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Important
information
about trusts

This document shares the answers to common questions about existing trusts.

You don't usually have to send existing trust documentation, Wills or Deeds of Variation to an insurance provider for analysis, but you may need to provide it if trustees of an existing trust are applying for a product.

The main points covered are:

1. Trustee duties and investment considerations.
2. What type of trust is it?
3. Can trustees invest in a bond?
4. Who is assessed for the tax on a chargeable event gain on a bond in trust?
5. How can a trust be brought to an end?



Trustee duties and investment considerations

Trustee duties

Trustees have certain common law and statutory duties to perform in relation to the management, administration and tax reporting of the trust.

Our [Tech Matters site](#) covers these duties.

Investment considerations

Trustees almost certainly have the power to invest in a bond.

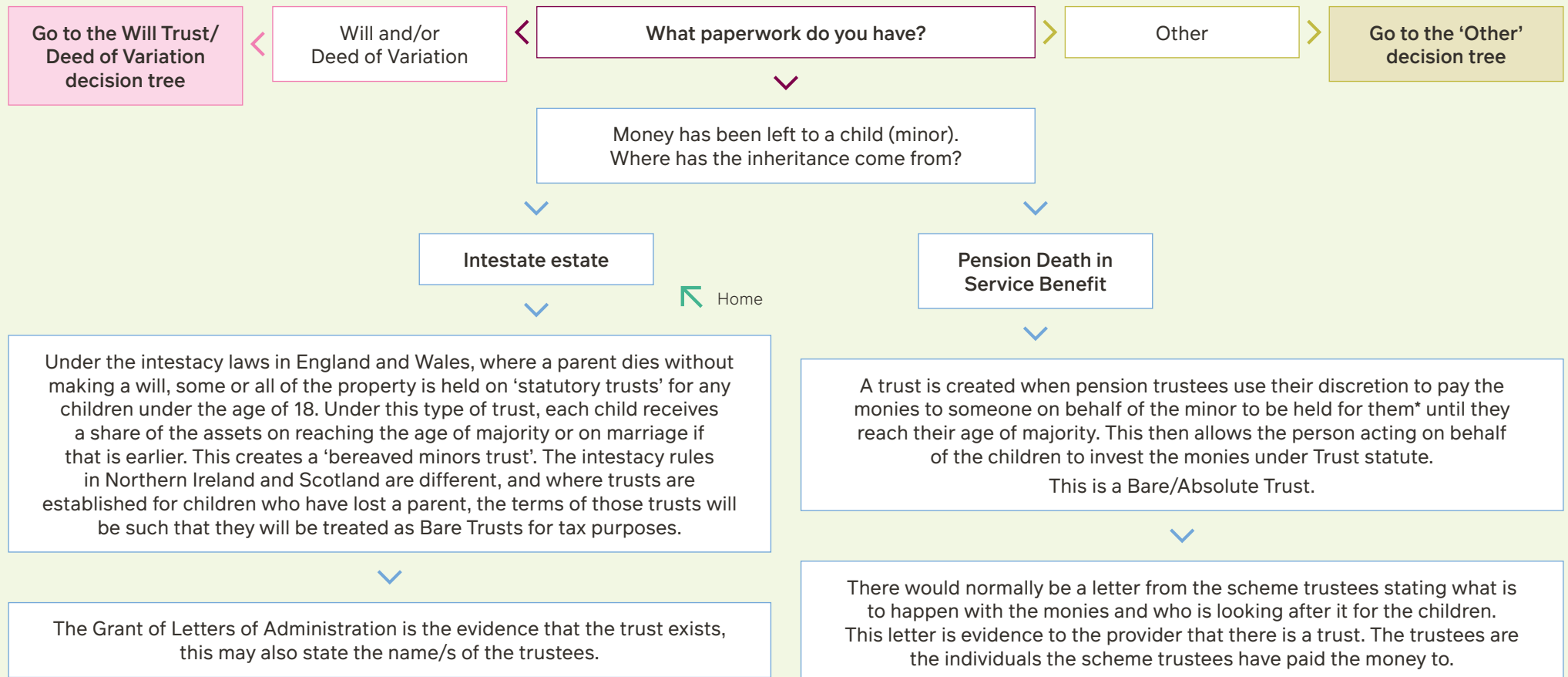
Under the Trustee Act 2000 (and the Scottish and Northern Irish counterparts), trustees have wide powers of investment. So unless the trust deed/instrument restricts the type of investment the trustees can choose, they will be able to buy any type of asset.

