

# Estate Planning



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**Inheritance tax (IHT) has traditionally been seen as a tax on the wealthy. Many of your clients may assume that it would not apply to them – but they could be mistaken.**

**First**, it doesn't include those estates that escape liability thanks to successful IHT planning. Without planning, a higher percentage could be liable in future.

**Second**, while married couples and civil partners can now take advantage of transferable nil rate band allowances, they would lose this benefit if they were to get divorced. There are also an increasing number of unmarried couples who could have a liability if they do not plan ahead.

**Third**, it relates to all estates, large and small. The typical market for advice is medium to higher net worth. We might expect the percentage to be much higher within the financial adviser market sector.

**Fourth**, the figures look only at the percentage of deaths that have attracted IHT – they do not look at the percentage of people potentially subject to IHT.

**Finally**, IHT planning is ideally for the medium to longer term – at least seven years where gifts are concerned.

The average UK house price is more than half of the IHT threshold, as the table below shows:

As a result, more and more people have fallen into the IHT net, often unawares.

	April 2018
Average UK house price*	£226,906
Percentage increase from April 2017	3.9%
Nil rate band**	£325,000
Average house price as % of IHT threshold	70%

\* Land Registry UK house price index – April 2018

\*\* £325,000 until April 2021. In addition, the Government introduced a 'main residence nil-rate band' from the 2017/2018 tax year starting at £100,000, increasing to £175,000 in the 2020/2021 tax year. This will be subject to a maximum estate valued at £2m.

This will be available if the deceased's residential property, which has been his or her residence, and is included in the estate, is left to one or more direct descendants on death.

### Opportunities for advisers

This market offers a number of opportunities for Financial Advisers:

- › advising individuals and couples planning for IHT on their own estates;
- › advising potential beneficiaries on ways to meet a tax liability;
- › advising beneficiaries on managing their inheritance – and avoiding a tax bill for their own heirs; and
- › establishing or developing relationships with professional connections, such as solicitors, accountants and trustees.

### The Finance Act 2006

Generally, with a few exceptions, trusts set up after 21 March 2006 are subject to the relevant property tax regime.

This means they may be subject to various IHT charges: an immediate charge on the gift into the trust, a periodic charge every 10 years and an exit charge when any money is distributed from the trust to beneficiaries, whether in the settlor's lifetime or after their death.

This does not by any means put an end to IHT planning. Many discretionary trusts will remain below the threshold where IHT is payable and, even where they may incur some IHT charges, these are in most cases likely to be less than the 40% tax bill if no planning is done. Also, absolute (or bare) trusts remain unaffected by the legislation and may be a suitable option for some clients.

What it does mean is that advisers will need to be aware of the implications of the different tax regimes as they apply to various types of trust. IHT planning is now more complicated – but that also means there is more opportunity, as clients will be increasingly in need of specialist advice to fit their own particular circumstances.

### Absolute and discretionary trusts

The tax rules for the two types of trust are explained in Appendix 1 on pages 18 and 19. The main characteristics are as follows.

#### Absolute trusts

- Neither the beneficiaries nor their share of the trust can be changed after the trust has been set up.
- Any gift element into a trust, if not covered by an exemption, is a potentially exempt transfer (PET).
- There is no IHT if the settlor survives for seven years.
- There may be taper relief after three years.
- Each beneficiary's share of the trust fund is part of their estate.
- Beneficiaries with legal capacity (generally, at age 18 in England and Wales and 16 in Scotland) have the right to demand their vested share of the trust fund at any time.

#### Discretionary trusts

- Beneficiaries can be changed and do not have a fixed share of the trust fund.
- The trust must be reported to the local tax office and gifts into it must be notified to HMRC if they are over the relevant limit.
- IHT returns are currently required every 10 years, subject to reporting limits.
- Any gift element into a trust, if not covered by an exemption, is a chargeable lifetime transfer (CLT).
- The trust fund may be subject to 10-yearly periodic charges and proportionate exit charges.
- While in the trust, none of the trust fund will be part of a beneficiary's estate.

### Nil rate band

The nil rate band for the 2018/2019 tax year is £325,000 and will remain frozen at that level until April 2021.

The nil rate band allowance is transferable on death between married couples and registered civil partners. This means that, for the current tax year, the nil rate band could be up to £650,000 on the second death.

If any of the allowance is used on the first death, it is the unused proportion that is transferred. For example, for a person who died in the 2008/2009 tax year (when nil rate band was £312,000), who had used £156,000 of their nil rate band allowance, a proportion of 50% would be transferable. So if their spouse died in the 2018/2019 tax year, the transferred proportion would be worth £162,500, on top of their own allowance of £325,000.

The balance above this is taxable on death at 40%. The value of the estate for IHT purposes will include everything the person owns, individually or jointly. This will include, for example, furniture and other house contents, car, jewellery, savings, investments and life assurance benefits (unless written in trust). For clients who are UK domiciled it will also include any assets held overseas.

### Main Residence Nil-Rate Band

In addition to the current nil rate Inheritance Tax band explained above, from the 2017/2018 tax year the Government introduced a 'main residence nil-rate band' starting at £100,000, increasing to £175,000 in the 2020/2021 tax year.

This will be available if the deceased's residential property, which has been his or her main residence, and is included in the estate, is left to one or more direct descendants on death.

Rules have also been introduced so that the main residence nil-rate band will be available when a person downsizes or ceases to own a home on or after 8 July 2015 and assets of an equivalent value, up to the value of the additional nil-rate band, are passed on death to direct descendants.

Where the value of the deceased's estate exceeds £2m (after deducting liabilities but before reliefs and exemptions) the main residence nil rate band will be reduced by £1 for every £2 excess value. The £2m threshold and the main residence nil rate band are due to increase in line with the Consumer Price Index from 6 April 2021.

Any main residence nil rate band that is not used on first death can be transferred to a surviving spouse or civil partner. The unused proportion will be applied to uplift the survivor's main residence nil rate band entitlement on second death.

### Charitable Giving

A lower rate of IHT of 36% will apply where 10% or more of a person's net estate is left to charity, for deaths on or after 6 April 2012.

To qualify for the reduction certain conditions must be met.

### Main exemptions

A number of gifts are exempt from IHT, including:

- all gifts transfers between UK-domiciled married couples or registered civil partners.

