

# Trusts and settlements?



Many wealthy people want to make tax efficient gifts or make provisions for others in their Wills but they are concerned that the sums that they want to pass on will be used wisely or will end up with those who they wish to ultimately benefit from their assets.

There are several reasons which clients often cite as areas of concern which include:

- » Second marriage and how to benefit both their spouse and their children from a previous relationship;
- » Concerns about a child's relationship;
- » Young members of the family and their education;
- » Family disputes; and
- » Concerns over a family member's lifestyle or inability to manage money.

The above and other concerns can often be managed by making sure that the assets are given to a trust or settlement so that someone will hold onto the capital (the trustees) and use it to buy assets for the use of the intended person or persons who you want to benefit but without those beneficiaries being able to take the assets and sell them to access the cash. It is also possible for the trustees to give the beneficiaries an income and to make capital payments to the beneficiaries if it is the right thing to do.

## Will Trusts

Aside from planning your estate in a tax efficient manner, it is also important to consider whether to leave your assets outright or to put them into a Will Trust. Any assets left outright will become the property of the recipient to do with as they please. By contrast, if you leave assets to a Will Trust, the custody of the fund will be held by "Trustees" and the beneficiaries may either be immediately entitled to income, or alternatively get income and/or capital at the Trustees' discretion. The Trustees duty is to look after the assets, to protect them, to increase their value and to exercise their powers and duties in accordance with the law.

People who have children from a previous relationship often consider putting part or all of their estate into a Will Trust so that their spouse or partner can have the benefit of the use of assets and income while they are alive but when they die the assets will pass to those who the first spouse wanted to ultimately receive them.

Additionally, Will Trusts are useful if you wish to set up a fund to provide for your grandchildren's education or you are worried about a child's management of money or their relationship with their partner, or simply because of you think that they may be too young to inherit a significant sum of money at that age.

A Will Trust can also be useful if you do not know how your assets should be split between beneficiaries and/or want maximum flexibility without having to keep changing your Will. You can let the people who will be responsible for your assets (your Trustees) know what you want them to do with your assets after your death by leaving them a Letter of Wishes.

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## Settlements

You can use Settlements in much the same way, to protect assets while making lifetime gifts. If, for example, you want to make a gift to someone but they are not financially aware or quite young, you can instead give the money into a Settlement of which they are a beneficiary.

If you make a gift to a Settlement during your lifetime, you may need to limit the amount you give to be within your Nil Rate Band (the amount which you can bequeath on your death free of tax, currently £325,000), as otherwise you would have to pay lifetime Inheritance Tax at the rate of 20% on any sum that you put into trust over and above your Nil Rate Band.

It is possible to give cash or other assets to a Settlement. If the gift may attract a liability to Capital Gains Tax (CGT), it is possible to delay the payment of CGT by making a "hold over" claim for CGT so that the trust in effect acquires the assets from you at the same value as you acquired it (this only relates to CGT not the value of the gift for Inheritance Tax).

Settlements and Trusts have their own special tax regimes (how the Settlement or Will Trust will itself be taxed during its existence) so it is important to take advice before creating a Settlement in your lifetime, or when giving instructions for a Will Trust, so that the tax regimes can be explained to you.

## Spouse Exemption

If you and your spouse have the same domicile then whatever you give or bequeath to each other is 100% exempt from Inheritance Tax. This exemption is often useful for passing assets to the next generation through the use of a Will Trust because the gift into a Will Trust in which the surviving spouse will be entitled to the income will still be entitled to Spouse exemption.

## Business Property Relief and Agricultural Property Relief

Business Property Relief (or "BPR") and Agricultural Property Relief (or "APR") as allowances on relevant business and agricultural assets which meet certain conditions, to be passed 100% or 50% free of Inheritance Tax.

Both BPR and APR are also useful means of transferring assets down the generations without creating a liability for Inheritance Tax. Again, these reliefs can be coupled with the use of Will Trusts and Settlements to maximise flexibility of benefit and tax savings through the generations.

## Contact us

For more information and advice please get in touch:



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