The trustees do have to make sure that the investment chosen is appropriate.

Our [Tech Matters site](#) covers the things to consider.

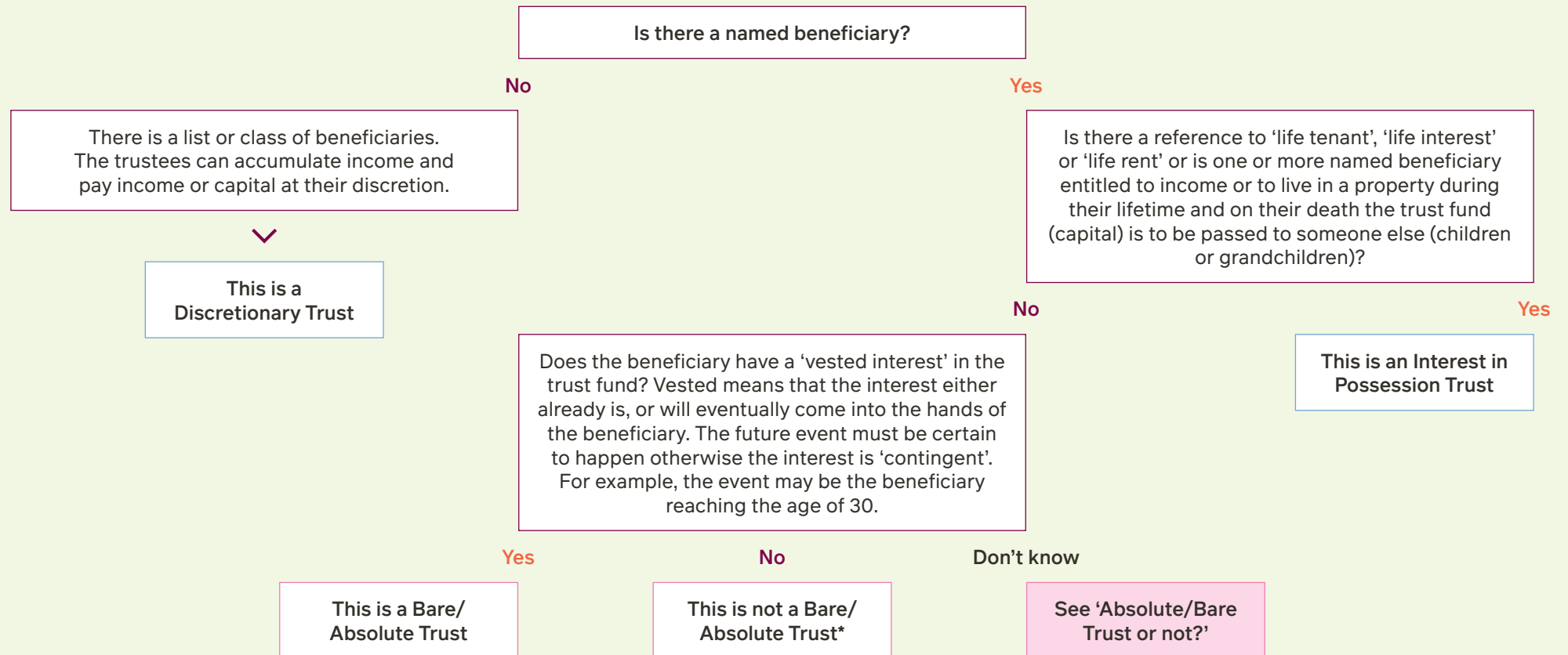
We've also created some decision trees to help determine the needs of the beneficiaries, and if a bond is suitable. **Can trustees buy a bond?**

What type of trust is it?



