

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 buy 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 Technical Centre page [here](#) 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.

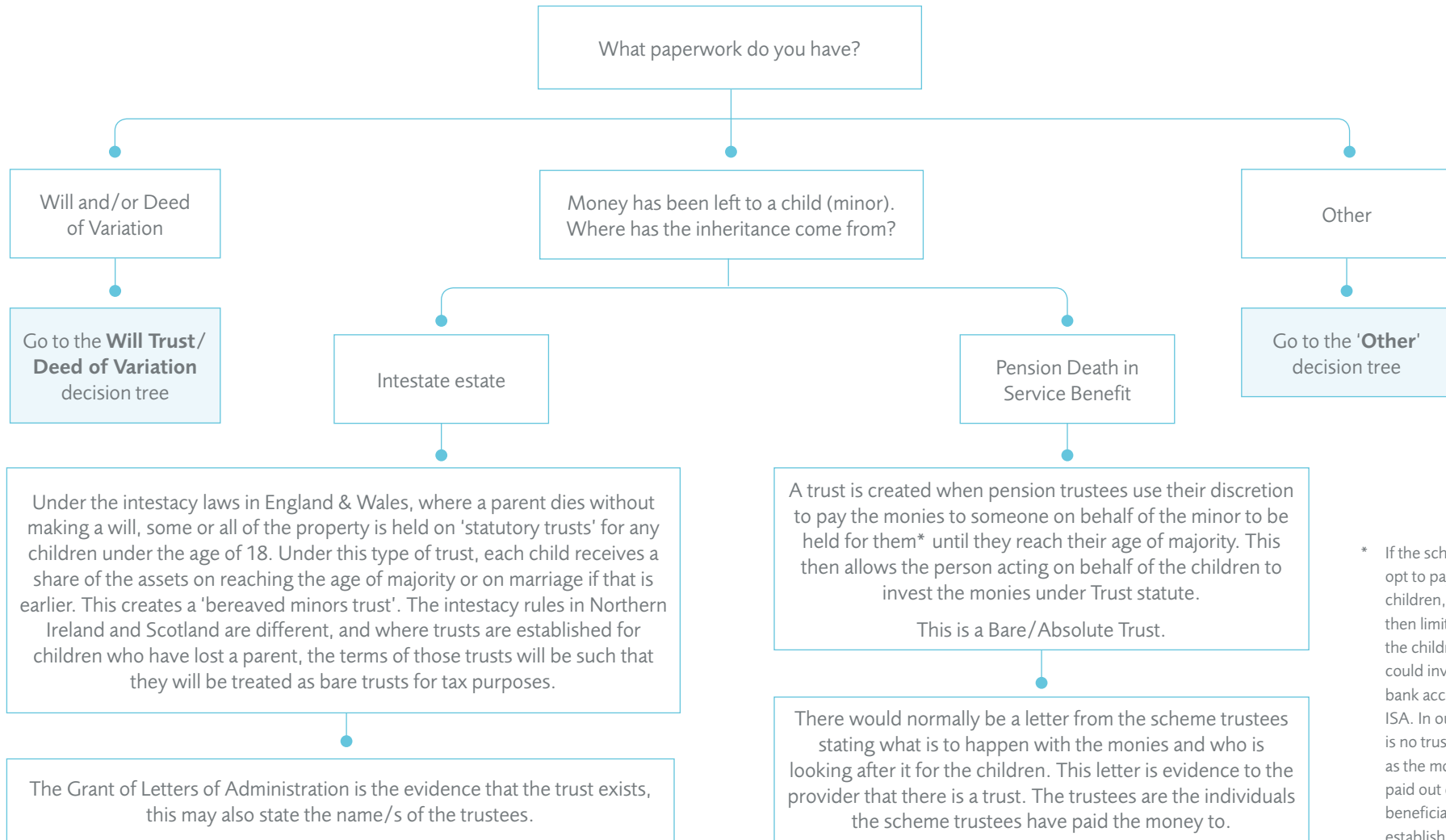
Our Technical Centre page [here](#) covers the things to consider.

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?**

You can find more information in our WebEx **Investment Considerations for Trustees**.