- gifts up to £3,000 in total per donor each tax year; any unused part of this allowance can be carried forward for one year.
- gifts of up to £250 per recipient.
- gifts to a non UK domiciled spouse or registered civil partner can be exempt. The limit for gifts depends on circumstances. The limit will be £325,000 (2018/2019) unless they elect to be treated as UK domiciled, with full exemption, during their lifetime or within 2 years of the UK domiciled spouses's death – however in this situation the worldwide assets of the electing spouse will be liable to IHT.
- gifts that are part of normal expenditure out of income.
- gifts on marriage or civil partnership: £5,000 from each parent, £2,500 from each grandparent and £1,000 from anyone else.
- gifts to charities.
- family maintenance.

There are also special reliefs on business property and agricultural property, under which 50% or 100% of the value may be exempt.

### Potentially exempt transfers

Most lifetime gifts, including those between one person and another, are potentially exempt transfers (PETs). If the donor survives for seven years after making the gift, it becomes exempt from IHT. If the donor dies within the seven years, the value of all such gifts will be included in the estate when calculating any IHT liability and will be applied first against the nil rate band.

Where PETs use up part or all of the nil rate band, there will be less or none to apply to the remaining estate on death. For example, if PETs amount to £150,000, there will be only £175,000 left of the nil rate band to offset against the value of the retained estate. So, if the estate is worth, say, £200,000, there will be an IHT liability, even though the value of the retained estate by itself is below the nil rate band.

### Taper relief

Where a PET becomes liable to IHT on death, taper relief may apply if the donor died more than three years after making the gift. Taper relief applies to the amount of tax payable, not the value of the gift, and rates are as follows.

Years between gift and death	Taper relief
Less than 3	None
3 – 4	20%
4 – 5	40%
5 – 6	60%
6 – 7	80%

Remember that lifetime transfers are applied first against the nil rate band, in chronological order. So if the total of PETs is below the nil rate band, no IHT is payable and taper relief is irrelevant. In the previous example, where the PETs totalled £150,000, this was all covered by the nil rate band. No IHT would have been payable, so no taper relief would have applied.

Even where the PET exceeds the nil rate band the same principle applies. Let's assume a single PET of £400,000 and that the donor dies between five and six years after making the gift. Again, the nil rate band is applied first against the PET. So, of the £400,000, only £75,000 (i.e. £400,000 minus

£325,000) is chargeable to IHT.

The charge is 40% which comes to £30,000. Taper relief now applies to that figure, which reduces the tax payable by 60%. The relief is £18,000, leaving an IHT charge of £12,000.

Suppose a further PET of £100,000 had been made 3<sup>1</sup>/<sub>2</sub> years before death. In this case, the first PET would absorb the entire nil rate band, so the second PET will be chargeable at 40%. The tax charge is £40,000, to which taper relief of 20% would apply, reducing the charge on this PET to £32,000. (These examples do not take account of any annual exemptions that may be available).

### Chargeable lifetime transfers

Gifts into a discretionary trust are chargeable lifetime transfers (CLTs), which may attract an immediate tax charge. The value of the gift is added to any other CLTs made in the previous seven years and tax will be charged on any excess over the nil rate band. Lifetime IHT is charged at 20% (half the death rate), but if the settlor pays the tax, or it is paid from their estate after death, the value will be grossed up.

If the settlor dies within seven years of making the CLT, there may be an additional tax charge. The tax due is recalculated using the IHT death rate of 40% and the nil rate band at that time. The calculation takes into account CLTs in the seven years prior to the start of the trust. Any PETs made within seven years of death are also included, as these will fail and become Chargeable Transfers. In addition, CLTs made in the seven years prior to the oldest 'failed PET' form part of the calculation.

Taper relief will apply if the death occurs more than three years after the gift. Any tax already paid is taken into account, but no refund can be made.

### Payment of tax

Where an estate is liable to IHT, the tax is usually payable **within six months** of the end of the month in which the death occurred. If it becomes overdue, the amount owing may incur interest.

The estate cannot normally be distributed until the IHT bill has been settled.

### Deeds of variation

A person who inherits under a will or through intestacy can use a deed of variation to redirect assets within two years of the death. IHT will then apply as if the variation had been made by the deceased (included in the deceased's will).

This presents a further opportunity for financial advisers: to advise the spouse or civil partner and other heirs on how they can effectively take retrospective action to improve their tax position when they may have believed the opportunity had already been lost.

Please note that for a Deed of Variation to be effective all the beneficiaries must agree to the proposed variation.

The government conducted a review into the use of Deeds of Variation for tax purposes in 2015. On 9 December 2015, they announced that they will not introduce new restrictions on how deeds of variation can be used for tax purposes but will continue to monitor their use.

### Intestacy

The rules on intestacy are quite complex and depend on who survives the deceased. There are also different rules in England and Wales, in Scotland and in Northern Ireland. However, in all cases, intestacy rules are not designed to save IHT and can make the bill higher.

The points to remember are that, generally speaking:

- the spouse or civil partner will not inherit everything – so there could be an immediate IHT bill on the balance, which will go to children or other near relatives; and
- where the spouse or civil partner gets the majority of the estate, this may lead to an IHT problem on the second death.

Some transfers on death may also be exempt from IHT such as transfers of assets between a husband and wife or civil partners and business property. However it is important not to ignore IHT by planning to give or leave everything to a spouse or civil partner as your clients assets may increase by more than the increases in the IHT tax band.

### Statement of wishes

With a discretionary trust, the trustees have discretion (within the rules of the trust) over when and to whom they pay benefits. This could mean that the assets are not distributed in the way the settlor would have liked or it could lead to difficulties if the trustees are not in agreement on who should benefit.

Prudential provides a "Statement of wishes" form which allows the settlor to record how they would like the trustees to distribute assets, and why, or factors they would like the trustees to take into account. This cannot be binding on the trustees in any way, but may provide valuable guidance.

As a rule, the type of trust to use – and even whether a trust is appropriate for a particular client – will be the primary consideration.

**Questions to consider include:**

**Where is the client's domicile: UK or elsewhere?**

If the client is non-UK domiciled, there are particular planning options available, such as an excluded property trust.

