AUDIT • TAX • ADVISORY

FAQs:

Using Trusts in Tax & Financial Planning

Trusts offer a way to protect your assets, such as property, cash or investments, and facilitate the transfer of assets to your nominated beneficiaries.

1

What is the impact of PETS becoming chargeable due to death within 7 years for Discretionary Trusts?

If a Discretionary Trust was created after a PET which fails due to a death within seven years, the tax implications are:

a. On the recalculation of the chargeable lifetime transfer IHT liability at 40% on death, the Nil Rate Band available to the trust will be reduced by the Failed PETs made before the trust was created and within seven years of the death, and CLTs in the seven years before the trust was established.

b. On Exits and ten-year charges going forward, the Trust's Nil Rate Band will be restricted by the value of the Failed PET.

2

Can I have a joint tenancy on property with my children?

Yes, however please seek legal advice especially in the case of minors.

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3

Are there any Stamp Duty Land Tax implications on transferring property into a discretionary trust, or on subsequent exit?

Generally there should only be a stamp duty charge if consideration is provided for the transfer. That would not normally be the case when property is settled onto a discretionary trust. Note however, that the assumption of a liability (e.g.: Mortgage debt) would amount to chargeable consideration for SDLT.

4

If a non-dom and non-resident individual create a UK trust, would the lifetime charge apply to amounts above NRB of £325k?

Only if the settlement comprises non excluded property i.e.: UK situated property. We will be pleased to advise you about the planning opportunities for non-domiciles.