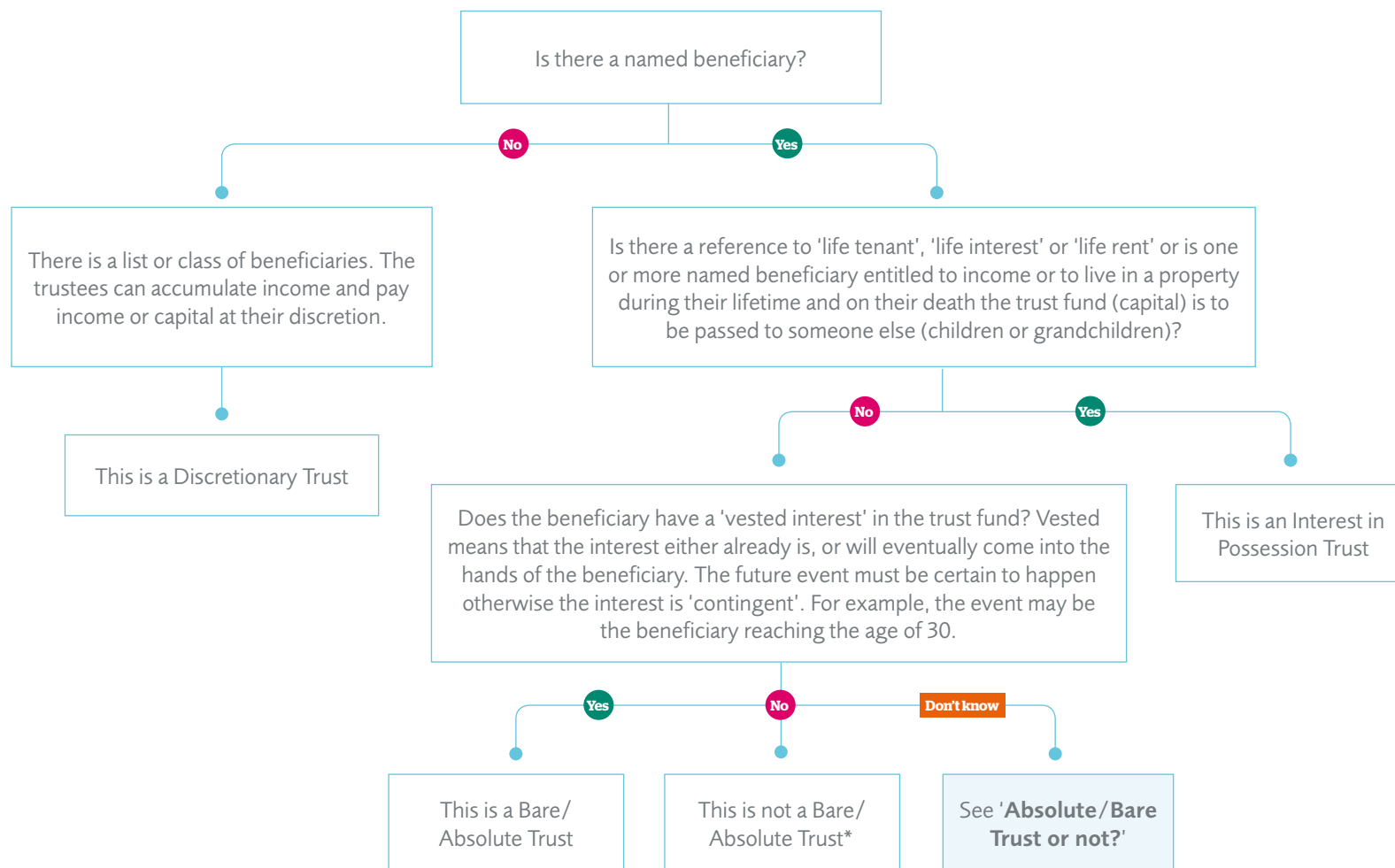


What type of trust is it?



* 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 HMRCs 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 9 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.

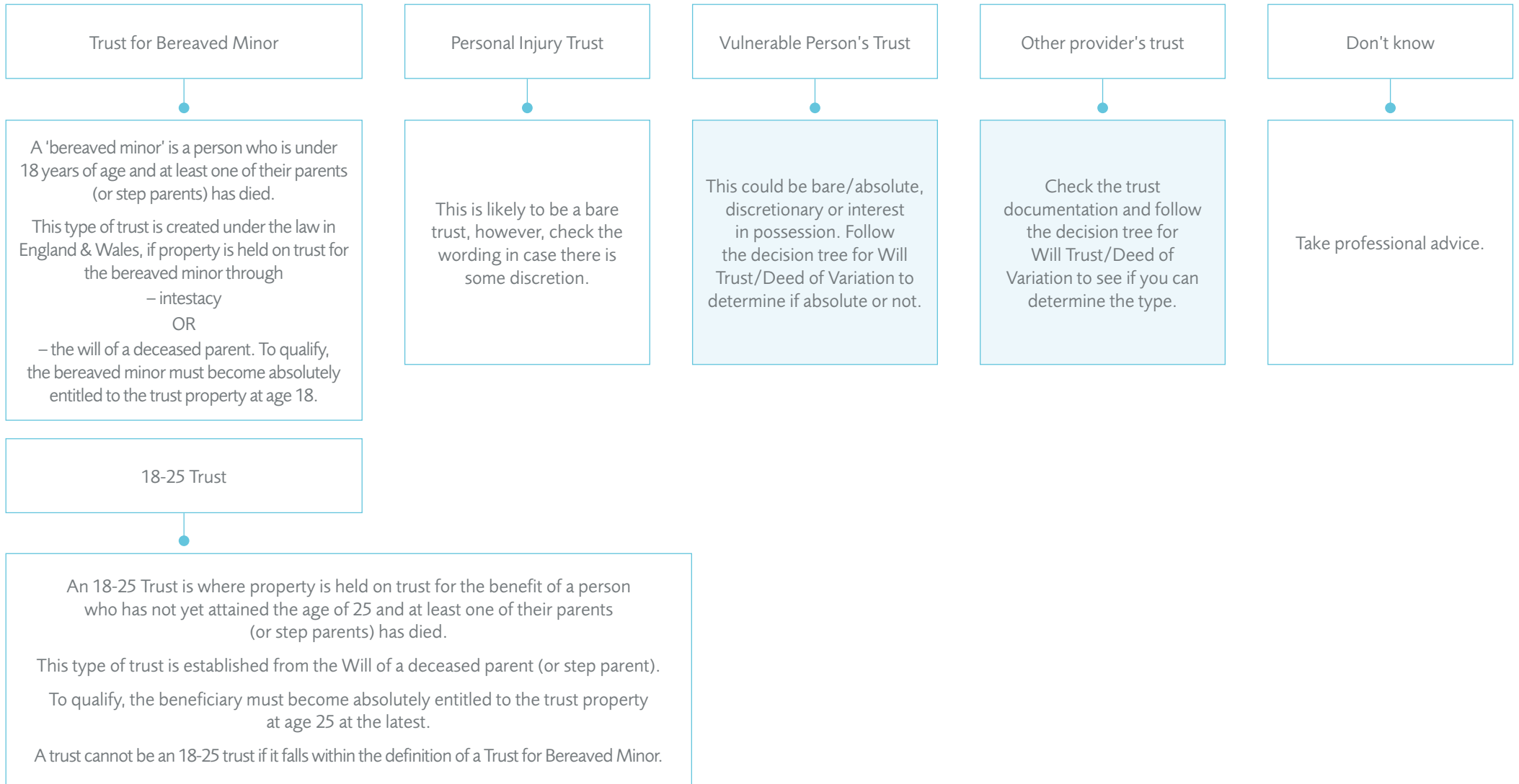
Here there are two conditions to be met before the grandchildren become entitled to their shares in the estate:-

