

Advising trustees

Trustee investment considerations

The information that follows is based on our understanding of current taxation, legislation and HM Revenue & Customs practice as of May 2023 all of which are liable to change without notice.

This is just for UK advisers – it's not for use with clients



Neil Macleod

Technical Manager



Important Information

This content is based on our understanding of current taxation, legislation and HM Revenue & Customs practice all of which are liable to change without notice. The impact of any taxation (and any tax reliefs) depends on individual circumstances.

Where content includes case studies or examples these are for illustration purposes and are not recommending a specific course of action.

Past performance is not a reliable indicator of future performance. The value of an investment can go down as well as up and your client may get back less than they've paid in.

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Learning Objectives

Understand trustee duties relating to investment

Describe the income tax and CGT treatment of trustee investments

Identify suitable investments for different types of trust

What type of trust is it?

Types of trust



What kind of trust?

A) Bare

B) Interest In Possession

C) Discretionary 

“For such of my children as the trustees shall in their discretion appoint by deed or deeds...”

What kind of trust?

A) Bare

B) Interest In Possession 

C) Discretionary

“...on trust to pay the income to my wife Caroline for life, thereafter to my children Barrie, Mark, and Jacqueline, in equal shares absolutely...”

What kind of trust?

- A) Bare ✓
- B) Interest In Possession
- C) Discretionary

“...residue of my estate on trust for the benefit of the grandchildren alive at the date of my death. Funds should be paid to them when they attain the age of 21
”
...

What kind of trust?

- A) Bare ✓
- B) Interest In Possession
- C) Discretionary ✓

“...the residue of my estate to such of my grandchildren as survive me and attain age 21 years. ...”

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.

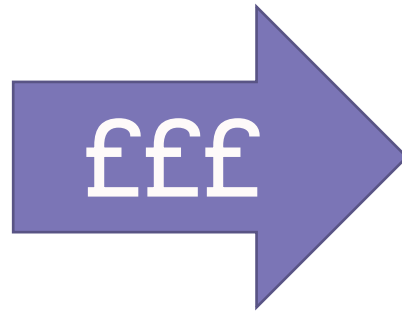
She directed that the funds should not be paid to the grandchildren until they respectively attain age 21 years.

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.

**2 CONDITIONS NEED TO BE
MET BEFORE BENEFICIARIES
HAVE A VESTED INTEREST**

Caution



Intestacy (Statutory Trust) - Bereaved Minor Trust - 18-25 Trust

Trustee investment duties?

Statutory Duties (Trustee Act 2000)



Skill & Care



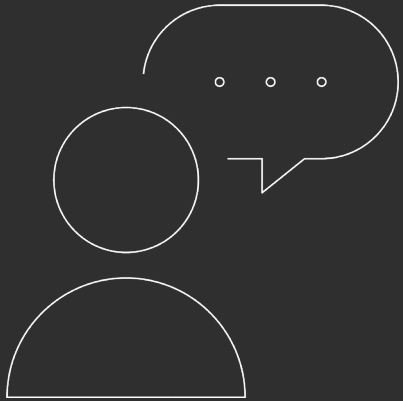
Standard
Investment
Criteria



Review
Investments



Take
Advice



“the advice of a person who is reasonably believed by the trustees to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investments”

Trustee investment

5 guiding principles of trustee investment

1

It's a must!

2

Be extra prudent

3

Ignore personal views

4

Be fair between beneficiaries

5

Take account of tax considerations

What can trustees invest in?

What can we buy?

5. ANY monies liable to be invested hereunder may be invested by my Trustees as if they were the absolute owners thereof

to resign office, and my Trustees shall have the fullest powers of and in regard to retention, realisation, investment, administration, management and division of the Trust Fund as if they were absolute beneficial owners; and in particular and without prejudice to these general

Power to sell or otherwise liquidate and deal with any asset whatsoever comprised in the Trust Fund and to invest in any property of whatsoever nature and wheresoever situate and whether producing income or not, including land, heritable property and investment in any policies of assurance or capital redemption policies as the Trustees may in their absolute discretion think fit

