

Adviser guide

Nucleus Onshore Bond Discretionary Discounted Gift Trust

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Introduction

This document consists of seven sections:

1. The Nucleus Onshore Bond Discretionary Discounted Gift Trust: an overview
2. The suitability of the Nucleus Onshore Bond Discretionary Discounted Gift Trust
3. Inheritance tax (IHT) planning
4. Practical issues
5. The trust provisions in detail
6. The UK tax implications

Note that in this document, the term 'spouse' includes a reference to a registered civil partner under the Civil Partnership Act 2004.

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1. The Nucleus Onshore Bond Discretionary Discounted Gift Trust: an overview

1.1 General purpose of the trust

The purpose of the Nucleus Onshore Bond Discretionary Discounted Gift Trust (the trust) is to facilitate effective lifetime inheritance tax (IHT) planning for an investor by using a single premium life insurance bond (the 'bond') without losing complete access to the investment.

The Nucleus Onshore Bond issued by Countrywide Assured is suitable for this purpose (please refer to the Nucleus Onshore Bond documentation for further details).

Where a new bond is to be made subject to a trust no initial adviser fees may be facilitated.

By using the trust with a life assurance bond, the individual may be able to immediately reduce his or her taxable estate for IHT purposes to the extent of the discount, whilst retaining access to a fixed stream of payments from the investment.

The trust allows an investor (known as the settlor) to make a gift to trust, which if they survive 7 years after making this gift will be outside their estate for IHT purposes. However, as this trust is subject to the relevant property tax regime, the gift could be subject to entry, principal and exit charges and other reporting requirements during the lifetime of the trust. If the settlor was to die during the 7 years from making the gift, HMRC would exclude the value the retained rights reserved for the settlor.

1.2 The trust fund split between the rights of the settlor and gifted benefits for the beneficiaries

The trust deed creates two interests in the trust fund. One part of the trust fund, called the retained rights of the settlor, is held absolutely for the settlor and comprises a series of fixed specified payments at pre-specified frequencies.

The other part of the trust fund is referred to as the gifted benefits for the beneficiaries. It is expected that these beneficiaries will benefit from the trust following the settlor's death. The trust fund at that time will reflect the investment performance of the bond less any capital payments made to the settlor whilst he or she was alive.

1.3 Overview of tax advantages

The value of the trust fund available for the beneficiaries partly depends on how long the settlor remains alive and therefore, on the amount of capital payments drawn from the trust.

Because the settlor's right to capital payments has an economic value for the settlor's own benefit (subject to underwriting), the value of the gift the settlor is treated as making is reduced. Hence the term 'discounted gift'.

Although, as stated, the value of the settlor's entitlement to capital payments remains in his or her estate during their lifetime, this value is nil when the settlor dies.

Whilst the gift with reservation provisions can neutralise the IHT benefits of a trust under which the settlor can benefit, these rules do not apply in this case because the settlor's entitlement to withdrawals is clearly defined in the trust and is held by the trustees absolutely for the settlor. The settlor cannot benefit in any way from the remainder of the trust fund.

The gifted benefits reserved for the settlor's beneficiaries are classed as a chargeable lifetime transfer for tax purposes. The trustees have absolute discretion over this fund as to who benefits, when and by how much from the classes of beneficiaries stated on the trust deed. Even though the gift to a trust is a chargeable lifetime transfer, no immediate tax liability arises unless the amount of the gift (plus any other chargeable transfers in the previous seven years) exceeds the nil rate band.

Further details of the UK taxation implications of the trust can be found later in this guide.

2. The suitability of the Nucleus Onshore Bond Discretionary Discounted Gift Trust

The Nucleus Onshore Bond Discretionary Discounted Gift Trust is likely to be suitable if:

- the investor, usually aged between 60 and 89, has a potential IHT liability on their estate, which they would like to reduce.
- the investor needs to retain some access to the investment, but is happy to restrict this access to a series of fixed capital payments.
- the investor can afford to give up access to the rest of the investment.
- the investor is in reasonably good health and is willing to undergo underwriting.

Where the investor does not require any access to withdrawals from the bond, another type of trust may be more suitable. If the investor requires access to the whole investment or the individual is in serious ill health and little to no discount would be given after the underwriting had been completed, then this type of trust would likely not be suitable and other trust planning options should be explored.