**Is the client married or in a civil partnership?**

If the client has a spouse or civil partner, consider whether both nil rate bands will be used effectively. It may also have a bearing on what access to funds is required. Unlimited assets can generally be transferred between spouses exempt of tax. If the spouse or partner is non-UK domiciled, the exemption on assets transferred between them is limited to the nil rate band.

**What access to funds does the client need: none, capital or regular payments only?**

This could have an important influence on the choice of trust. IHT planning often involves a balance between saving tax and providing access to funds.

**Could a deed of variation apply?**

If a client has recently inherited assets, more effective IHT planning might be achieved by redirecting assets either outright or to a suitable trust, subject to the rules governing deeds of variation.

**Should the trust arrangement be single or joint?**

This depends on who owns what assets and whether they are split in an appropriate way for IHT planning. It may be that separate single arrangements could be more suitable than a joint arrangement in some cases. For IHT purposes, a joint settlement is treated as two single settlements.

Prudential Group has a range of plans, offering both absolute and discretionary trusts, that can match a variety of client circumstances and needs.

**Prudence Inheritance Bond:**

a discounted gift plan with a distinctive structure that uses the "natural income" produced by the underpinning investments to provide a payment stream for the client, the opportunity to accumulate some or all of that investment stream for future use and which offers potential income tax benefits.

**Loan Trust:** an arrangement that allows the client to access the original capital, either as lump sums or as regular repayments, while any growth on the capital is outside the estate.

**Gift Trust:** a trust that is used to hold a gift of an investment bond.

**Discounted Gift Trust:** an arrangement that allows the client to give away capital while keeping a payment stream for life, with a choice of onshore and international investments.

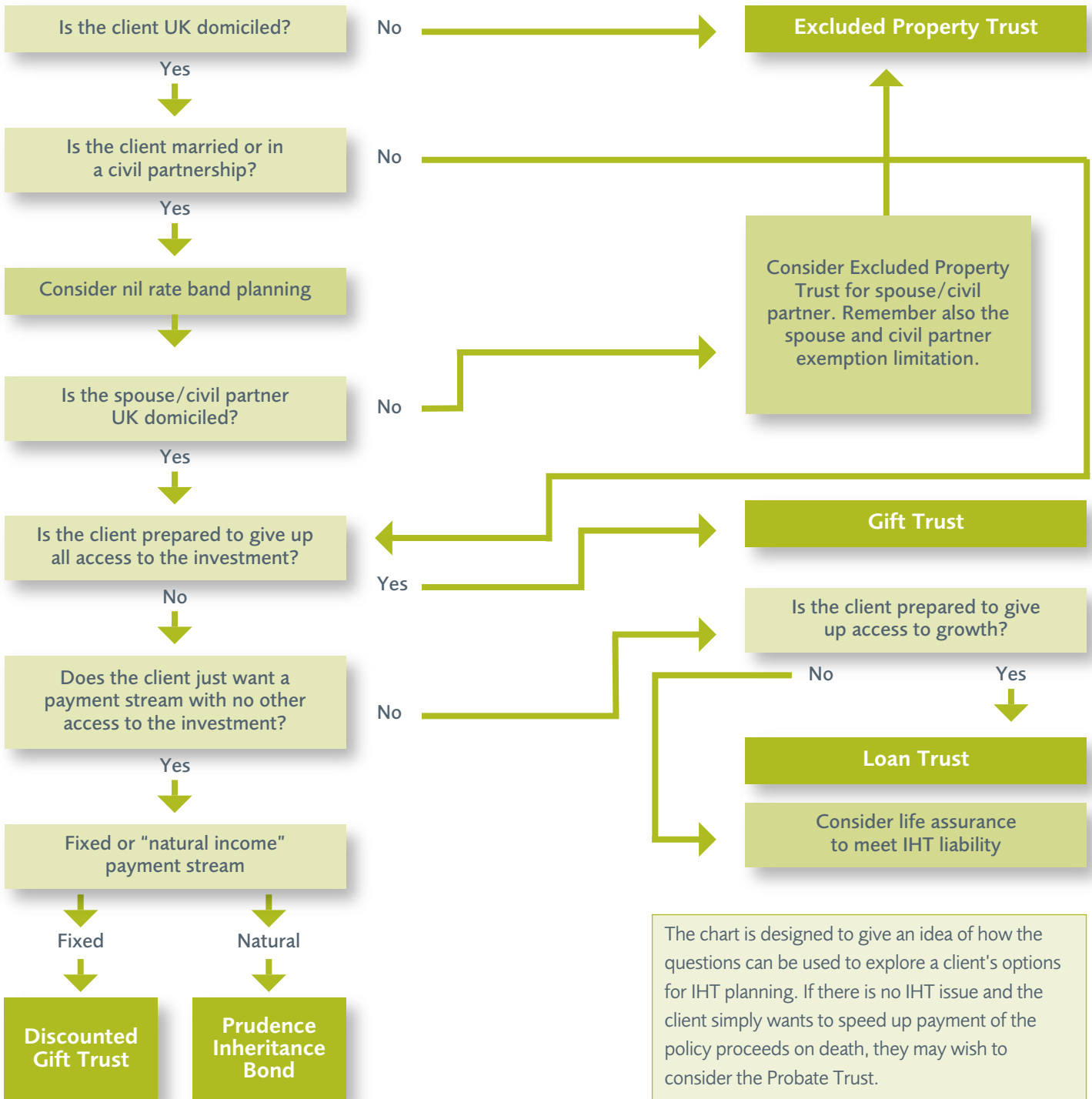
**Excluded Property Trust:** a trust for clients who are non-UK domiciled.

**Probate Trust:** a trust used to speed up the payment of proceeds on death by avoiding the need for probate in respect of the trustee owned assets. It is important to note that this is not an IHT effective trust.

Further information on the trusts is given on pages 12 to 16.



The flowchart below shows how the questions can help to indicate which trust or trusts may be suitable.



The chart is designed to give an idea of how the questions can be used to explore a client's options for IHT planning. If there is no IHT issue and the client simply wants to speed up payment of the policy proceeds on death, they may wish to consider the Probate Trust.

Natural income means the actual income stream generated by the investment without drawing on capital.