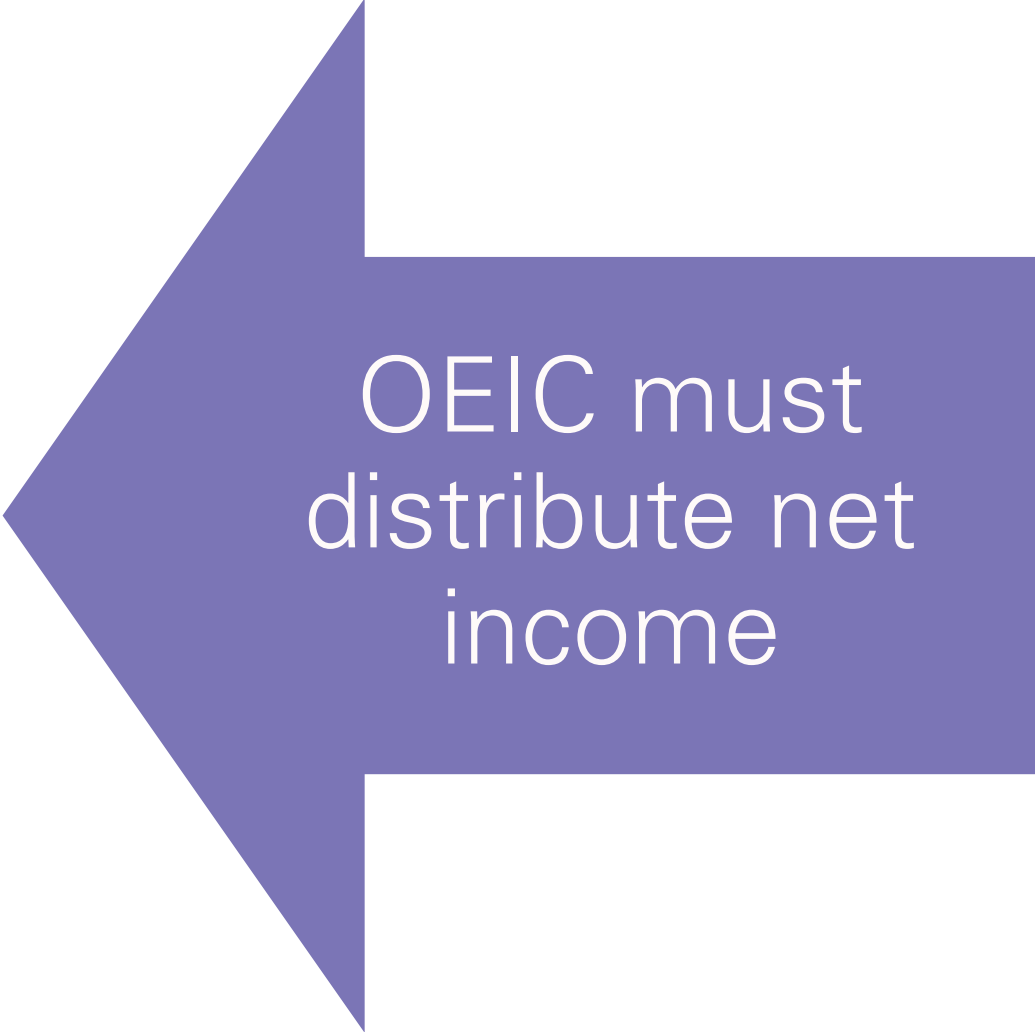
(i) to invest any money requiring investment in any property of whatever nature (including any policies of assurance or capital redemption contracts) and wherever situated whether producing income or not and upon such security (if any) as the Trustees shall in their absolute discretion think fit.

What can we buy?

7.1 The standard provisions and all of the Special Provisions of the Society of Trust and Estate Practitioners (2nd Edition) (the 'standard provisions') shall apply to this Settlement excepting paragraph 5 (trusts for sale).

What is the tax treatment of the trust?