* If the scheme trustees opt to pay directly to the children, the monies are then limited to assets that the children themselves could invest in, such as a bank account or a Junior ISA. In our opinion, there is no trust in this instance as the money has been paid out directly to the beneficiaries without establishing trustees.

Will Trust/Deed of Variation



* See 'Other Types of Trust' for further information.

Absolute/Bare Trust or not?

We take our guidance on this from HMRC's Trusts, Settlements and Estates Manual (TSEM1563) and the information below is based on this.

An absolute or Bare Trust is one in which each beneficiary has an **immediate and absolute right to both capital and income**.

It is up to the trustees to establish whether a trust is bare. If the trustees have access to legal advice they should ask their legal adviser whether the trust funds have 'indefeasibly vested' in the beneficiaries. If they have then the trust will be a 'Bare Trust'.

In other circumstances the trustees will need to consider carefully the terms of the trust that they are administering. Does the trust

- impose conditions that must be fulfilled before the beneficiaries become entitled to the trust funds, or
- does it merely defer payment until the beneficiary reaches a particular age?

Example 1 – Bare Trust

Mrs A left the residue of her estate to such of her grandchildren as were alive at the date of her death.

She directed that the funds should not be paid to the grandchildren until they respectively attain age 21 years.

All of the grandchildren who were alive when Mrs A died are entitled to an equal share in the residue of the estate. There are no other conditions that they must fulfil before they become entitled. The direction about payment does not affect this basic position. The beneficiaries have a vested interest and the trust is a Bare Trust.

The income ought to be returned as the children's own income and not that of the trustees.

Example 2 – Bare Trust

The trustees of a pension scheme decide under their discretionary powers to grant the sum of £20,000 to the child of a deceased member of the pension scheme. Because the child is only nine years old they decide to appoint trustees to administer the fund and protect the child's interests until she attains age 18 years. The terms of the appointment from the pension scheme were in favour of the child absolutely. This is a Bare Trust.

The income ought to be returned as the child's own income and not that of the trustees.

Example 3 – not a Bare Trust

Mr B left the residue of his estate to 'such of my grandchildren as survive me and attain age 21 years'. If any grandchild dies before age 21, his/her prospective share goes to the other grandchildren who do attain that age.

Here there are two conditions to be met before the grandchildren become entitled to their shares in the estate:

- they must survive Mr B; and
- they must attain age 21 years.

Here the grandchildren did not take immediate vested interests at the death of the testator. This is not a Bare Trust.

The trustees must make a tax return.

Other types of trust

Trust for Bereaved Minor

A 'bereaved minor' is a person who is under 18 years of age and at least one of their parents (or step-parents) has died.

This type of trust is created under the law in England and Wales, if property is held on trust for the bereaved minor through:

intestacy

OR

the will of a deceased parent. To qualify, the bereaved minor must become absolutely entitled to the trust property at age 18.

Personal Injury Trust

This is likely to be a Bare Trust, however, check the wording in case there is some discretion.

Vulnerable Person's Trust

This could be bare/absolute, discretionary or interest in possession. Follow the decision tree for Will Trust/Deed of Variation to determine if absolute or not.

Other provider's trust

Check the trust documentation and follow the decision tree for Will Trust/Deed of Variation to see if you can determine the type.

Don't know

Take professional advice.

18-25 Trust

An 18-25 Trust is where property is held on trust for the benefit of a person who has not yet attained the age of 25 and at least one of their parents (or step parents) has died.