The trust can be used regardless of whether the bond is owned or is applied for by one individual or two. Where two persons jointly own or invest in a bond they are joint settlors. For IHT purposes, two settlements then exist. Joint settlors should contribute equally to the arrangement. When one settlor dies the surviving settlor will still enjoy the capital repayments under the trust.

To avoid the bond coming to an end due to death, the bond should be effected on the lives of several beneficiaries on a multiple lives last survivor basis. However, it is recommended that the bond must not be effected on the life of the settlor or the settlor's spouse.

3. IHT planning

A tax effective gift, but retention of control and some access to the capital

In order to ensure that an effective gift is made for IHT purposes, it is essential that the settlor only has access to the retained rights and not the rest of the trust fund. In such circumstances, the 'gift with reservation' provisions do not apply.

The gifted fund is held for the beneficiaries and in practice, benefits will usually only be paid to discretionary beneficiaries after the death of the settlor (or the death of the survivor of joint settlors).

Under the terms of the trust, the settlor is the appointor, which means that he or she (or they) has the power to appoint the benefits from the trust amongst any of the discretionary beneficiaries specified in the trust. On the settlor's death (or the death of both settlors), this power of appointment passes to the trustees.

As the trust is discretionary, no beneficiary is entitled to any benefit until the appointor makes an appointment of capital or income to the beneficiary.

The possibility of further gifts by the settlor

Once the trust has been created there can be no top ups to the existing bond. If the settlor wants to do further gifts to trust this should be with a new trust and new bond. The requirement for the settlor to take withdrawals is key for this type of trust as once these have begun they cannot be stopped by the settlor or this would affect the IHT effectiveness of this trust. However, the settlor could, for example, simply gift the cash that he or she receives from the trustees to anyone, including any of the intended beneficiaries. These gifts would be classed as potentially exempt transfers and could be chargeable if death occurs within 7 years and they are not within any IHT gift exemptions. The withdrawals from a discounted gift trust are return or capital and would not qualify under the gifts out of normal expenditure exemption for IHT purposes. The settlor should take independent advice if he or she wishes to achieve this.

4. Practical issues

4.1 Creating a valid trust

The trust is made when the settlor and additional trustees execute a trust deed. The settlor can establish the trust with either a cash gift or an existing bond. If the trust is set up with a cash gift, the settlor transfers the amount intended for investment to the trustees, which is done by means of a cheque for the desired amount. Unless the trustees open a bank account especially for that purpose, the settlor gives the trustees the cheque. The cheque should be made payable to 'Nucleus'.

Alternatively the trust can be created by the settlor transferring an existing bond to the trustees at the application stage depending on the timing and processing the trust deed used.

4.2 The importance of additional trustees

As explained above, additional trustees must be appointed at outset as either the trustees make the investment into the bond or an existing bond is transferred to the trustees.

It is important for the settlor to choose the trustees wisely. Even though the settlor is one of the original trustees and it is expected that he or she will remain as trustee during his or her lifetime, where the trust is governed by English law the trustees must act unanimously. In extreme circumstances where the trustees disagree, the settlor has the power to dismiss a trustee, but at least one trustee must remain who is someone other than the settlor or his or her spouse.

One of the key duties of the trustees during the settlor's lifetime (or during the lifetime of the settlor and the survivor of the settlor if there are two settlors) is to pay the capital payments specified in the trust to the settlor. These payments must be made every time the settlor survives to the appropriate date when his or her entitlement arises. The trustees cannot pay the settlor more than the entitlement on the specified date.

4.3 The bond

As the bond is a life assurance policy, the trustees must indicate on whose life (or lives) the policy is to be issued. The settlor and the settlor's spouse should not be lives assured under the bond.

The bond is then issued on a last survivor basis.

It is advisable for the bond to be issued with multiple lives assured on a last survivor basis to ensure greater flexibility in the timing of the final encashment of the bond. As the bond is automatically encashed when the last life assured dies, ideally the lives assured should be younger than the policyholder(s).

When the trustees are due to make capital payments to the settlor in accordance with their obligation in respect of the settlor's fund, they have to make withdrawals/part surrenders from the bond.

4.4 Calculating the discount and underwriting the gift

The amount of the discount on the gift depends largely on the settlor's (or both settlors', if appropriate) age and state of health, as well as the amount and frequency of the capital payments the settlor is entitled to. In practice, the younger and healthier the settlor, the greater the value that will be attached to his or her retained rights.

It is necessary to ascertain the discounted gift at outset in order to make a return to HMRC covering the chargeable lifetime transfer that is being made to the trust.