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

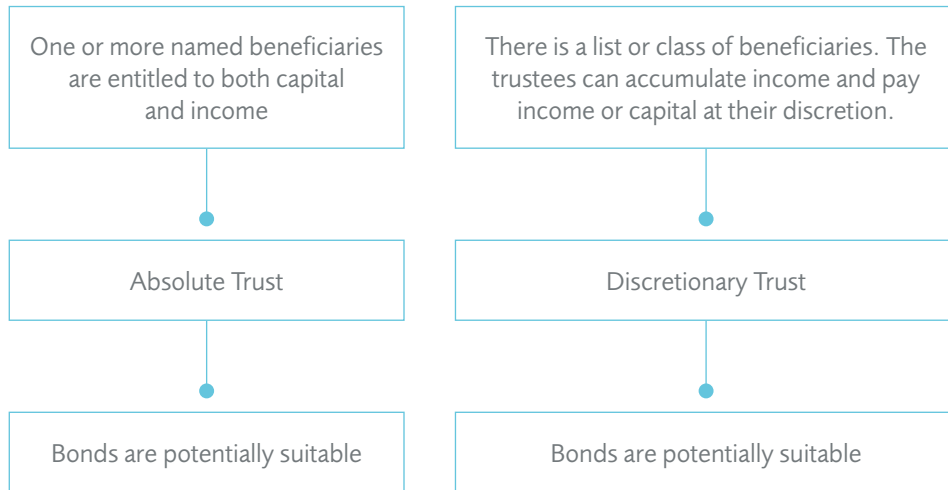
Here the grandchildren did not take immediate vested interests at the death of the testator. This is not a bare trust.

The trustees must make a tax return.