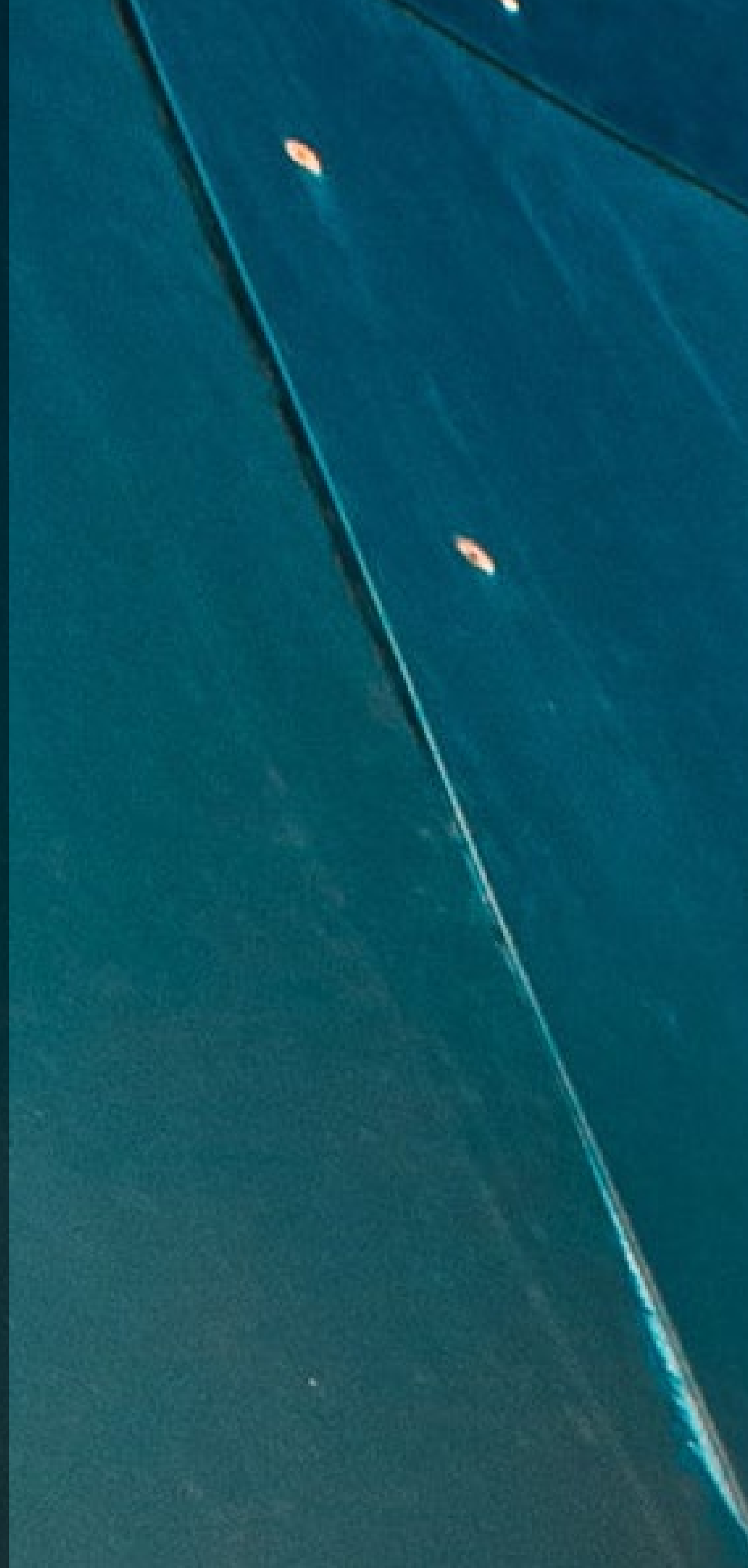
5

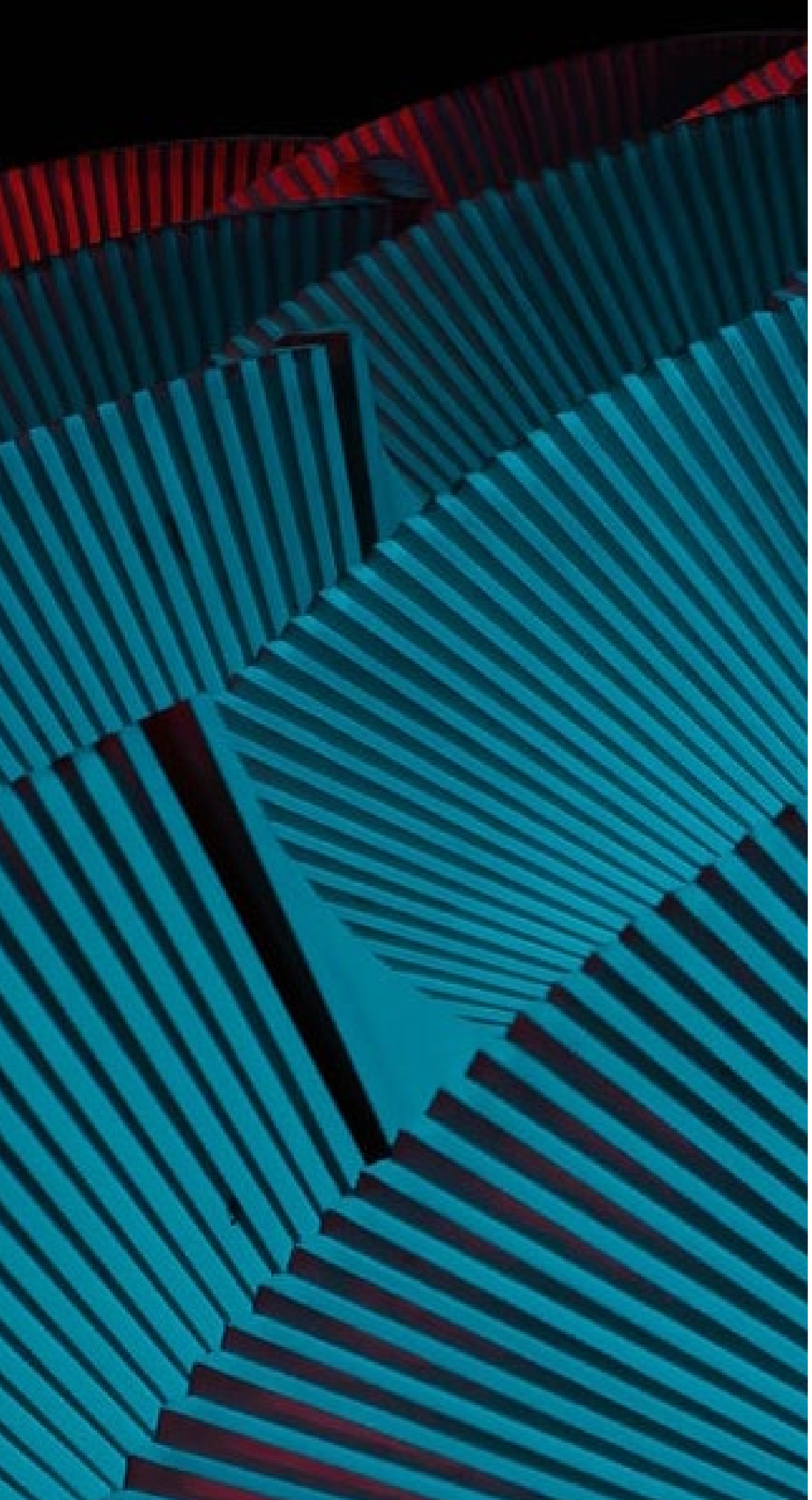
How can assets that are passed to children be protected from a subsequent marriage split in their lives?