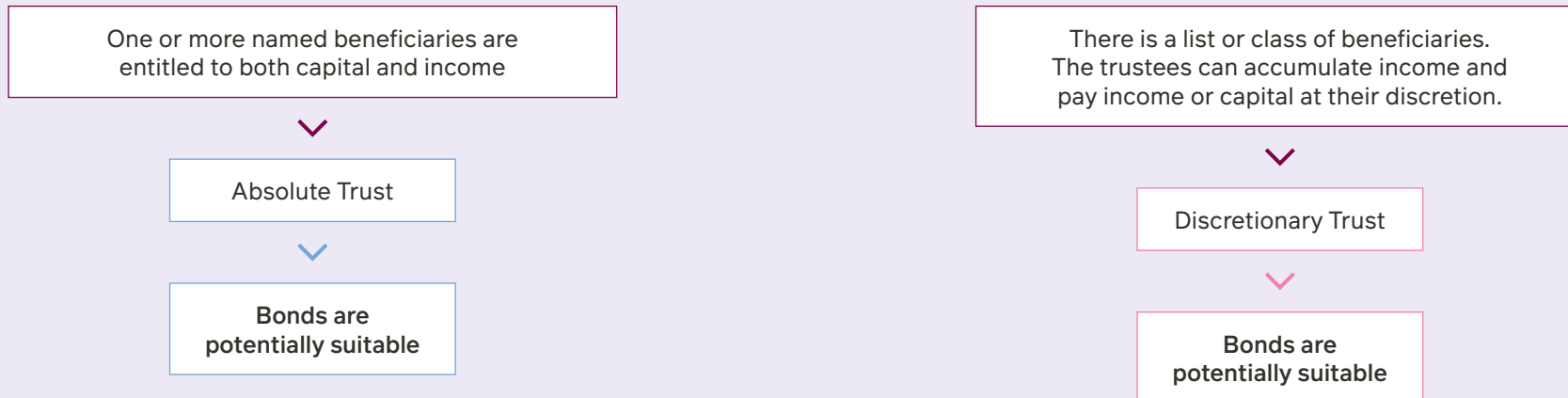
This type of trust is established from the Will of a deceased parent (or step parent).

To qualify, the beneficiary must become absolutely entitled to the trust property at age 25 at the latest.

A trust cannot be an 18-25 trust if it falls within the definition of a Trust for Bereaved Minor.

* See 'Other Types of Trust' for further information.

Can trustees invest in a bond?



Interest in Possession Trust

It is up to the trustees to establish whether a trust is bare. If the trustees have access to legal advice they should ask their legal adviser whether the trust funds have 'indefeasibly vested' in the beneficiaries. If they have then the trust will be a 'Bare Trust'.

There will be someone entitled to income (IIP beneficiary) but does the trust also state that this beneficiary is entitled to capital that may be paid to that beneficiary? (check for an 'Advancement of Capital' clause)?

Yes

As the trustees can advance capital to the IIP beneficiary, a bond may be suitable.

No

Is the IIP beneficiary sufficiently provided for elsewhere within the trust fund? For example, living in a property owned by the trust or is receiving income from other investments.

Yes

The trustees may choose to diversify the trust fund and investing in a mixture of assets to suit the needs of all beneficiaries. A bond may be suitable.

No

A bond may not be suitable. The trustees should think about investing in 'income-producing' assets* to meet the needs of the IIP beneficiary.

* Such as collectives, shares, unit trusts and OEICs.

Who is assessed for the tax on a chargeable event gain on a bond in trust?