HMRC frequently agrees a standard basis of valuation with a life office, but as any particular discount depends on an evaluation of the settlor's state of health at the time of establishing the trust, HMRC can challenge that discount.

In particular, if the settlor dies soon after effecting the trust, HMRC may question whether the settlor was in good health when the trust was established with a view to limiting the discount accordingly.

HMRC does not currently accept that any discount is available in the case of a settlor who has an actual or underwriting age of 90 or more. For this reason, an application for an onshore bond discretionary discounted gift trust from investors aged over 89 will not be accepted.

4.5 Underwriting

Each settlor is required to complete a medical questionnaire at the outset. The settlor's life expectancy is underwritten by MorganAsh, a specialist underwriting services company, before the bond and the trust is established. The client may be required to attend a medical appointment with his or her general practitioner or with a convenient independent medical practitioner. MorganAsh will not be able to underwrite the case until they are in receipt of all the medical information required.

Subject to the parties being satisfied with the value of the discounted gift, the investment and the trust can then proceed and the settlor can receive a personalised illustration from Countrywide Assured. Please note that HMRC can challenge this in the future.

For the underwriting an initial consultation fee of £150 is charged, which covers the time spent in underwriting and establishing the level of discount available (joint settlors each pay a fee of £150). A separate cheque for this fee must be supplied at the time of the application, and should be made payable to 'Countrywide Assured'. This fee is non-refundable if the application for a discount is declined.

Nucleus will not accept a discounted gift trust unless underwriting has been completed prior to the bond or trust being created.

4.6 Type of investment

In theory, the trustees could invest in a different type of investment, for example, unit trust units or shares in an OEIC, instead of a bond. However, this can be complex, and have ongoing tax consequence for the trustees so Nucleus will only accept and investment bond as an underlying asset for this trust and only one bond per trust.

Investment bonds are non-income producing asset and the gains are subject to income tax upon a chargeable event. It is therefore a more tax efficient investment for the trust, which means that there are no ongoing annual tax liabilities and no annual tax returns are required.

4.7 The death of the settlor

For single settlor trusts, no value is included in the settlor's estate in respect of the retained rights, as the settlor's entitlement depends on them being alive, so is valueless on death.

In joint settlor cases, the right to capital payments continues to the surviving settlor.

Following the death of the settlor (or the death of both settlors), the trustees can either continue with the bond as a long-term trust investment or distribute the proceeds to the beneficiaries, so long as there are continuing lives assured.

If an existing bond is transferred to the trust, it may be that the bond was originally effected on the life of the settlor and/or the settlor's spouse. In this case, if the settlor is the sole remaining life assured and he or she dies, the bond is encashed and the value is paid to the trustees. As the continuing right to payments to the settlor then ceases, the trustees are free to distribute the trust fund to the beneficiaries or invest it for their benefit.

Please note if the settlor and or their spouse are lives assured on the existing bond gifted to trust, they and the trustees should seek tax and legal advice to discuss any implications of Paragraph 7 of Schedule 20 to the Finance Act 1986 and potential gift of reservation of benefit consequences.

5. The trust provisions in detail

5.1 Two trusts in one

The trust is effectively split into two parts: the retained rights and the gifted benefits for the beneficiaries. The settlor's retained rights are held on a bare trust for the benefit of the settlor. The beneficiaries' fund consists of the balance of the trust benefits, which are held under a fully discretionary trust.

5.2 Trust clauses in detail

The following is a summary of the key provisions as they appear in the draft trust deed.

Section 1 – Declaration

The trust offers alternative provisions depending on whether it is effected with cash or an existing bond is made subject to trust. The amount of cash gifted or the policy number, as appropriate, needs to be inserted.

Section 2 – Definitions

In this part of the trust, the terms used throughout are defined to avoid repetition. The most important definitions are those of the discretionary beneficiaries and the default beneficiaries.

The discretionary beneficiaries are those persons to whom the appointor may appoint benefits. The appointor is the settlor during his or her (or their) lifetime and thereafter the trustees. The discretionary beneficiaries include the spouse (except where the spouse is a joint settlor), widow or widower of the settlor, the children and the remoter issue of the settlor, their spouses, the brothers and sisters of the settlor and their issue, anybody who would benefit from the estate of the settlor on the settlor's death as well as any person nominated in writing to the trustees by the settlor or any charity. The class of discretionary beneficiaries is therefore very wide and can be added to by the settlor by providing written notification to the trustees. However, the settlor himself or herself cannot be added to the class at any time, as otherwise a gift with reservation occurs.