Other Types of Trust

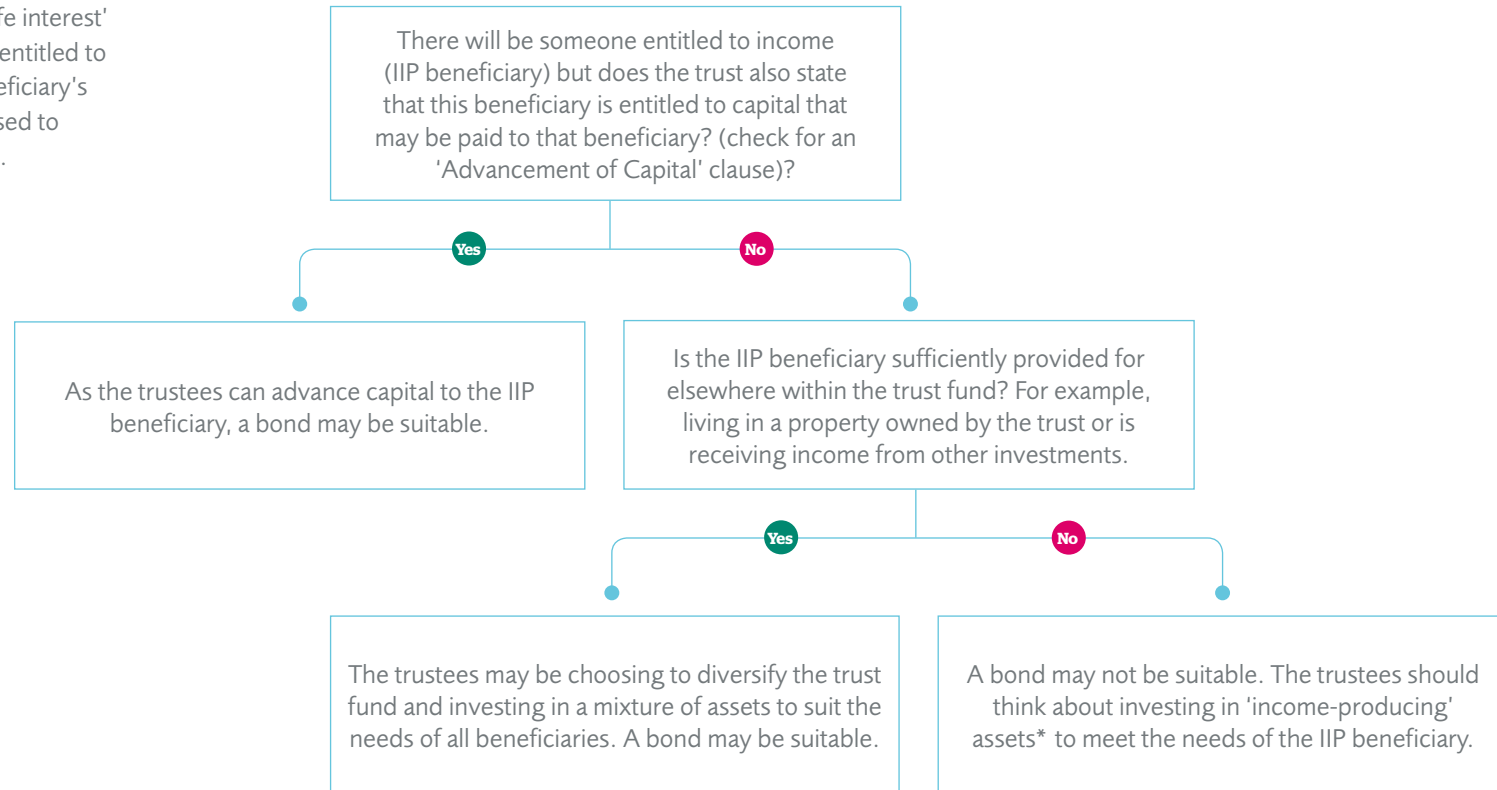


→3 Can trustees buy a bond?



Interest in Possession Trust

There may be reference to 'life tenant', 'life interest' or 'life rent'. One or more beneficiaries is entitled to income during their lifetime. On that beneficiary's death, the trust fund (capital) is to be passed to someone else (children or grandchildren).



* such as collectives, shares, unit trusts & OEICs

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

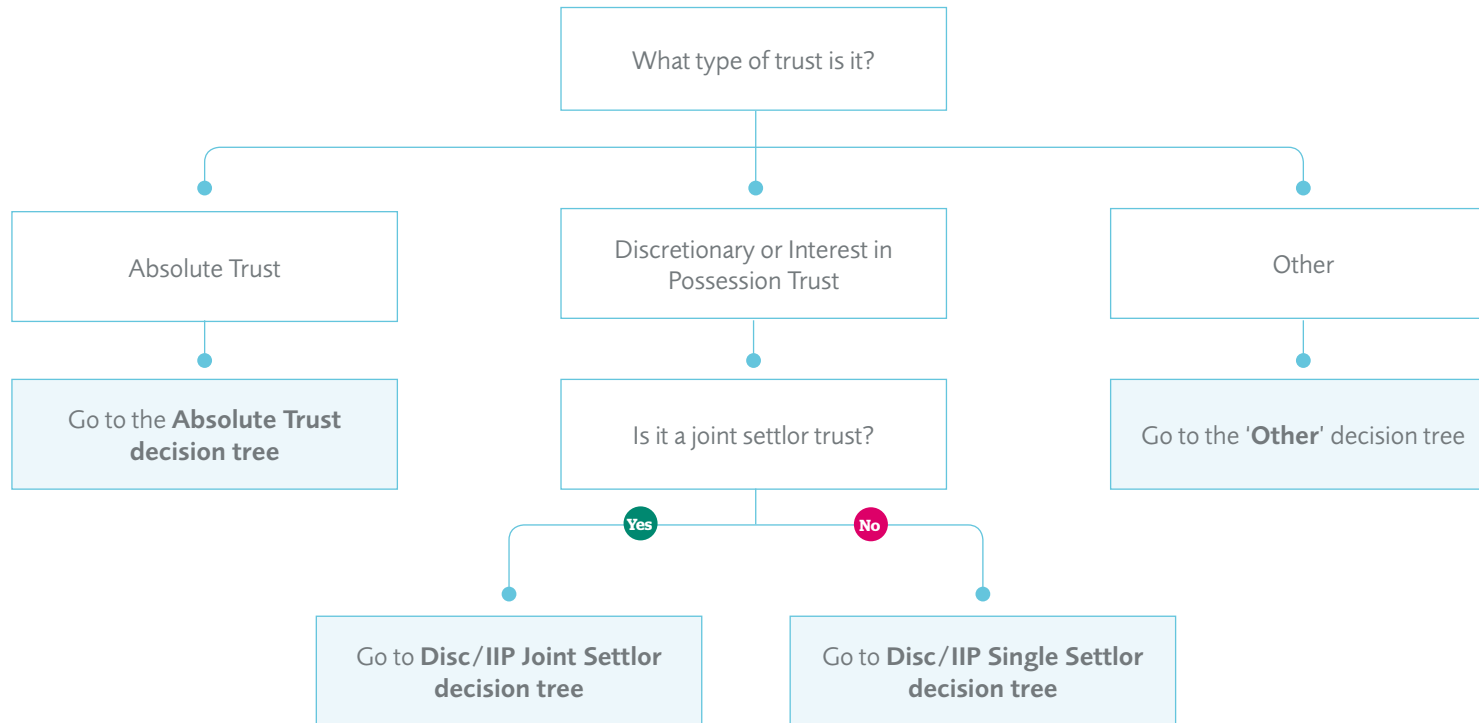
This section covers who is assessed for income tax when a chargeable event gain arises on a bond in trust.