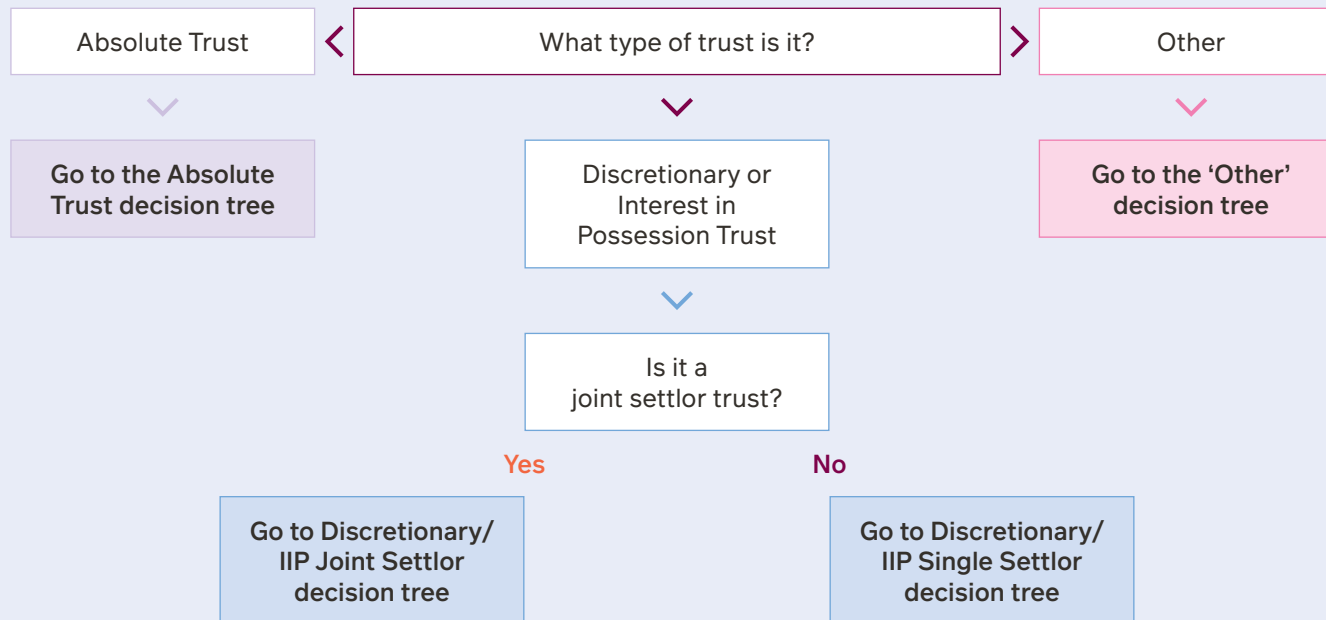
This section covers who is assessed for income tax when a chargeable event gain arises on a bond in trust.

The assessment for tax depends on various factors, such as:

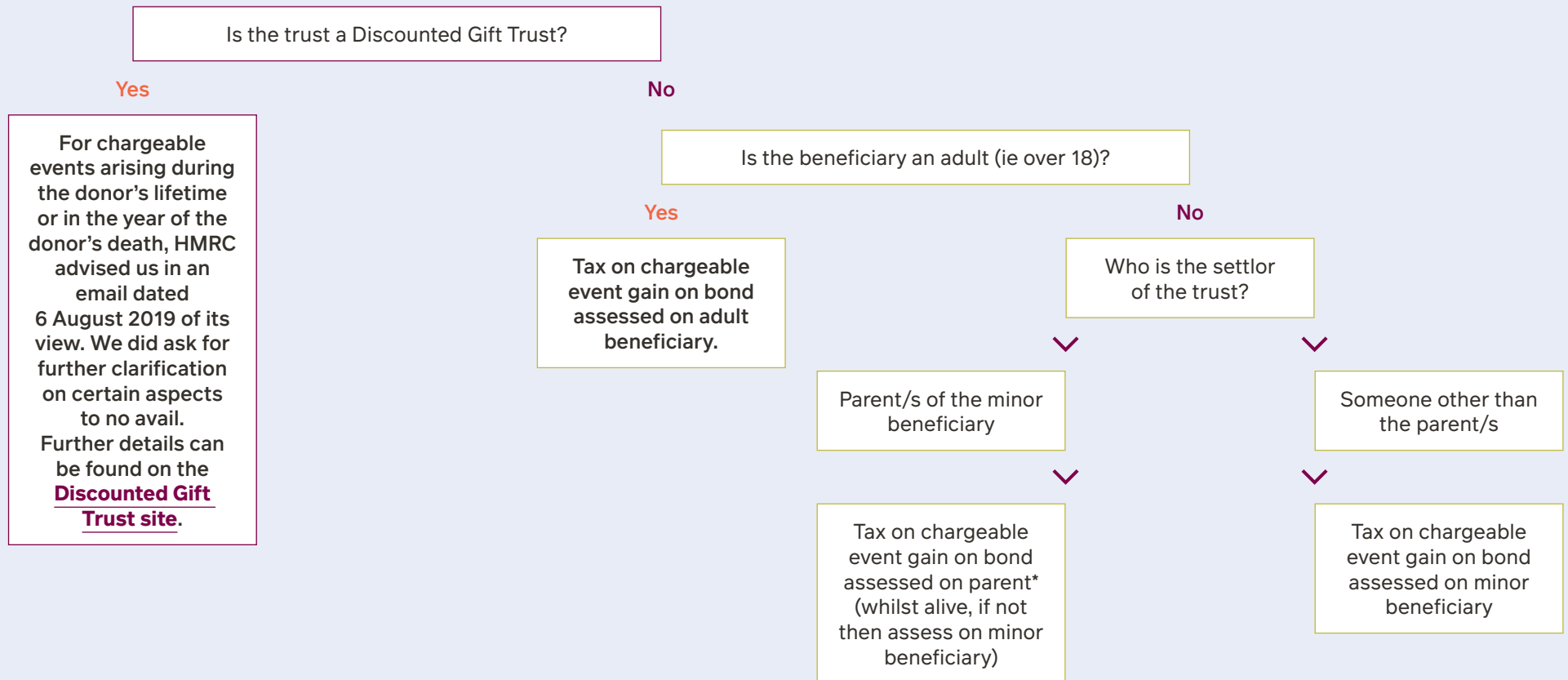
- the type of trust (absolute, discretionary, interest in possession or other)
- the type of chargeable event (was it due to a death claim or an encashment/surrender)
- if it is a joint or single settlor trust
- if the settlor is alive (or both alive, if joint)
- if the settlor/s resides in the UK
- if not, is the trust UK resident – see our [Tech Matters page](#).