Taxation of income - investments

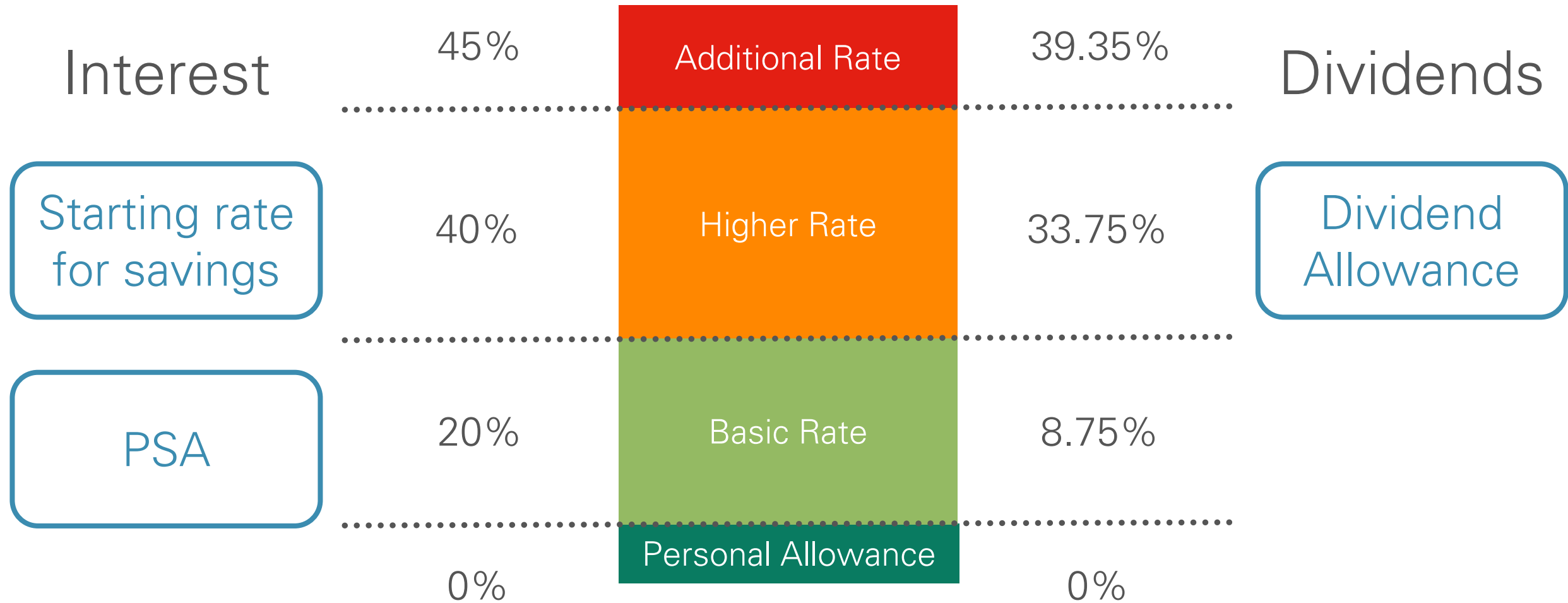


OEIC must
distribute net
income



Insurance Bond
is non income
producing

Bare Trusts - Tax rates on OEIC income



Dividend Nil Rate



2022/23
£2,000

2023/24
£1,000

2024/25
£500

The £100 rule – minor children

Where the settlor is a parent, the income is taxed on the parent, whether or not it's paid to the child.

If the total income of a child from settlements of one parent doesn't exceed £100 in any tax year, the legislation doesn't apply in that year.



Taxation of income – Interest in possession

Trust income

Type of income	Income tax rate
Non dividend	20%
Dividends	8.75%



Trustees can “mandate” income directly to beneficiary



Income retains character - starting rate, PSA and dividend allowance available

Example – taxing IIP interest

- Trustees receive gross OEIC interest of £1,000 & pay tax @ 20%
- Beneficiary receives £800 from the trustees
- Beneficiary includes £1,000 interest in his/her tax return
- Beneficiary given credit for the £200 tax paid by the trustees
- The beneficiary can utilise their 0% starting rate for savings income and PSA as appropriate
- Beneficiary might pay more tax or be due a refund
- Mandating?



Taxation of income – rates and bands

Trust income up to £1,000*

Type of income	Income tax rate
Non dividend	20%
Dividends	8.75%

Trust income over £1,000*

Type of income	Income tax rate
Non dividend	45%
Dividends	39.35%

* The standard rate band is split between the number of trust set up by the settlor subject to a minimum of £200 per trust.

Taxation of income – rates and bands

Trustees of a discretionary trust receive interest of £5,000 and dividends of £10,000. How much tax will they pay?

	Interest £	Dividends £	Tax Due £
Received	5,000	10,000	

Taxation of income – rates and bands

Trustees of a discretionary trust receive interest of £5,000 and dividends of £10,000. How much tax will they pay?

	Interest £	Dividends £	Tax Due £
Received	5,000	10,000	
Standard Rate Band	1,000 @ 20%		200

Taxation of income – rates and bands

Trustees of a discretionary trust receive interest of £5,000 and dividends of £10,000. How much tax will they pay?

	Interest £	Dividends £	Tax Due £
Received	5,000	10,000	
Standard Rate Band	1,000 @ 20%		200
Trustee Rate	4,000 @ 45%	10,000 @ 39.35%	5,735

Taxation of income – rates and bands

Trustees of a discretionary trust receive interest of £5,000 and dividends of £10,000. How much tax will they pay?