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

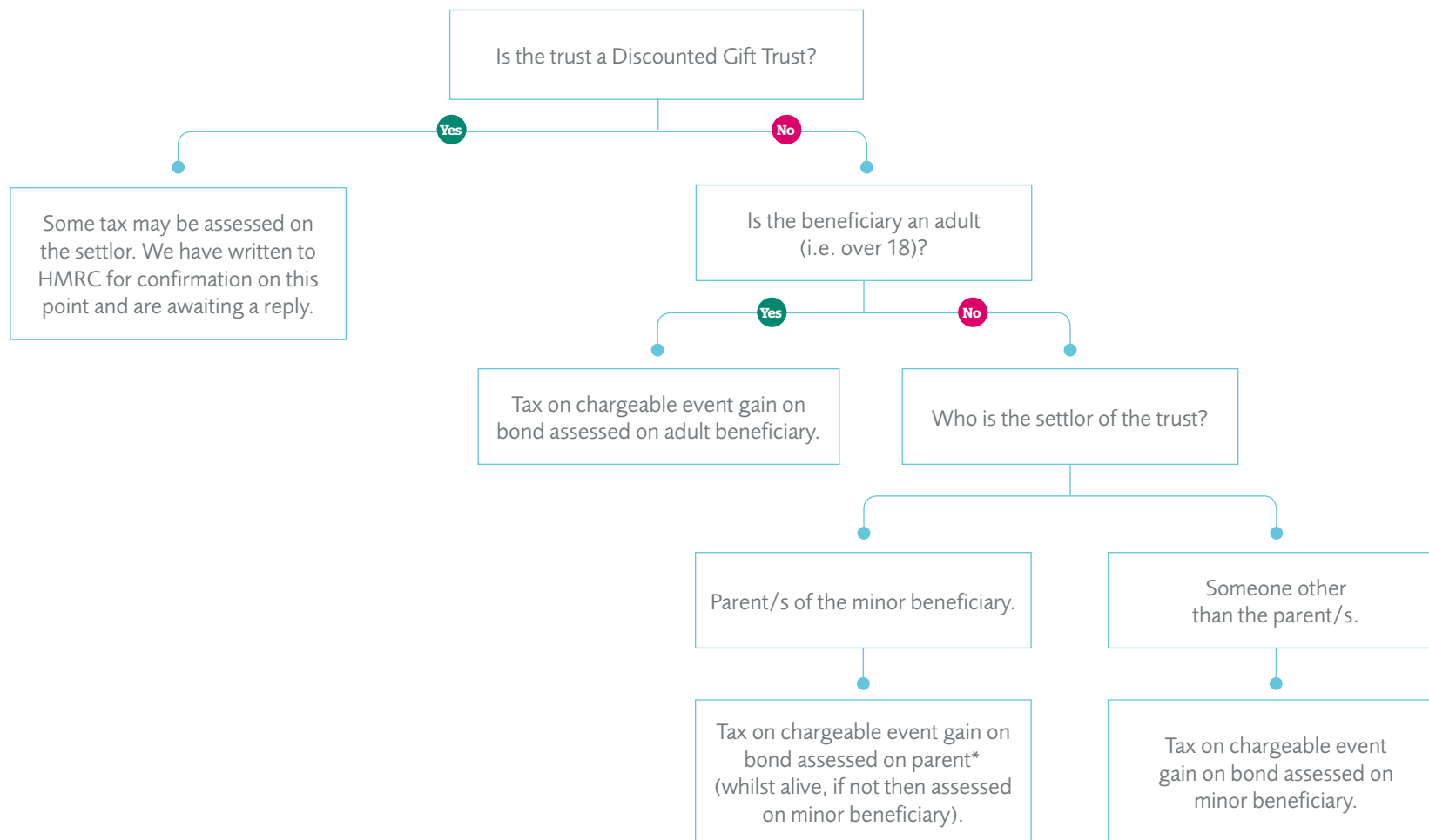
- the type of trust (absolute, discretionary, interest in possession or other)
- the type of chargeable event (was it due to a death claim or an encashment/surrender)
- if it is a joint or single settlor trust
- if the settlor is alive (or both alive, if joint)
- if the settlor/s resides in the UK
-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