If you do not have all the information then it is not possible to determine who is liable.

Who is assessed for tax?

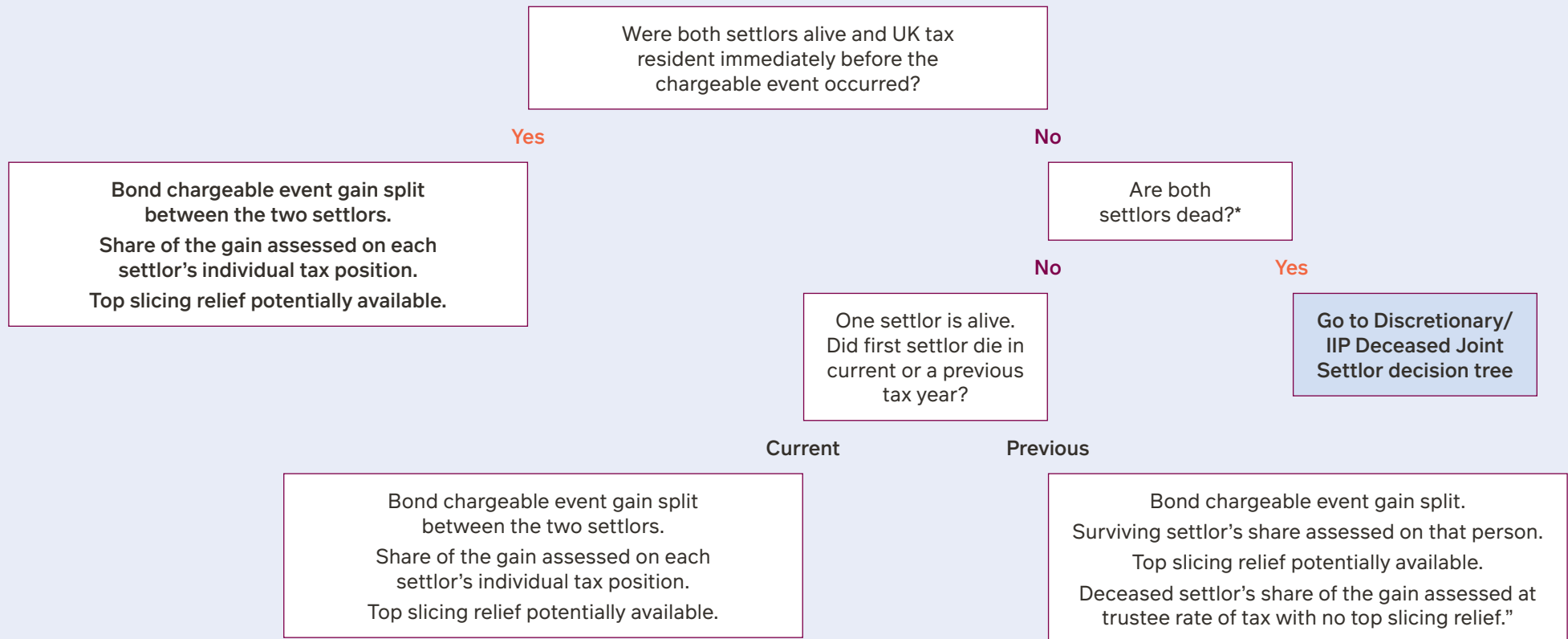


Absolute Trust decision tree



* Where total chargeable event gains plus all other income of a child from settlements by that parent exceed £100 in any tax year.

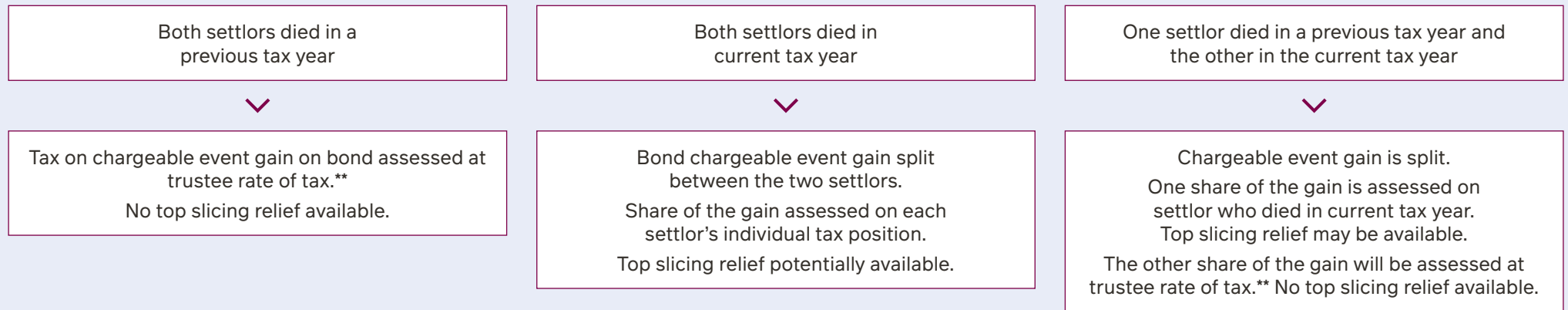