The default beneficiary(ies) is the individual(s) who benefits in the unlikely event that the power of appointment is not exercised by the appointor by the end of the trust period (i.e. 125 years from the time the trust is created). They are named by the settlor in the trust deed. At least one person must always be named and if more than one is named, the shares in which they are to benefit must be stated. This is necessary to ensure that the trust has the intended tax consequences.

Section 3 – Principal trust terms

3A – The settlor’s retained rights – these are held on bare trust for the settlor.

The settlor specifies the amount and frequency of the payments he or she wishes to receive. The settlor can postpone the start of the entitlement to some date in the future. For example, if the settlor wants to delay the start date of the cash payments, he or she can state that payments should commence a specified number of months or years from the date of the trust.

In determining the amount of the cash payment, the settlor can specify a cash sum or a percentage of the amount paid to the trustees to purchase the bond or, in the case of an existing bond, a percentage of the initial premium. The frequency should also be specified, which could be yearly, half-yearly, quarterly or monthly.

3B – The gifted benefits for the beneficiaries are held on discretionary trust, where the trustees have absolute discretion on who benefits from the trust property.

In this part, the power of appointment is defined as well as the default entitlement if the power of appointment is not exercised during the trust period of 125 years.

The power to appoint capital and income under the trust is vested in the appointor (i.e. the settlor(s)) during his or her (or their) lifetime and thereafter the trustees. The power is exercisable at the appointor’s discretion and includes the power to appoint further trusts in favour of beneficiaries.

Where there are two settlors, the appointor is both settlors whilst alive and of full capacity and then the survivor of them. After the death or loss of mental capacity of the settlor(s), the appointor is the trustees.

In the unlikely event that an appointment of all of the trust assets has not been made by the end of the trust period, the default beneficiaries benefit. These are the people initially named by the settlor in the trust deed. However, it is most unlikely that the trust fund will not be distributed within 125 years.

There is also a special provision dealing with any potential conflict of interest. In many cases, the trustees are family members who are also beneficiaries under the trust. If the power of appointment is exercised by the trustees (after the death of one or both settlors) such trustees are often also the beneficiaries (for example, the settlor’s spouse in single settlor cases and/or children of the settlor). If an appointment of benefits is made in favour of a beneficiary who is also a trustee, then suspicion of a conflict of interest could arise. For this reason, there is a provision in the trust which states that if a beneficiary is also one of the trustees, the trustees can only make an appointment in favour of that beneficiary if there is at least one other trustee who does not benefit directly or indirectly from the appointment being made.

The trustees have wide powers to advance capital from the trust fund to the beneficiaries and to make loans to beneficiaries. In practice, this only takes place after the settlor’s death.

Section 4 – Administrative powers of the trustees

The trustees also have wide administrative powers to deal with the bond and to reinvest the proceeds in any way they wish. They also have power to borrow funds, to make payments to parents or guardians of minor beneficiaries and to delegate certain powers.

Section 5 – Appointment, dismissal, retirement and remuneration of trustees

The trust contains comprehensive provisions that regulate the activities and powers of the trustees.

The power to appoint new or additional trustees is vested in the appointor. The appointor is the settlor, whilst alive and of full capacity, and then the trustees. The settlor also has power to dismiss any trustee provided at least one trustee, other than the settlor and the settlor’s spouse, remains after such dismissal. After the death or loss of capacity of the settlor, if any trustee loses mental capacity, they can be dismissed by the majority of the other trustees. In all other cases, under a trust subject to English law, trustees must act unanimously. There are also powers to deal with the retirement of trustees.

Under the terms of the trust, trustees who act in their professional capacity are entitled to charge fees.

Section 6 – Further trust provisions

These deal with the trustees’ duty of care and liability for loss to the trust fund.

The statutory duty of care contained in section 1 Trustee Act 2000 has been extended by the trust to apply to all functions of the trustees. This statutory duty of care is a duty to act with such care and skill as is reasonable in the circumstances having regard in particular to any special knowledge or experience that the trustee has or holds himself or herself out as having and, in the case of a trustee acting in a professional capacity (e.g. a solicitor, accountant, stockbroker or independent financial adviser), to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

The liability of individual trustees is limited so that they will not, generally, be held liable for any loss to the trust fund provided they act in good faith. Trustees who are paid for their services are also liable for their negligence.

