended investment is a Bond, the Trustees will make an application for the policy on the joint or multiple lives of some of the Beneficiaries and/or Settlor(s). Alternatively, the investor 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 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 Settlor assigns the beneficial title to the Trustees (the legal ownership of the shares or units continues 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 Settlor 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 in to the names of Trustees.

The draft Discretionary Gift Trust deed provides for a maximum of 4 Trustees (including the Settlor(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 Discretionary Gift Trust

- During the Trust period (125 years) the Trustees may pass the Trust benefits (capital or income) to any of the Discretionary Beneficiaries. These Beneficiaries include the Settlor's widow/er or surviving registered civil partner, children and grandchildren, brothers and sisters, and their issue, as well as any person nominated by the Settlor(s) to the Trustees in writing.
- The Settlor can choose whether to include his or her spouse amongst the Beneficiaries. The term "spouse" in the Trust Deed and other guides includes a registered civil partner.

*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.

- As the Trust is a Discretionary Trust, no Beneficiary is entitled to receive any benefit from the Trust until the Trustees make an appointment in his or her favour. If any income arises to the Trustees from the Trust investments (not relevant while the sole trust asset is a non-income producing asset such as a Bond), they can distribute it to, or for the benefit of, any of the Beneficiaries. If they choose not to, they can accumulate the income within the Trust Fund. The Trustees may need to consider opening a trust bank account if investment income is received.
- The Settlor(s) cannot benefit from the Trust in any circumstances.
- The Settlor(s) names (as Default Beneficiaries) the individual or individuals who are to benefit from the Trust Fund at the end of the 125 year trust period (if no appointment is made before then), and, if more than one, the shares in which they are to benefit. 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%.
- The Trustees have wide powers to invest including reinvestment in other assets and generally dealing with the trust property.

6 The law of the Trust

The Trust is governed by the law of England.

7 The Trustees

The Settlor (or each of them in the case of joint Settlors) is automatically one of the Original Trustees. At least one additional Trustee should be appointed at outset. The additional Trustee(s) executes the trust deed with the Settlor(s).

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

The Settlor (both Settlors jointly) can appoint further Trustees later on and the Settlor may also dismiss a Trustee, provided at least one Trustee, other than the Settlor or Settlor's spouse, remains.

The Trustees must act unanimously. Unresolved disagreements may be referred to the courts so it is important to choose your Trustees carefully.

No more than 4 Trustees (including the Settlor(s)) should be appointed at outset.

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 The tax implications of the Fidelity Adviser Solutions Discretionary Gift Trust

In all cases, it is assumed that the Settlor and the Trustees are UK resident – 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 (IHT)

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 Settlors, each is treated as making a gift in proportion to the amounts actually transferred.
- 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.
- 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 be as otherwise set out above.
- If the amount of the transfer exceeds the Settlor's available inheritance tax annual exemption, currently £3,000 for each Settlor (£6,000 maximum for each Settlor if the annual exemption for the previous tax year has not been fully used), it will be a chargeable lifetime transfer. This means that a potential liability to inheritance tax at 20% may immediately arise if the value of the gift plus the value of all other chargeable lifetime transfers made by the Settlor in the previous seven years exceeds the inheritance tax nil rate band at the time. A further tax liability could arise if the Settlor dies within seven years of making the transfer.

Additions to the Trust by the Settlor

- Any additional premium paid by the Settlor into a Bond, or any additional amount paid to a investment fund held by the Trust will be a further gift and the tax implications will be as described above for the initial gift.
- Additional investments into the Trust can also have an impact on the periodic and exit charges to inheritance tax (see below).

Death of a Beneficiary

- As no Beneficiary is actually entitled to receive any benefits until the Trustees make an appointment, the death of a Beneficiary has no inheritance tax implications for this Trust.

Death of the Settlor

- On the death of the Settlor (or, where appropriate, either of the Settlors) the value of the trust investments will be outside of the Settlor's estate for inheritance tax purposes. There may however be further inheritance tax consequences on death within 7 years as mentioned above.

Inheritance tax whilst the Trust is in existence

As this is a discretionary trust, special inheritance tax charging rules apply. Under these rules there may be inheritance tax charges:

- On every ten-year anniversary of the Trust – "the Periodic Charge"; and
- Whenever property leaves the Trust (e.g. when capital is advanced to a Beneficiary) – "the Exit Charge".

The Periodic Charge

Periodic charges to inheritance tax may be applied at ten-yearly intervals to the value of the assets in the Trust. Further details are available from your financial adviser.

The Exit Charge

Exit charges may be applied on the value of property leaving the Trust. Further details are available from your financial adviser.