Discretionary/IIP Joint Settlor decision tree



* Apply the same logic as death for settlors who become non-UK resident for income tax purposes.

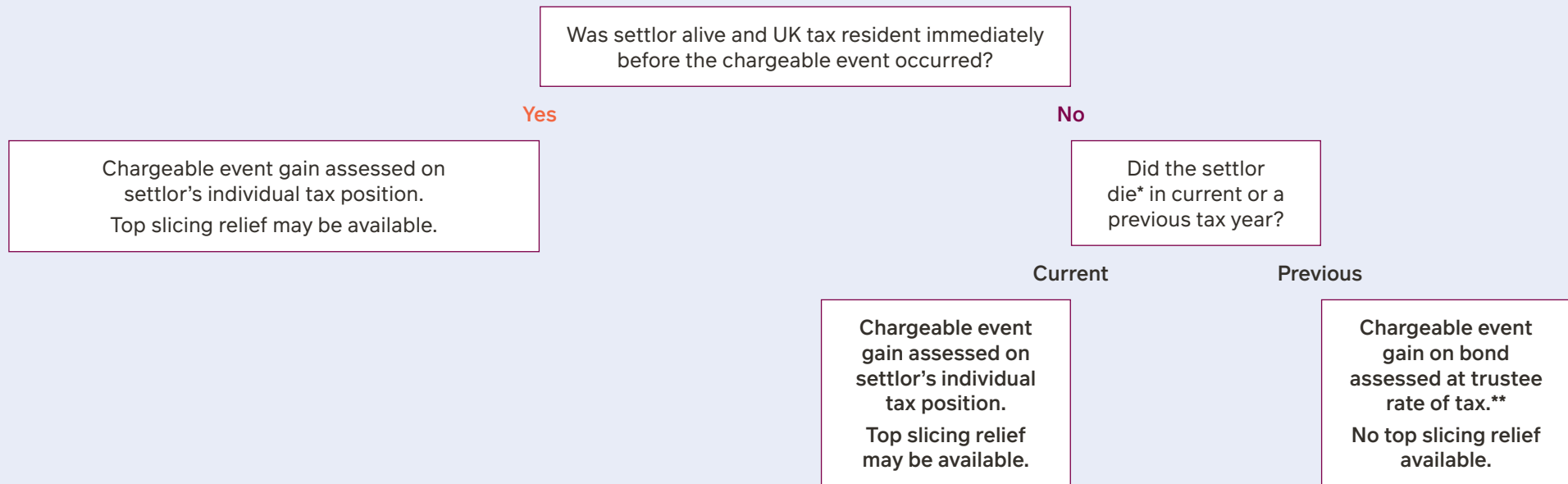
** The trustee rate of tax applicable to bond gains is 45%. Onshore bond gains come with a 20% tax credit so trustees have a further 25% liability.