Section 7 – Proper law

The draft trust deed specifies that the trust will be governed by the laws of England and Wales. If the Settlor wishes to have the laws of Scotland or Northern Ireland applying then they should seek legal advice about getting a bespoke trust deed created to suit their circumstances and the implications of this.

There is some uncertainty however, over whether discounted gift trusts can be validly made under the law of Scotland, and it is possible that the IHT gift with reservation rules may apply. Where the settlor still chooses to select the law of Scotland, a written statement is required from the settlor as acknowledgement of this risk.

6. The UK tax implications

In the following overview, it is assumed that the settlor, the beneficiaries and the trustees of the trust are all UK resident. Special rules apply when this is not the case.

The tax position of trust is complex and depends on each individual's circumstances. Nucleus cannot provide legal, tax or investment advice and accepts no responsibility for any reliance placed on the contents of this guide.

6.1 Inheritance tax (IHT)

a. Establishment of the trust

When the trust is established, the settlor is treated as having made a discounted gift for IHT purposes. The size of this gift is equal to the difference between the amount of cash used to buy a new bond (or the value of the existing bond, adjusted as appropriate, as explained above) and the value of the settlor's retained right to capital payments.

For IHT purposes, the gift is a chargeable lifetime transfer. If this amount, plus the amount of any other chargeable transfers made by the settlor in the previous seven years, does not exceed the nil rate band for IHT there is no IHT liability when the gift is made. If the settlor survives for seven years after investing in a trust, no IHT liability arises at all in respect of the gift (although the bond may be subject to principal/exit charges). If the settlor's nil rate band is exceeded, there is a lifetime liability on the excess.

Where a husband and wife invest as joint settlors using jointly owned funds, each is treated as making an investment of 50% of the total investment and each is treated as a settlor of one trust made up of that person's discounted gift and each person is underwritten separately.

HMRC set the limits for reporting chargeable lifetime transfers. Gifts which exceed these limits must be reported to HMRC using the IHT and any supplementary forms.

All UK express trust unless specifically excluded must be registered on the UK's trust registration service (TRS). It is the responsibility of the trustees to ensure their trust is registered correctly, proof of registration is provided when requested and the record is kept up to date.

b. Death of the settlor

On the death of the settlor (or, where relevant, either of the settlors), the value of the trust fund (i.e. the bond) is outside of the settlor's estate for IHT purposes if the gift was made 7 years prior to this event.

If the settlor does not survive the gift by seven years, the potential IHT liability on the original chargeable transfer must be recalculated at the full death rates applicable at the date of death. However, no IHT arises if the gift was within the settlor's available nil rate band though IHT could still be due depending on other assets in their estate. The gift to trust may take up some or all of the nil rate band and when calculating the estate for IHT the order of gifts is important and the remaining estate will sit on top of the gifts. If the nil rate band was exceeded at creation, the tax charge paid on entry can be deducted. IHT taper relief may be available, if the settlor has survived the gift by at least three years.

As previously discussed, it is strongly recommended that the bond is not effected on the life of the settlor/settlor's spouse. Professional advice should be taken before transferring an existing bond to the trust if it is on the life of the settlor/settlor's spouse.

If the settlor is survived by a life assured under the bond, the bond continues unaffected by the settlor's death.

c. IHT whilst the trust is in existence

As this is a discretionary trust, the relevant property tax regime applies and there may be IHT charges:

- on every ten-year anniversary of the trust, i.e. the principal charge; or
- when the trust property is distributed to the beneficiaries, i.e. the 'exit charge'.

The principal charge

The trust fund is subject to a principal charge at every ten-yearly anniversary. Special rules apply to determine the value of trust property for discounted gift trusts. The rate of IHT charged is determined by assuming a transfer being made by an assumed transferor. This means that it is broadly necessary to take account of:

- the value of the property in the trust on the ten-year anniversary, the value of certain additions made to the trust and the value, when they were set up, of any other trusts created on the same day (the assumed transfer); and
- the recalculated discount; and
- the settlor's cumulative total of chargeable transfers made in the seven years immediately preceding the creation of the trust (assuming there has been no added property); and
- any distributions to the beneficiaries; and
- the available nil rate band.

The maximum liability is therefore 6% of the value of the trust property over the available nil rate band, but frequently it will be much lower.

The exit charge

Exit charges will be based on the value of the property leaving the trust either when distributing to the beneficiaries or winding up the trust.