	Interest £	Dividends £	Tax Due £
Received	5,000	10,000	
Standard Rate Band	1,000 @ 20%		200
Trustee Rate	4,000 @ 45%	10,000 @ 39.35%	5,735
		Total	5,935

Trustees – Tax on distribution

	£
Net income distributed	8,250

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	£
Net income distributed	8,250
Tax Credit (45%)	6,750

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Gross trust income received by beneficiary	15,000

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Tax already paid	5,935

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	£
Net income distributed	8,250
Tax Credit (45%)	6,750
Gross trust income received by beneficiary	15,000
Tax already paid	5,935
Further tax due by trustees to satisfy tax credit	815

Trustees – Tax on distribution

	£
Net income distributed	8,250
Tax Credit (45%)	6,750
Gross trust income received by beneficiary	15,000
Tax already paid	5,935
Further tax due by trustees to satisfy tax credit	815



Trustees need to maintain records of income received and tax paid – the “tax pool”

Beneficiary – Tax on receipt

UK rates

Band/Allowance	Rate %
Personal Allowance	0
Basic Rate	20
Higher Rate	40
Additional Rate	45

Scottish Rate of Income Tax

Band/Allowance	Rate %
Personal Allowance	0
Starter Rate	19
Basic Rate	20
Intermediate Rate	21
Higher Rate	42
Top Rate	47



Personal Savings Allowance, Starting Rate for Savings and Dividend Allowance don't apply!



Beneficiary can reclaim tax paid depending on their tax position

Trust Taxation Change

23/24

Standard Rate Band
£1,000

Tax liability < £100
No tax return (by concession)
Tax payable on distribution

24/25

~~Standard Rate Band
£1,000~~

Income < £500
No tax return on receipt
Tax payable on distribution

Has settlor retained an interest?

Where the settlor has retained an interest, the income arising is treated as the settlor's income for tax purposes.

A settlor has retained an interest if the property or income may be applied for the benefit of the settlor, a spouse or civil partner.



Capital Gains Tax

Bare

Other

Non Bare trusts & CGT (23/24)

Trust capital gains up to £3,000*

Type of capital gain	CGT rate
Residential Property	Exempt
Other	Exempt

Trust capital gains over £3,000*

Type of capital gain	CGT rate
Residential Property	28%
Other	20%

- Trust exemption is half the personal exemption. The trust exemption is split between the number of trusts set up by the settlor subject to a minimum of 1/5th per trust.

Trustees and CGT

Trustees of a discretionary trust crystallise a £20,000 capital gain on disposal of an OEIC.

Trustees and CGT

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	£	Tax Due £
Capital Gains for tax year	20,000	

Trustees and CGT

Trustees of a discretionary trust crystallise a £20,000 capital gain on disposal of an OEIC.

	£	Tax Due £
Capital Gains for tax year	20,000	
Less Annual Exempt Amount	3,000	

Trustees and CGT

Trustees of a discretionary trust crystallise a £20,000 capital gain on disposal of an OEIC.

	£	Tax Due £
Capital Gains for tax year	20,000	
Less Annual Exempt Amount	3,000	
Taxable Gains	17,000 @ 20%	3,400
		3,400

Trustees and CGT


Trustees of a discretionary trust crystallise a £20,000 capital gain on disposal of an OEIC.

	£	Tax Due £
Capital Gains for tax year	20,000	
Less Annual Exempt Amount	3,000	
Taxable Gains	17,000 @ 20%	3,400
		3,400



Holdover relief is potentially available when assets are transferred out of the trust.

Capital Gains Tax – AEA for trusts



2022/23
£6,150

2023/24
£3,000

2024/25
£1,500

Chargeable Event Gains

Bare

Other

Bare Trusts

Chargeable event gains will be taxed on the beneficiary of a bare trust subject to two exceptions.

1. Discounted Gift Trusts
2. Parental settlements



Chargeable Event Gains - Who is liable?

Is settlor alive and UK resident?