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

Who is assessed for tax

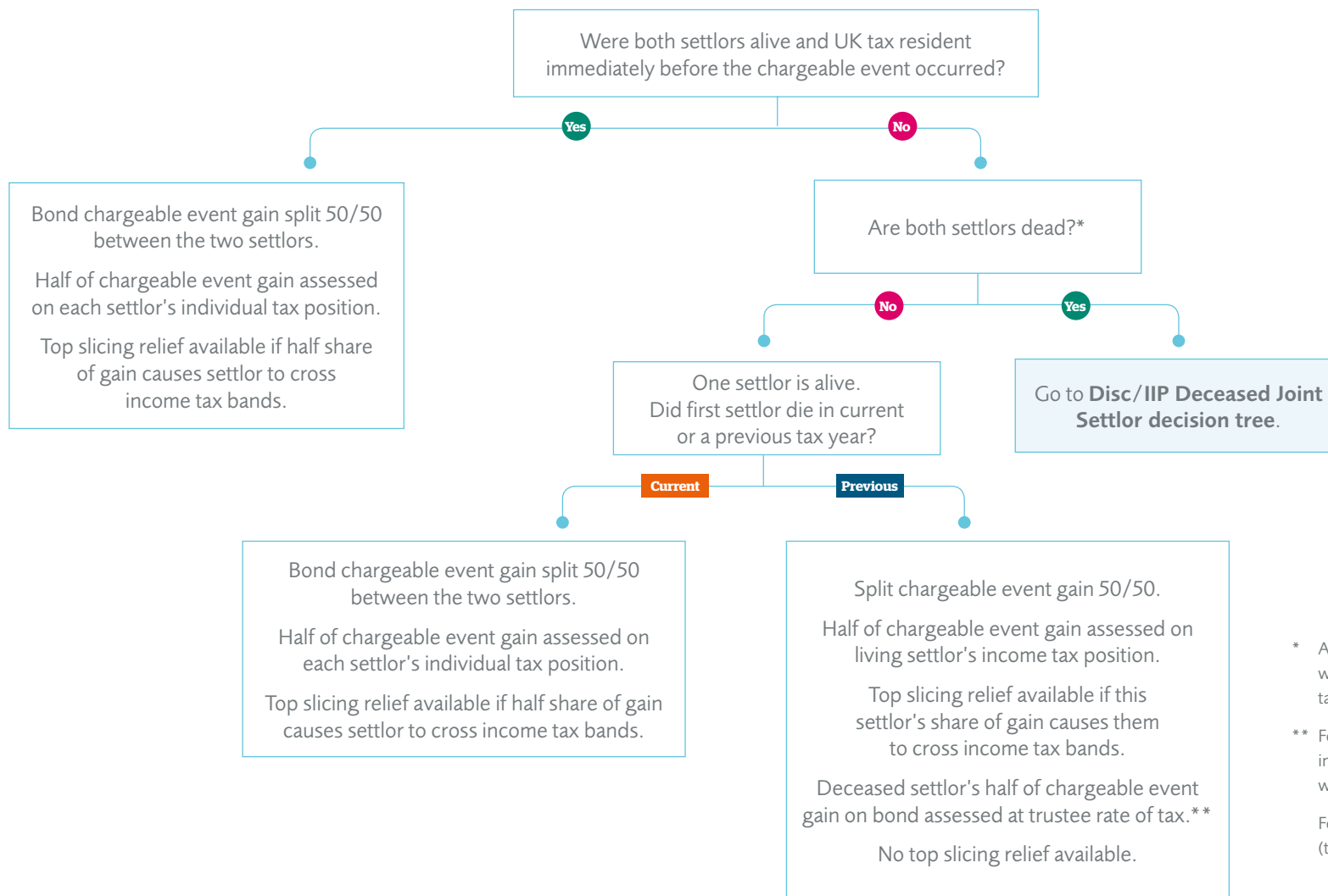


Absolute Trust Decision Tree



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

Disc/IIP Joint Settlor Decision Tree

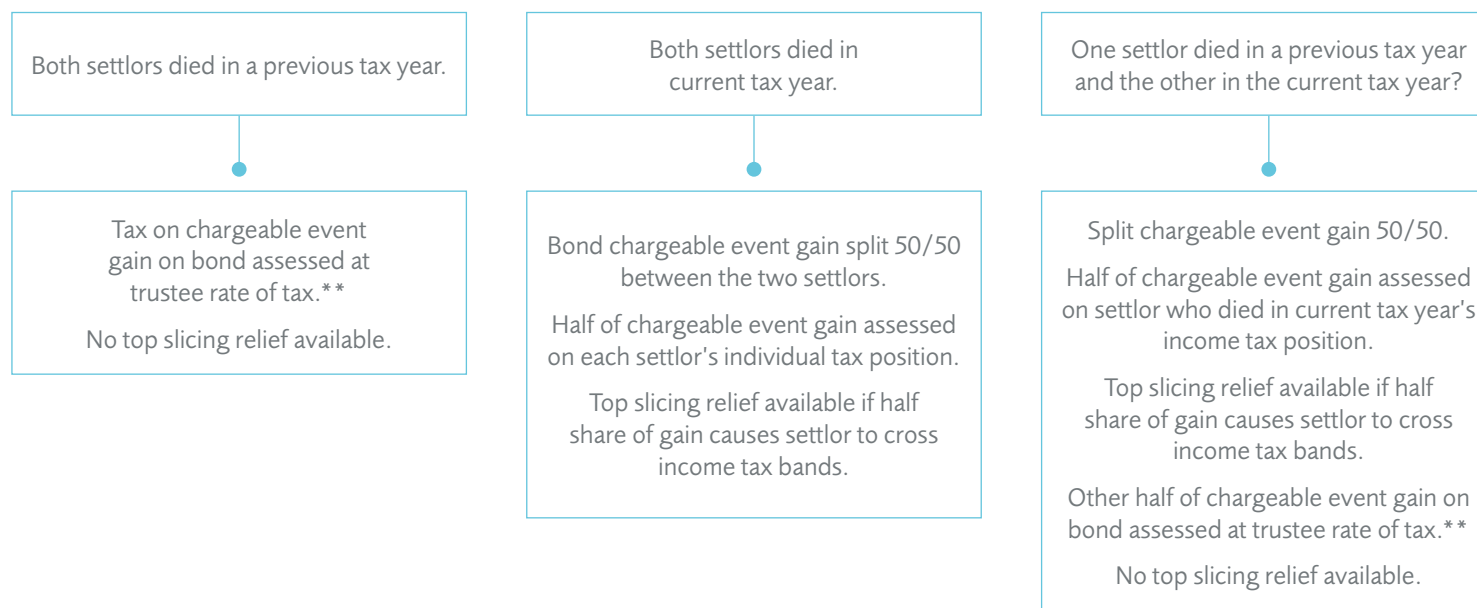


* Apply the same logic as death for settlors who become non-UK resident for income tax purposes.