**Absolute or discretionary: The IHT implications**

	Prudence Inheritance Bond/Discounted Gift Trust	
	Absolute	Discretionary
<b>When the trust is set up</b>	Potentially exempt transfer (discounted value of gift); no charge	Immediate charge of 20% on excess of discounted value of gift (plus any relevant previous chargeable transfers) over nil rate band
<b>If the settlor dies within 7 years</b>	40% on excess of discounted value of gift (plus any relevant previous chargeable transfers) over nil rate band, less any taper relief	40% on excess of discounted value of gift (plus any relevant previous chargeable transfers) over nil rate band, less any taper relief, less tax paid under immediate charge
<b>Every 10 years</b>	No charge	Periodic charge if value of beneficiaries' trust fund exceeds nil rate band; maximum of 6% of value of fund; any "discount" is recalculated using settlor's current age
<b>On distributions within first 10 years</b>	No charge	Possible exit charge on amount distributed; maximum rate 6%
<b>On distributions after 10 years</b>	No charge	Possible exit charge on amount distributed; maximum rate 6%
<b>Trust fund included in beneficiaries' estates?</b>	Yes	No

Please note that, for simplification, the table assumes the full nil rate band is available and generally ignores annual exemptions.

Loan Trust		Gift Trust	
Absolute	Discretionary	Absolute	Discretionary
No charge as no transfer of value. The outstanding loan remains in the donor's estate for IHT purposes.	No charge as no transfer of value. The outstanding loan remains in the settlor's estate for IHT purposes.	Potentially exempt transfer; no charge	Immediate charge of 20% on excess of value of gift/premium(s) (plus any relevant previous chargeable transfers) over nil rate band
No charge, however, any outstanding balance of the loan is included in the donor's estate.	No charge, however, any outstanding balance of the loan is included in the settlor's estate.	40% on excess of value of gift (plus any relevant previous chargeable transfers) over nil rate band, less any taper relief	40% on excess of value of gift (plus any relevant previous chargeable transfers) over nil rate band, less any taper relief, less tax paid under immediate charge
No charge	Only if value of trust fund (less outstanding loan) plus any relevant previous chargeable transfers is more than nil rate band; maximum rate 6%	No charge	Periodic charge if value of trust fund (plus any relevant previous chargeable transfers) exceeds nil rate band; maximum rate 6%
No charge	No charge	No charge	No charge if immediate charge was nil; otherwise exit charge on amount distributed; maximum rate 6%
No charge	No charge if last periodic charge was nil; otherwise maximum rate 6% (repayment of loan is not subject to exit charges)	No charge	No charge if the last periodic charge was nil; otherwise exit charge on amount distributed; maximum rate 6%
Yes, the beneficiary's percentage share of the value of the trust fund (less outstanding loan).	No	Yes	No

A discounted gift plan that provides three distinct features: regular payments based on the natural income from the underlying investments, the option to reinvest some or all of these payments for future use and potential income tax benefits.

The value of an investment, and any income from it may go down as well as up and is not guaranteed. Your client or their beneficiaries may get less than was paid in.

#### How it works

- › The bond is split into two parts: a whole of life plan and an endowment plan.
- › The whole of life plan holds the gifted investment that can help reduce the settlor's IHT liability. This pays out only on death.
- › The endowment plan provides tax-efficient regular payments. Year to year, the amount may fluctuate, but the underlying fund is managed with the aim of generating a steady natural income.
- › The settlor can choose to be paid the full amount of the natural income from the fund, cap payments at 5% a year of the original investment or leave it all within the plan. Any reinvested amount remains within the settlor's estate.
- › At the settlor's death:
  - any remaining value in the endowment plan is part of the estate, and
  - the whole of life plan pays the capital lump sum to the trustees for the beneficiaries.
- › The special structure means there is unlikely to be a chargeable event gain on the settlor's death.

#### Who can benefit

##### The settlor(s):

- › Receives regular quarterly payments based on the natural income stream from the investment. These may be taken in full, capped at 5% with any excess reinvested, or reinvested in full. Payments continue for the life of the settlor or until the death of the survivor for joint cases.
- › Can access any reinvested payments at any time.
- › Has no access to capital or any other benefits.

##### The beneficiaries:

- › Have no access to capital during the settlor's lifetime.
- › Receive the capital, distributed by the trustees, after the settlor's death.

#### Investment options

- › Prudential fund:
  - Capital is automatically invested into the fund with, currently, a broadly equal split between UK equities and UK bonds (the actual asset allocation may change over time).
  - Plan payments not taken can be redirected into up to three funds from a range of Prudential funds.

An arrangement that allows the client to access the original capital, either as lump sums or as regular payments, while any growth on the capital is outside the estate.

### How it works

- › The settlor makes an interest free loan to the trust, repayable on demand.
- › The money is invested in one or more single premium bonds.
- › The settlor can waive (by deed) the remaining loan repayment at any time. This will count as a transfer of value at that time, which may have IHT consequences.
- › At the settlor's death:
  - any part of the loan not previously repaid is repayable and remains part of their estate, and
  - any balance may be distributed to the beneficiaries or the trust may continue.

### Who can benefit

#### The settlor(s):

- › Can access the original capital, but not the growth, on demand.
- › May request access as a single lump sum, occasional lump sums or regular payments.
- › Can vary the amounts and frequency of withdrawals, but cannot take out more than the original loan.

#### The beneficiaries:

- › Are entitled to the balance of the trust fund (the total less the outstanding loan), but care must be taken that the outstanding loan can always be repaid.

### Investment options

- › Prudential bonds:
  - Prudential Investment Plan: choice of around 160 funds, along with a flexible charging structure based on customer agreed remuneration.
  - The Prudential Onshore Portfolio Bond is available on a number of investment platforms. The bond offers access to the range of assets available on the selected platform.
- › Prudential International bonds for UK residents:
  - Prudential International Investment Bond: choice from a broad range of unit-linked funds.
  - Prudential International Investment Portfolio: choice of over 2,500 funds, from an extensive list of fund managers, with flexible charging option.

## A trust that can be used to make an outright gift of an investment.

### How it works

- › The settlor's investment bond is put into trust during his/her lifetime.
- › Payments can be made to the beneficiaries at any time. The trust will continue to the end of the trust period or until all benefits have been paid out.
- › At the settlor's death, either:
  - the trust can continue, or
  - the trust can be wound up and the assets distributed.