If there are joint Settlors, the Trust is effectively treated as two separate trusts, each settled by one Settlor, for all inheritance tax purposes.

Capital Gains Tax

Creation of the Trust

When existing investment funds are transferred to the Trust, this will be a disposal for CGT purposes. The gain will be calculated in the usual way and, subject to the Settlor's available CGT annual exemption, taxed at the tax rate applicable to individuals for taxation on capital gains.

However, as the transfer to a discretionary trust is also a chargeable transfer for inheritance tax purposes, any chargeable gain can be held-over, i.e. deferred until a subsequent disposal by the Trustees. Hold-over relief is not available if the Settlor's spouse, registered civil partner and/or dependent children can benefit from the Trust. The rules for Hold-over Relief can be complicated and individual advice should be sought relevant to the 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 capital gains

- Tax on capital gains (CGT) is assessed on the Trustees. Trustees have their own annual exemption (normally equal to one half of the personal exemption but reduced in cases where the settlor has created more than one trust), after which they pay CGT at the rates applicable to trust.
- Hold-over Relief may be available to allow the Trustees to transfer assets to beneficiaries – or other Trustees in certain circumstances – without paying Capital Gains Tax. The recipient usually pays the tax when they sell or transfer the asset. The rules for Hold-over Relief can be complicated and individual advice should be sought relevant to the circumstances.

Income tax

The income tax implications depend on whether the asset held by the Trustees is a Bond (see (a) below) or investment funds (see (b) below).

Chargeable event gains under a Bond

- **During the Settlor's lifetime, or in the tax year in which the Settlor's death occurs**

  For income tax purposes, any chargeable event gains arising under the Bond will be assessed on the Settlor provided the Settlor is, or was, UK tax resident during the tax year. If there are joint Settlors, each will be assessed on the gain in proportion to the amounts he or she actually transferred into the Trust.

  If the Settlor becomes non-UK resident, any chargeable gains arising in a tax year after that in which the Settlor moved abroad will be assessed on the UK resident Trustees at the rate of tax for trusts. If there are no UK-resident Trustees special rules apply to tax UK ordinarily resident Beneficiaries when they receive benefits from the Trust – specialist advice should be sought if this applies.

- **After the end of the tax year in which the Settlor's death occurs**

  Following the Settlor's death, any chargeable event gains arising in a tax year after that in which the Settlor died will be assessed on UK resident Trustees at rate of tax for trusts.

  If the Trustees are not UK resident there are special rules to tax UK Beneficiaries when they receive benefits – specialist advice should be sought if this applies.

  Please refer to your financial adviser for further details on the taxation of Bonds.

Income arising to the Trustees from investments in investment funds

If the spouse of the Settlor is **excluded** from benefit under the Trust, then for income tax purposes, the Trustees are are assessed to income tax on any trust income at the relevant rate applicable to trusts according to the type of income

Where income is to be distributed to a Beneficiary, the Trustees must first have paid the relevant income tax on it.

The Beneficiary will be taxed on the income received from the Trust, grossed up to take account of any tax credit in respect of tax paid by the Trustees. Where the Beneficiary pays a rate of tax lower than the rate of tax for the Trustees, a tax reclaim of any overpaid tax may be made.

If the Beneficiaries include minor, unmarried children of the Settlor, who are not in a registered civil partnership, and any income actually paid to such a child, or for his or her benefit, it will be assessed on the Settlor for income tax purposes if this income, and income from all other gifts the Settlor has made to, or for the benefit of, that child exceeds £100 gross in a tax year. The £100 pa gross limit applies per Settlor per child per tax year.

The spouse of the Settlor is included as a Discretionary Beneficiary

If the spouse of the Settlor is **included** as a Discretionary Beneficiary, all trust income will be treated as income of the Settlor, and assessed to income tax accordingly. However, the Trustees will still be liable at the trust rates. If the Settlor pays a rate of tax lower than the rate of tax for the Trustees he or she can reclaim the excess tax paid by the Trustees. However, the Settlor must pay to the trustees any tax repayment obtained.

9 Notifying HMRC about a discretionary 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

HMRC Inheritance Tax – does not automatically need to know when a new trust is set up, but they do need to know when a trust incurs an Inheritance Tax charge or if the initial transfer in or periodic valuations or exit amounts exceeds certain limits. There are differing rules dependent upon the type of asset being transferred and reference should be made to the guidance notes issued by HMRC.

10 Further information

This guide should be read in conjunction with the literature available for the relevant investment contracts to be held within the Discretionary Gift Trust.

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

ADV_TR_147 [WF:1992934]