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graph TD; Q1[Is settlor alive and UK resident?] --> A1[Settlor is assessed on the gain  
Top slicing relief may apply  
Statutory right of recovery]; Q1 --> Q2[Is the trust UK resident?]; Q2 --> A2[Trustees are assessed on the gain  
Trustee rates apply  
Top slicing relief does not apply];
```

- Settlor is assessed on the gain
- Top slicing relief may apply
- Statutory right of recovery

No? Then look to the trustees

Is the trust UK resident?

- Trustees are assessed on the gain
- Trustee rates apply
- Top slicing relief does not apply

Chargeable Event Gains – Taxed on trustees

Trustees of a discretionary trust crystallise an onshore bond gain of £100,000. How much tax will they pay?

	Bond Gain £	Tax Due £
Received	100,000	

Chargeable Event Gains – Taxed on trustees

Trustees of a discretionary trust crystallise an onshore bond gain of £100,000. How much tax will they pay?

	Bond Gain £	Tax Due £
Received	100,000	
Standard Rate Band	1,000 @ 20%	200

Chargeable Event Gains – Taxed on trustees

Trustees of a discretionary trust crystallise an onshore bond gain of £100,000. How much tax will they pay?

	Bond Gain £	Tax Due £
Received	100,000	
Standard Rate Band	1,000 @ 20%	200
Trustee Rate	99,000 @ 45%	44,550

Chargeable Event Gains – Taxed on trustees

Trustees of a discretionary trust crystallise an onshore bond gain of £100,000. How much tax will they pay?

	Bond Gain £	Tax Due £
Received	100,000	
Standard Rate Band	1,000 @ 20%	200
Trustee Rate	99,000 @ 45%	44,550
		44,750

Chargeable Event Gains – Taxed on trustees

Trustees of a discretionary trust crystallise an onshore bond gain of £100,000. How much tax will they pay?

	Bond Gain £	Tax Due £
Received	100,000	
Standard Rate Band	1,000 @ 20%	200
Trustee Rate	99,000 @ 45%	44,550
		44,750



Onshore bond gains come with a 20% tax credit. Further 25% tax to pay

Chargeable Event Gains – Taxed on trustees

Trustees of a discretionary trust crystallise an onshore bond gain of £100,000. How much tax will they pay?

	Bond Gain £	Tax Due £
Received	100,000	
Standard Rate Band	1,000 @ 20%	200
Trustee Rate	99,000 @ 45%	44,550
		44,750



Onshore bond gains come with a 20% tax credit. Further 25% tax to pay



No 45% tax credit for the beneficiary. The tax paid is not reclaimable.

Chargeable Event Gains - Who is liable?

Is settlor alive and UK resident?



- Settlor is assessed on the gain
- Top slicing relief may apply
- Statutory right of recovery

No? Then look to the trustees

Is the trust UK resident?



- Trustees are assessed on the gain
- Trustee rates apply
- Top slicing relief does not apply

No? Then look to the beneficiary

Is the beneficiary UK resident?



- If beneficiary is UK resident they will be assessed on the gain.

Discretionary Trust – single settlor

John takes out an investment bond and assigns it into a discretionary trust. Subsequently the bond is encashed when John is still alive and UK resident.

Who is taxable?

Settlor



Trustees

Beneficiaries

Discretionary Trust – joint settlor

In 2010, Bill and Hilary jointly set up an investment bond under a discretionary trust. Bill dies one year later but the bond continues with Hilary as the surviving life assured. In 2023/24 the trustees encash the bond.

Who is taxable?

Settlor



Trustees



Beneficiaries

What should the trustees invest in?

Consider tax status of beneficiaries – 23/24

Capital Gains

£6,000 gain within annual exempt amount

Dividend income

£1,000 dividends taxed at 0%

Savings income

£1,000 / £500 Personal Savings Allowance @ 0%
£5,000 starting rate taxed @ 0%

Personal allowance

£12,570 tax free income within personal allowance

Bare - considerations



Beneficiary probably under 18

Beware parental settlements!

OEICs – utilise beneficiary's allowances

Bond – utilise beneficiary's allowances

Bond – offshore likely to be more appropriate

Interest in possession - considerations



Treat beneficiaries fairly!

May need income producing investments

OEICs produce income - Bonds don't

How much income is required?

Large trust fund - diversify?

Power to advance capital?

Life Tenant may be allowed capital!

(b) To pay any income from the Property Fund to my said wife during her lifetime

(g) Provided my Trustees are at least two in number they shall have power to raise capital (irrespective of whether or not in so doing they exhaust the Property Fund) and to pay or lend the same to my wife (or apply it for her benefit) in such manner and upon such terms as my Trustees think fit

Discretionary - considerations



Undistributed income expensive

Tax returns – trustee and beneficiary

Settlor interested rules - income

£3,000 soon to be £1,500 AEA

Higher rate CGT – 20%

Low income/gains – OEIC?

Bonds may be appropriate

Learning Objectives

Understand trustee duties relating to investment

Describe the income tax and CGT treatment of trustee investments

Identify suitable investments for different types of trust

QUESTION TIME



Support



Articles



Videos



Tools & Calculators



Ask the Techs



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