### Who can benefit

#### The settlor(s):

- › Cannot receive any benefit from the trust.

#### The beneficiaries:

- › Will benefit from the entire trust fund. Any payments during the settlor's lifetime must not be used in a way where the settlor could or does benefit.

### Investment options

- › Prudential bonds:
  - Prudential Investment Plan: choice of around 160 funds, along with a flexible charging structure based on customer agreed remuneration.
  - The Prudential Onshore Portfolio Bond is available on a number of investment platforms. The bond offers access to the range of assets available on the selected platform.
- › Prudential International bonds for UK residents:
  - Prudential International Investment Bond: choice from a broad range of unit-linked funds.
  - Prudential International Investment Portfolio: choice of over 2,500 funds, from an extensive list of fund managers, with flexible charging options.

An arrangement that allows the client to give away capital while still receiving regular fixed payments, with a choice of onshore and international investments.

### How it works

- › The Settlor's investment bond is put into trust during his/her lifetime.
- › The settlor gets regular payments, with the amount and frequency fixed from the outset.
- › Entitlements for the beneficiaries are at the trustees' discretion. Modest one-off payments may be made during the client's lifetime, as long as the settlor's income is not put at risk.
- › At the settlor's death, either:
  - the trust can be continued for the benefit of the beneficiaries, or
  - the trust can be wound up, with the bond assigned to the beneficiaries or cashed in and the proceeds distributed.

### Who can benefit

#### The settlor(s):

- › Receives regular fixed payments. These continue for the life of the settlor or until the death of the survivor for joint cases (unless the trust fund is exhausted).
- › Has no access to capital or any other benefits.

#### The beneficiaries:

- › May benefit from modest amounts of capital during the settlor's lifetime at the discretion of the trustees.
- › Receive the capital, distributed by the trustees, after the settlor's death.

### Investment options

- › Prudential bonds:
  - Prudential Investment Plan: choice of around 160 funds, along with a flexible charging structure based on customer agreed remuneration.
  - The Prudential Onshore Portfolio Bond is available on a number of investment platforms. The bond offers access to the range of assets available on the selected platform.
- › Prudential International bonds for UK residents:
  - Prudential International Investment Bond: choice from a broad range of unit-linked funds.
  - Prudential International Investment Portfolio: choice of over 2,500 funds, from an extensive list of fund managers, with flexible charging options.

## Highly effective UK IHT planning for foreign domiciliaries, allowing the settlor to benefit from the entire trust fund.

### How it works

- › The Excluded Property Trust is a discretionary trust. However, as all the trust assets are excluded property, this will not give rise to any immediate, periodic and exit charges as described earlier in this brochure.
- › The trust is suitable only for clients who are currently non-UK domiciled – in particular, those who may in future become UK domiciled or treated as UK domiciled for IHT purposes.
- › It can also be used by non-domiciled clients who have or may have UK domiciled beneficiaries.
- › The settlor's international bond is put into trust during their lifetime.
- › The trust is set up while the settlor is non-UK domiciled. If the settlor subsequently becomes UK domiciled for IHT purposes, the trust assets will remain excluded property and have no liability to UK IHT.

- › At the settlor's death, either:
  - the trust can continue, with payments to beneficiaries at the trustees' discretion, or
  - the trustees can wind up the trust and distribute the assets.
- › If the trust continues after the settlor's death, assets in it remain excluded property and will not form part of the beneficiaries' estates, even if they are UK domiciled.

### Who can benefit

#### The settlor(s):

- › Can benefit from the entire trust fund at any time during their lifetime.

#### The beneficiaries:

- › Can benefit from the entire trust fund, at the trustees' discretion and in particular after the settlor's death.

### Investment options for UK Resident clients

- › Prudential International bonds:
  - Prudential International Investment Bond: choice from a broad range of unit-linked funds.
  - Prudential International Investment Portfolio: choice of over 2,500 funds, from an extensive list of fund managers, with flexible charging options.



### Probate trust

A trust designed to speed up the payment of policy proceeds on death by avoiding the need for probate in respect of the trustee owned policy

#### How it works

- › The bond is put into trust during the client's lifetime.
- › Payments can be made to the client and beneficiaries at any time.
- › The trust will continue to the end of the trust period or until all the assets have been distributed.
- › At the client's death, the trust can continue or be wound up with the proceed paid out.
- › The trust can accommodate single owner policies but not jointly owned policies.
- › The gift into trust, less any available exemptions, is a chargeable lifetime transfer. This will give rise to an immediate charge if the value, added to any relevant previous chargeable transfers, is more than the nil rate band.

- › On death within seven years there may be an additional charge.
- › There may be 10-yearly periodic charges if the value (plus any relevant previous chargeable transfers) is more than the nil rate band at that time.
- › There may be an exit charge on capital distributed from the trust.
- › As the settlor is a potential beneficiary this will be a gift with reservation. The value of the bond will be in the settlor's inheritance tax estate at the time of his/her death, however double charge relief may be available.

#### Who can benefit

- › The trust is discretionary in nature.
- › There is a wide range of potential beneficiaries – including the settlor.

#### Investment options

- › Prudential Investment Plan: a wide range of investment funds to suit many market conditions including the PruFund range of funds.
- › Prudential Onshore Portfolio Bond: available on a number of investment platforms. The bond offers access to the range of assets available on the selected platforms.

- › Prudential International Investment Bond: available from Prudential International, offering tax-efficient growth with a wide choice of funds including the PruFund range of funds.
- › Prudential International Investment Portfolio: available from prudential International, providing tax-efficient growth with a broad range of investments, including unit trusts, investment trusts, and OEICs, from an extensive list of fund managers.

The value of an investment can go down as well as up. Your client could get back less than they have paid in.

**Absolute trusts**

**General principles**

- Once the trust has been set up, the beneficiaries are fixed. Neither they nor their share of the trust can be changed.
- The beneficiaries have the right to demand their share of the trust fund at any time after reaching the age of 18 (16 in Scotland).
- A beneficiary's share of the trust fund is part of his/her estate.

**The tax rules**

Gifts into an absolute trust are potentially exempt transfers. If the donor survives for at least seven years after making the gift it becomes an exempt transfer and will not incur any IHT.