** For discretionary trusts, first £1000 of trust income (including bond gain) taxed at basic with remainder at 45% (tax year 2018/19).

For IIP trusts, all of bond gain taxed at 45% (tax year 2018/19).

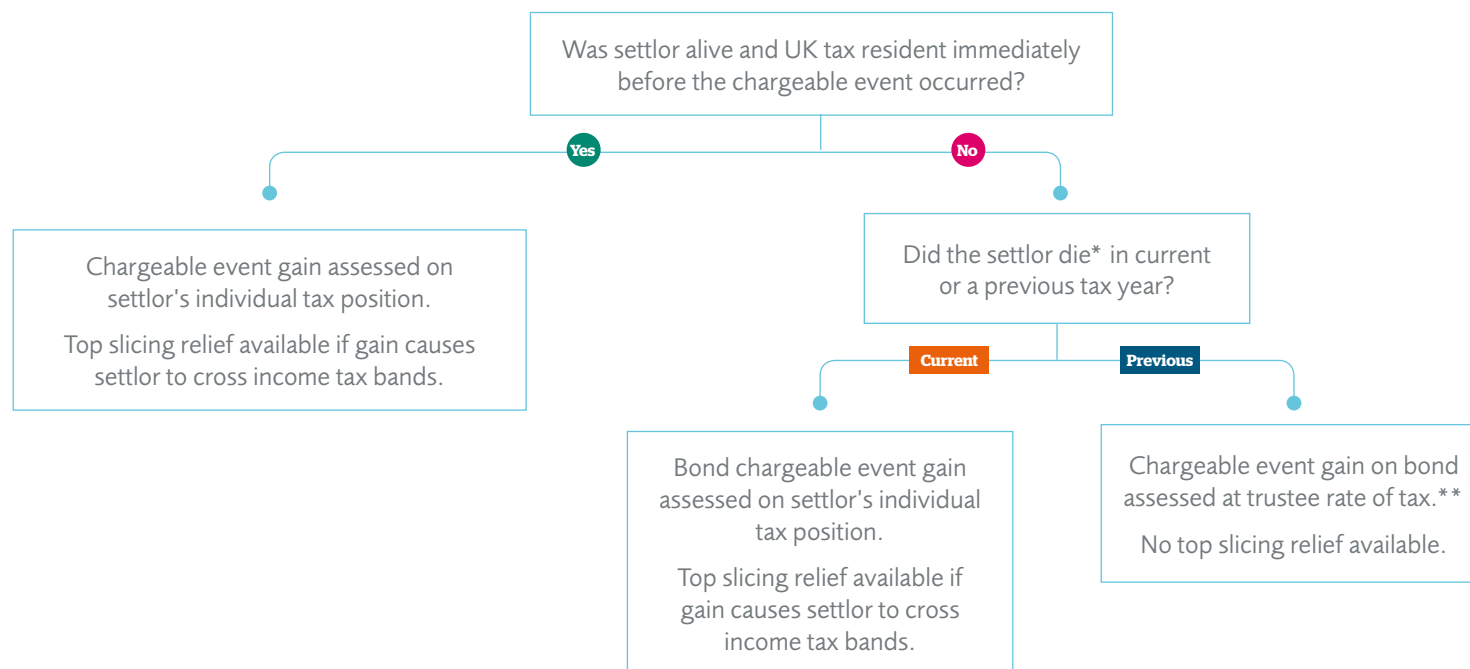
Disc/IIP Deceased Joint Settlor Decision Tree