Discretionary/IIP Deceased Joint Settlor decision tree



** The trustee rate of tax applicable to bond gains is 45%. Onshore bond gains come with a 20% tax credit so trustees have a further 25% liability.

Discretionary/IIP Single Settlor decision tree



* Apply the same logic to death for settlors becoming non-UK resident for income tax purposes.

** The trustee rate of tax applicable to bond gains is 45%. Onshore bond gains come with a 20% tax credit so trustees have a further 25% liability.

Other

Personal Injury Trust



Go to our Tech Matters page to find out about [Personal Injury Trust](#)

Personal Injury Trust



Go to our Tech Matters page to find out about [Trusts for Disabled Persons](#)

18-25 Trust



The income and gains will be taxed at the trust rate until the beneficiary attains vested interest. After this, it is assessed on the beneficiary.

18-25 Trust



Bereaved Minor's Trust – this is not a Bare Trust as the child is only absolutely entitled on reaching age 18. The income and gains will be taxed at the trust rate until the child becomes absolutely entitled. After this, it is assessed on the beneficiary.

A vulnerable person's election may be made. If it is then the income tax which is payable by the trustees is based on the amount which would have been payable if the income had accrued directly to the beneficiary (similar rules apply for CGT).

How is a trust brought to an end?

Can the settlor have their money back out of a trust?

In general, the answer to this will be no. Most trusts are irrevocable, which means that they are not able to be reversed and entering into a trust arrangement, is an irrevocable step. Trustees have obligations and a duty of care to the beneficiaries and they have a duty to act within the terms of the trust.

Most IHT effective trusts exclude the settlor as a beneficiary, although the settlor could have specific rights, depending on the type of trust, such as Loan Trust or Discounted Gift Trust. The trustees need to take those into account along with the needs of the beneficiaries.

It is important to note that the 'carve out' of settlor's rights is all that the settlor is entitled to. The terms of the trust do not allow the trustees to appoint benefits outside of these rights, to the settlor.

For a Loan Trust the settlor is not a beneficiary but is entitled to repayment of her or his loan.

So, if the settlor has not carved out any rights for themselves and they are excluded from the beneficiary class, then the trustees cannot appoint any benefits to them under the terms of the trust. If they do, they could be leaving themselves open to legal action for breach of trust and the settlor would be subject to the Gift with Reservation rules.

Guidelines about how a trust can be brought to an end and requests for the settlor to have their money back out of a trust.

The only way to end a trust is to distribute all of the trust assets to the beneficiaries. Once this is done, the purpose of the trust will have been served and the trust comes to a natural end.

Trust assets can be distributed by:

- Trustees encashing the bond and giving the beneficiaries the cash, or
- assigning the bond, or segments of it, to adult beneficiaries.

Assignments are normally done by Deed of Assignment to Beneficiaries. The trustees complete the form as assignor/s and the beneficiary completes as assignee.



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