HMRC has confirmed that no exit charge will arise on payments made to the settlor under an onshore bond discretionary discounted gift trust because this property is already held absolutely on bare trust for him or her.

Exit charges in the first 10 years

Exit charges within the first 10 years are nil if the value of the initial chargeable lifetime transfer (before applying any IHT exemptions or reliefs) to the trust is below the available nil rate band at the time of the exit. However if there have been failed potentially exempt transfers, causing the chargeable lifetime transfer to exceed the available nil rate band, or additions to the trust, exit charges could be due. If an exit charge does arise, the hypothetical lifetime entry charge would need to be calculated and the effective rate of tax applied depending on the number of quarters (3 month periods) that have expired since the trust was created.

Exit charges after the first 10 years

The amount of any exit charge occurring after the first 10 years depends on the rate of tax charged at the last ten-year anniversary (if any) and the length of time (in quarter years) that the property has been in the trust since the last principal charge. If there was no charge at the previous ten-year anniversary, there will be no exit charge in the following 10 years.

Exit charges should not arise on loans made by the trustees to beneficiaries.

The occasion of a principal charge and transactions that can give rise to an exit charge, such as capital payments to the beneficiaries, also have to be reported to HMRC even if no actual tax liability arises.

If there are joint settlors (who should contribute equally), the trust is effectively treated as two separate trusts, each settled by one settlor, for all IHT purposes. IHT calculations are then applied to each of the settlements. The trust fund is effectively divided into proportions reflecting the value of the discounted gift made by each settlor for the purposes of calculating the ten-year principal charge and any exit charge.

6.2 Income tax

a. Payments to the settlor

The settlor's cash entitlements are funded by the trustees making encashments from the bond. The trustees are entitled to withdraw from the bond, tax deferred, an amount of up to 5% of the premiums invested each year for 20 years. To the extent that such a 5% allowance is not used in one year, it can be carried forward to the next year and so on. As long as payments are kept within the cumulative total of unused annual 5% allowances, no income tax implications arise for the trustees or the settlor at the time of the withdrawal, but may do so on the occurrence of a chargeable event giving rise to a chargeable gain.

b. Payments to advisers and DFM fees

Where the trustees have agreed that ongoing or ad-hoc adviser fees are to be paid from the bond such adviser fees will count towards the 5% allowance, as will all DFM fees paid from the bond.

Ongoing adviser fees should be paid as a fixed monetary amount. It is strongly recommended not to pay ongoing adviser fees as a percentage of the fund value for discounted gift trusts, as this may compromise the tax planning benefits of the arrangement.

c. Chargeable event gains

- i) During the settlor's lifetime and in the tax year in which the settlor's death occurs

For income tax purposes, any chargeable event gains arising under the bond are assessed on the settlor. If there are joint settlors, each is assessed on a portion of the gain based on the proportion of his or her contribution (assumed to be equal). The settlors may have personal tax allowances and or top slicing relief that could be available to them to reduce the tax payable on the gains.

- ii) After the end of the tax year in which the settlor's death occurs

Following the settlor's death, any chargeable event gains arising in a tax year after that in which the settlor died, are assessed on UK resident trustees at the special rate of 45%. In the case of an onshore bond, a basic rate tax credit is given for the tax paid by the life company. Trusts with income less than £500 in a tax year are not subject to Income Tax. If income is £501 or more then all income will be taxed at the appropriate trust rate of 45% gross (deducting the basic rate tax credit paid within the fund for onshore bonds). If the trustees assign the policies out to the beneficiaries prior to surrender then the tax liability will fall on the beneficiary and they may have personal tax allowances and or top slicing relief available to the to offset against the tax due.

d. Tax on pre-owned assets (POAT)

The POAT is a special income tax charge, which has applied since 6 April 2005. It can apply in cases where a trust is created under which the settlor can potentially benefit and the trust is not subject to the IHT gift with reservation rules.

For the purpose of the POAT charge, both the settlor's fund and the beneficiaries' fund have to be tested separately. As the settlor's fund is held on a bare trust for the settlor, the POAT charge cannot apply as for this charge to apply there must be a settlement. Although the beneficiaries' fund is a settlement, the settlor cannot benefit from this part and therefore the POAT charge cannot apply to this fund either. HMRC issued a guidance note on this issue in March 2005 confirming this interpretation.

6.3 Capital gains tax

No capital gains tax should arise in relation to any dealings with a bond held subject to the trust.

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