** For discretionary trusts, first £1000 of trust income (including bond gain) taxed at basic with remainder at 45% (tax year 2018/19).

For IIP trusts, all of bond gain taxed at 45% (tax year 2018/19).

Disc/IIP Single Settlor Decision Tree

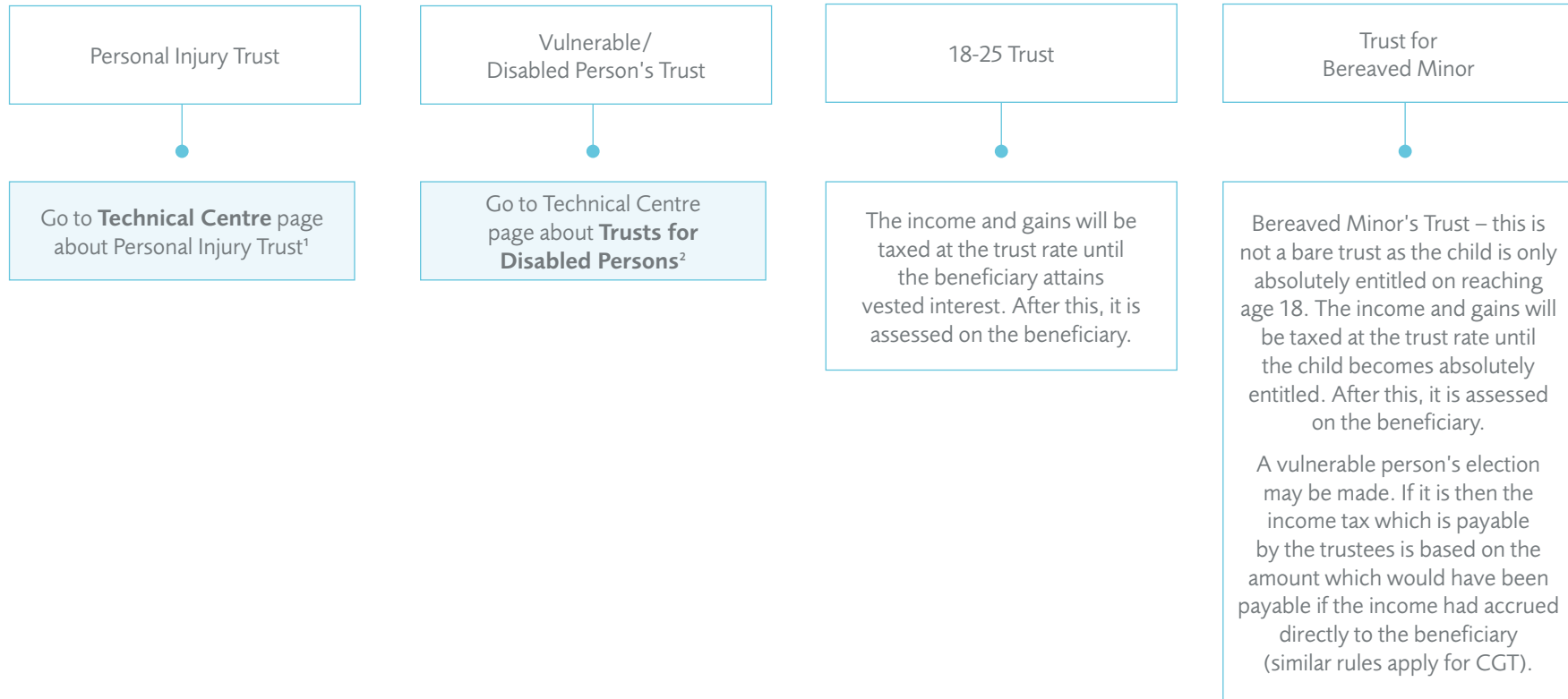


* Apply the same logic to death for settlors becoming non-UK resident for income tax purposes.

** For discretionary trusts, first £1000 of trust income (inc bond gain) taxed at basic with remainder at 45% (tax year 2018/19).

For IIP trusts, all of bond gain taxed at 45%.

Other



5 How is a trust brought to an end?

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.

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.



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