If the assets have already passed to the children they would need legal advice and possibly a pre or post nuptial agreement to protect assets from a marriage split.

Trusts can be used to protect assets from these issues and is one of the non-tax reasons that trusts are often used instead of outright gifts, but there are tax and other implications to consider.

Whilst we believe a separating non-beneficiary spouse would not normally have a claim to the trust assets on divorce, we understand that in some circumstances the courts may take into account the trust assets and income when assessing the needs and assets of the beneficiary, to determine a divorce settlement. Legal advice should be taken.





6

If dividends are mandated, are there trust tax implications?

If dividends are mandated to the life tenant, the trust will not receive the income and therefore will not be liable for the income tax on the dividends.

7

Regarding income tax planning in lifetime, has the placing of shares into a trust recently been subject to a HMRC Spotlight anti-avoidance?

HMRC recently highlighted that where implemented incorrectly, the settlements legislation will apply. This has always been the case.

8

Does a tax liability arise on a beneficiary withdrawing funds from a bare trust e.g.: on unrealised property gains?

No, under a bare trust the beneficiary is absolutely entitled to the assets and income. The assets are treated as their own for tax purposes. There may be on sale of assets.

9

How can funds be used for school fees when schools want the parents to contract to pay fees?

This can vary from case to case. Please contact us for your individual circumstances.

10

Does the 6% charge apply to a discretionary trust established in 1990 with no further additions?

This is correct. For specific guidance for your circumstances, please contact us.

11

If an estate has been registered for self-assessment, does it also need to be registered as a bare trust on the trust register after 2 years following the death?

Possibly, depending on the wording of the Will.

12

Do the Whole of Life policy premiums have to be treated as gifts?

The life insurance premiums paid by the life assured will be treated as gifts for IHT purposes, but the gifts will be exempt if they form part of the life assured's normal expenditure out of income, or if they fall within the annual exemption which applies to gifts of capital.

13

If gifting a holiday home, could the property be settled onto a Lifetime Discretionary Trust to mitigate inheritance tax liability?

Yes, however the settlor should be excluded and therefore would need to pay a market rate rent for occupation.

14

If not all aim shares qualify, how is it determined which ones do qualify?

Not all AIM companies are eligible for BPR however, to qualify, a company must be a trading company carrying out the majority of its business in the UK. Businesses trading in land or securities or receiving a substantial amount of income from letting property or land, are excluded.

15

Regarding Discounted Gift Trusts, can an existing offshore bond be assigned to a trust with retention of the 5% annual withdrawals and achieve the same discount?

It is not possible to convert an existing offshore bond into a discounted gift trust arrangement.

This trust is underwritten and needs to be instigated at implementation at the time of the original nvestment into an offshore bond.

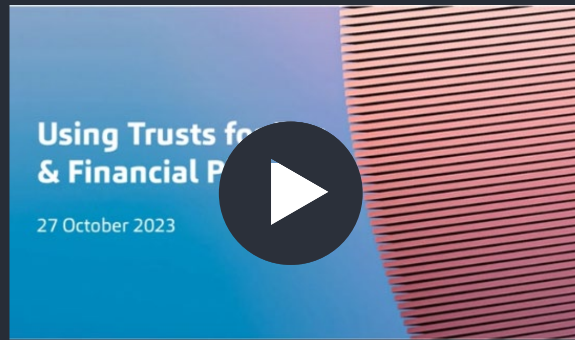
Contact us

James Kipping
Tax Partner, MHA

Katriona McEwan
Tax Director, MHA

David Hume
Independent Financial Adviser,
MHA Caves Wealth

Watch now: Using Trusts for Tax & Financial Planning



For more guidance on this topic, please watch our webinar to learn how Trusts can be used to maintain control of your assets, the tax benefits, and the scenarios where different types of Trusts should be used.

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