If the donor dies within seven years, the gift fails and the PET becomes a Chargeable Transfer. The tax calculation will take into account the total of any chargeable transfers (both CLTs and "failed PETs") made in the seven years before death. In addition, CLTs in the seven years prior to the oldest "failed PET" will be brought into the calculation.

The total of these chargeable transfers is added to the amount of the gift into the trust and tax will then be charged on the excess over the current nil rate band (£325,000 for the current tax year at a rate of 40%).

If the donor dies more than three years after making the gift into trust, taper relief may be available. The reduction applies to the tax due, not the taxable amount.

If the value of the gift into trust and previous chargeable transfers are together less than the nil rate band, there will be no tax on the trust, but it will reduce the nil rate band allowance available for the rest of the estate. The example below, and those on the following pages, do not take account of any tax that may be due on the rest of the estate. They also assume that the annual exempt allowance has been used elsewhere.

**Example 1**

Relevant information/assumptions

- Gift into absolute trust of £325,000 made on 1 December 2014
- Potentially exempt transfer of £100,000 made on 1 February 2012
- Donor dies on 6 April 2018

<b>Step 1:</b> Calculate total of chargeable transfers and gifts into trust	Previous chargeable transfer 1 February 2012 (failed PET) (This is applied first against the NRB, so is not taxable and taper relief will not apply)	£100,000
	Gift into trust	£325,000
	<b>Total</b>	<b>£425,000</b>
▼		
<b>Step 2:</b> Calculate the amount of tax due	Nil rate band	£325,000
	Chargeable amount	£100,000
	Tax @ 40%	£40,000
▼		
<b>Step 3:</b> Apply taper relief	Taper relief @ 20%	£8,000
	<b>Amount of tax due on gift to trust</b>	<b>£32,000</b>

**Taper relief**

On death within:	0 – 3 years	3 – 4 years	4 – 5 years	5 – 6 years	6 – 7 years
Taper relief	0	20%	40%	60%	80%

## Discretionary trusts

### General principles

- › The trustees can distribute the trust fund at their discretion to any potential beneficiary.
- › Gifts above the relevant limit must be notified to HMRC by the settlor and IHT returns are required every 10 years.
- › Trust fund assets are not part of any beneficiary's estate while in the trust.
- › A change of beneficiary does not create a potentially exempt transfer (PET) or chargeable lifetime transfer.

### The tax rules

Gifts into a discretionary trust are chargeable lifetime transfers. There are three inheritance tax charges that may arise:

- › an immediate charge,
- › a 10-yearly periodic charge, and
- › an exit charge when money from the trust fund is distributed to beneficiaries.

There may also be an additional charge if the settlor dies within seven years of setting up the trust.

While the settlor is alive, tax charges on the trust do not take into account any PETs. If the settlor dies and there are PETs which then become chargeable, charges on the trust may be revised and extra tax may become payable.

### Immediate charge

The immediate charge is at the lifetime rate of 20%. This is charged on the excess over the nil rate band of the gift into trust plus any chargeable transfers made in the previous seven years.

### Example 2

Relevant information/assumptions

- › Gift into discretionary trust of £325,000 made on 6 April 2017
- › Previous chargeable transfer of £100,000 made on 1 February 2011
- › Nil rate band is £325,000

<b>Step 1:</b> Calculate aggregate chargeable transfer	Previous chargeable transfer	£100,000
	Gift into discretionary trust	£325,000
	Aggregate chargeable transfers	£425,000
▼		
<b>Step 2:</b> Calculate tax due	Nil rate band	£325,000
	Taxable amount	£100,000
	Tax due @ lifetime rate of 20%	£20,000

### Points to note:

- › Gifts into trust of an amount below the nil rate band will not attract any immediate charge if there have been no chargeable lifetime transfers in the previous seven years or if the total of the gift and any previous chargeable lifetime transfers is less than the nil rate band.
- › If the immediate charge is paid by the settlor rather than the trust, the amount payable will be grossed up to 25%, as the tax payment represents a further gift being made. This is likely to be the case for gifts of bonds and life policies, as otherwise part of the bond or policy would need to be surrendered immediately to pay the tax if no other trust funds were available.

### Additional charge on death within seven years

If the settlor dies within seven years of setting up the trust, the tax due on the gift into trust is recalculated using the full IHT rate of 40% and the current nil rate band. The tax calculation will take into account the total of any chargeable transfers (both CLTs and "failed PETs") made within the seven years before death. In addition, CLTs in the seven years prior to the oldest "failed PET" will be brought into the calculation.

If the settlor dies more than three years after making the gift into trust, taper relief may be available. The reduction applies to the tax due, not the taxable amount.

If the amount of tax due is more than the tax already paid under the immediate charge, there will be an additional tax charge to make up the difference. However, if the amount due is less than has already been paid, there will not be any refund.

#### Example 3

Relevant information/assumptions

- › Gift into discretionary trust of £325,000 made on 6 April 2014
- › Previous chargeable transfer of £100,000 made on 1 February 2008
- › Settlor dies on 1 December 2017
- › Nil rate band at that time is £325,000

<b>Step 1:</b> Calculate aggregate chargeable transfer	Previous chargeable transfer	£100,000
	Gift into discretionary trust	£325,000
	Aggregate chargeable transfer	£425,000

<b>Step 2:</b> Calculate tax bill	Nil rate band	£325,000
	Taxable amount	£100,000
	Tax @ 40%	£40,000

<b>Step 3:</b> Take off taper relief (see page 18 for table of taper relief)	Taper relief @ 20%	£8,000
	Tax due	£32,000

<b>Step 4:</b> Calculate balance due	Less tax paid as immediate charge (from Example 2)	£20,000
	Balance due	£12,000

#### Points to note:

- › The additional charge is based on the original gift into the trust, not its current value, but the current nil rate band is used.
- › If there was no immediate charge when the trust was set up, there will not normally be an additional charge, although any "failed" PETs could trigger a charge if they take the total above the nil rate band.

### Periodic charge

Every 10 years, the value of the trust fund is subject to a periodic charge. This applies for as long as the trust continues, even if the settlor has died. The calculation is based on the excess over the nil rate band, taking into account any chargeable transfers (CLTs and failed PETs) made in the seven years before the trust was set up. The tax rate that applies is 30% of the effective lifetime rate.

#### Example 4

Relevant information/assumptions

- › Periodic charge arising on 6 April 2024
- › Gift into discretionary trust of £325,000 made on 6 April 2014
- › Previous chargeable transfer of £100,000 made on 1 February 2008
- › Trust fund is now worth £570,000
- › No distributions have been made from the trust
- › Nil rate band is now £350,000

<b>Step 1:</b> Calculate aggregate chargeable transfer	Previous chargeable transfer	£100,000
	Current value of trust fund	£570,000
	Aggregate chargeable transfer	£670,000
▼		
<b>Step 2:</b> Calculate effective rate	Nil rate band	£350,000
	Taxable amount	£320,000
	Tax @ 20%	£64,000
	Effective rate (= tax/value of trust fund)	11.23%
▼		
<b>Step 3:</b> Calculate tax due	Tax due (= effective rate x 30% x value of trust fund)	£19,203

#### Points to note:

- › If the trust fund is growing faster than the nil rate band, there may be a periodic tax charge even if there was no immediate charge when the trust was set up.
- › Further complex rules apply if there are related settlements, if further property has been added to the trust, if the trust contains non-relevant property and concerning accumulated and undistributed income.

## Exit charge on capital distributions

### a) In the first ten years

Where part or all of the trust fund capital is distributed to a beneficiary, either during the settlor's lifetime or after their death, there may be an exit charge. During the first ten years, this will be based on 30% of the effective lifetime rate. This is then adjusted for the amount of time since the trust was set up, using a factor of  $X/40$ , where  $X$  is the number of complete quarters that have elapsed.

### Example 5

Relevant information/assumptions

- › Gift into discretionary trust of £325,000 made on 6 April 2014
- › Previous chargeable transfer of £100,000 made on 1 February 2008
- › Distribution of £100,000 made on 6 October 2019
- › 22 quarters between trust being set up and distribution
- › Nil rate band when the distribution is made is £325,000

<b>Step 1:</b> Calculate aggregate chargeable transfer	Previous chargeable transfer	£100,000
	Gift into trust	£325,000
	Aggregate chargeable transfer	£425,000
▼		
<b>Step 2:</b> Calculate the effective tax rate	Nil rate band	£325,000
	Taxable amount	£100,000
	Tax @ 20%	£20,000
	Effective rate (= tax/value of gift)	6.15%
▼		
<b>Step 3:</b> Calculate the tax due	Chargeable rate (= effective rate x 30% x 22/40)	1.01%
	Amount distributed from trust	£100,000
	Tax due	£1,010

### Points to note:

- › The calculation for the exit charge is based on the original gift into trust, not its present value, but uses the current nil rate band.
- › If there was no immediate charge, the exit charge will also be nil.

## Exit charge on capital distributions

### b) After ten years

After ten years, the exit charge will be based on 30% of the effective rate at the last ten-year anniversary, but recalculated using the current nil rate band. Again, it is adjusted for the time that has elapsed since the last charge, using a factor of  $X/40$  where  $X$  is the number of complete quarters that have elapsed.

#### Example 6

Relevant information/assumptions

- › Gift into discretionary trust of £325,000 made on 6 April 2014
- › Previous chargeable transfer of £100,000 made on 1 February 2008
- › Trust fund was worth £570,000 at last periodic charge
- › Distribution of £100,000 made on 6 October 2027
- › 14 quarters between last periodic charge and distribution
- › Nil rate band when the distribution is made is £400,000

<b>Step 1:</b> Calculate aggregate chargeable transfer	Previous chargeable transfer	£100,000
	Value of trust fund at last periodic charge	£570,000
	Aggregate chargeable transfer	£670,000
▼		
<b>Step 2:</b> Calculate the effective tax rate	Nil rate band	£400,000
	Taxable amount	£270,000
	Tax @ 20%	£54,000
	Effective rate (= tax/value of trust fund)	9.47%
▼		
<b>Step 3:</b> Calculate the tax due	Chargeable rate (= effective rate x 30% x 14/40)	0.99%
	Amount distributed from trust	£100,000
	Tax due	£990

#### Points to note:

- › The calculation for the exit charge is based on the value of the trust fund at the last periodic charge, not its present value, but uses the current nil rate band.
- › If the last periodic charge was nil, the exit charge will also be nil.

### Pre-Owned Assets Tax

The Finance Act 2004 introduced new rules that provide for an income tax charge on benefits received by a former owner of property. It applies to individuals who continue to receive benefits from certain types of property that they owned after 17 March 1986 but have since disposed of. The tax has applied since the tax year 2005/2006.

The property affected can be grouped under three headings: land, chattels and intangible property. Not every instance where an individual may have disposed of property will come within the scope of the charge. There are several types of transactions relating to land and chattels that are excluded. There are also provisions exempting the relevant property from the charge where it is subject to a charge to IHT or where specific protection from IHT is given by legislation.

It is Prudential's understanding, based on the legislation and on HM Revenue & Customs' published statements and practice, as at May 2018, that the trust arrangements outlined in this brochure, in isolation, should not give rise to a charge to income tax under Section 84/Schedule 15 Finance Act 2004. This assumes that the trusts are not being arranged as part of any other "associated" arrangements that may be being made at the same time.

### UK income tax on an Investment Bond in a non-charitable trust

Many types of investment in a trust are liable to capital gains tax (CGT). However, with a bond, any tax charged on any profit made will generally be income tax.

A bond normally consists of a group of identical policies. The chargeable event tax rules look at each policy (or segment) separately. For instance, all the policies may be in the trust at outset, but at some point some may come out of the trust – because the trustees have assigned them to one of the beneficiaries. Where that happens, the assigned policies will be taxed as belonging to an individual, while those still in the trust will be taxed as policies in a trust.

A tax charge only arises when a "chargeable event" occurs. In the chart, a "Taxable Policy" means a policy that has become taxable because a chargeable event has occurred – for example, the policy has been fully surrendered. Sometimes a chargeable event will occur under all the policies in the bond at the same time, in which case all the policies in the bond will be Taxable Policies. At other times, a chargeable event may occur under just one of the policies, in which case you will be looking at just that one Taxable Policy.

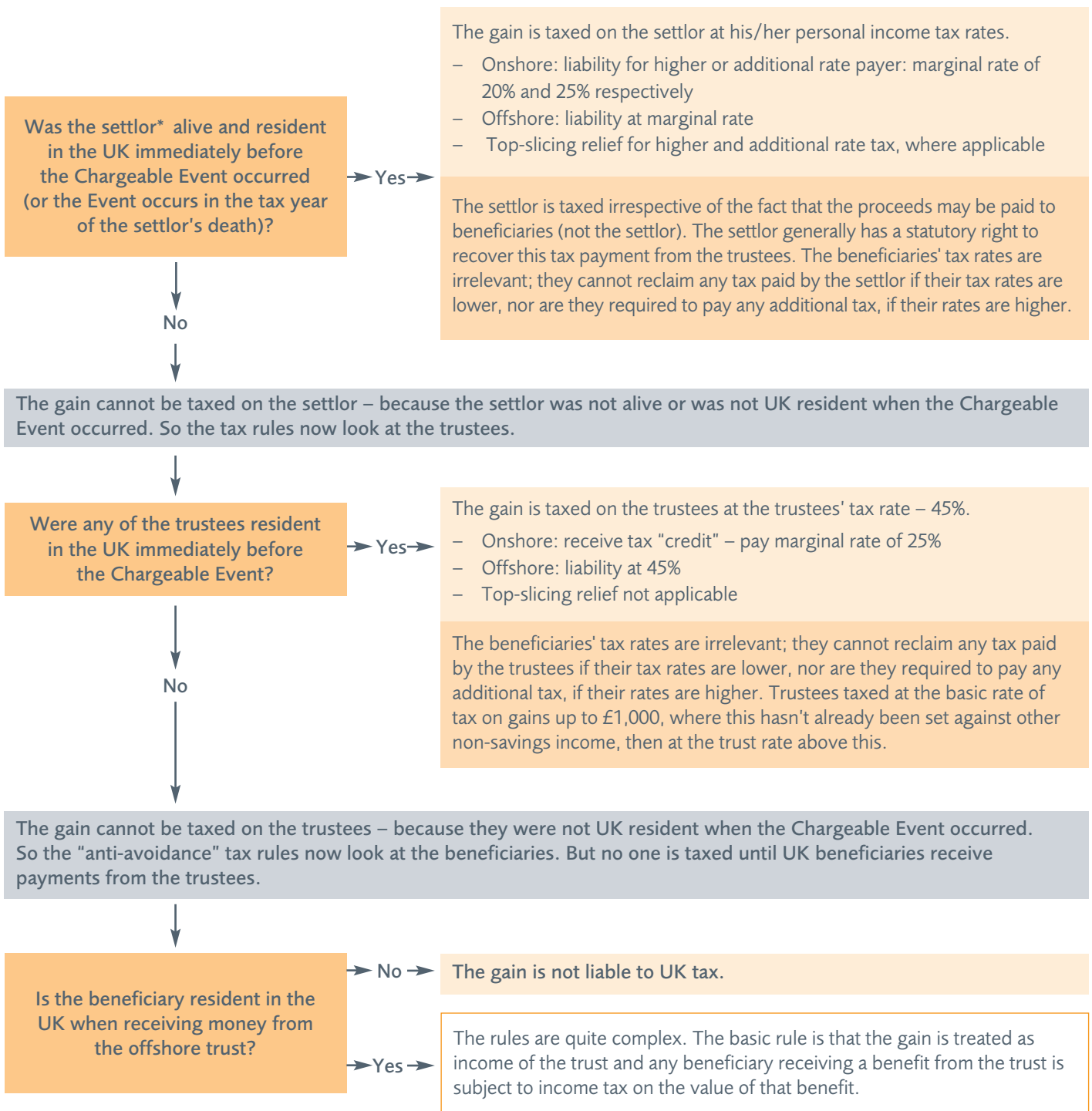
### Bond in trust – who is the taxpayer?

Regardless of age, chargeable event gains will be taxed on the beneficiary of a bare trust subject to one exception. That exception relates to the parental settlement provisions under S629 ITTOIA 2005 where gains are taxed on the parent. This applies where

- › the settlor is a parent
- › the beneficiary is a minor child or step child of the settlor (who is neither married nor in a civil partnership). A step child includes the child of a civil partner.
- › the total chargeable event gains plus all other income of a child from settlements by that parent exceed £100 in any tax year

For discretionary trusts, the position is set out in the chart overleaf. The tax rates shown are for tax year 2018/2019 (post 17 March 1998 policies only).





\* Where there are joint settlors, each settlor is assessed for half of the chargeable gain. When assessing, the gain should be split 50/50 between the two settlors and for each part follow the flowchart to assess who is liable. Where one settlor is deceased, you could have the situation where half of the chargeable gain is assessed on the trustee rate of tax and the remainder taxed on the surviving settlor's marginal rate.

The value of an investment, and any income from it may go down as well as up and is not guaranteed. Your client or their beneficiaries may get less than was paid in.

Our trust declaration forms and accompanying brochures are provided for consideration and use on the strict understanding that investors always seek suitable professional advice. We believe that this is very important for anyone considering using a trust, or doing anything under the provisions of a trust, for a number of reasons.

- › Trusts will not always be suitable in all cases. Other forms of planning may be more suitable in individual circumstances.
- › Creating a trust can have tax as well as legal consequences.
- › Once a trust has been created it cannot be revoked.
- › The trustees have special duties to the settlor and beneficiaries and the misuse of a trust power by a trustee can make him or her personally liable for resulting losses.
- › Situations that may involve international or cross-border legal and taxation issues can be extremely complex.
- › Tax and trust law can be open to differing interpretations.

For more information on trusts from Prudential and Prudential International, please speak to your usual Prudential contact, visit [www.prudviser.co.uk/estate-planning/](http://www.prudviser.co.uk/estate-planning/) for UK domiciled clients, and [www.prudential-international.com](http://www.prudential-international.com) for non-UK domiciled residents.

The registered office of Prudential International is in Ireland at Montague House, Adelaide Road, Dublin 2. Prudential International is a marketing name of Prudential International Assurance plc.





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