

Client guide

The Nucleus Flexible Gift Trust

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1. Introduction

Welcome to the Nucleus Flexible Gift Trust guide. This section explains how the document is structured and defines some of the terms we will be using.

This document consists of eight sections:

1. Introduction
2. What is the Nucleus Flexible Gift Trust?
3. Nucleus Flexible Gift Trust suitability
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Where we refer to 'you' in this guide, we mean you as the settlor. The word settlor refers to both settlors where there are two settlors.

The expression 'spouse' applies to husbands, wives and civil partners.

This document is provided strictly for general consideration only and is based on the the laws of England and Wales as currently understood. Any action taken or refrained from in connection with the Nucleus Draft Flexible Gift Trust must be preceded by discussion with your legal and other professional advisers. Accordingly, neither Nucleus nor any associated or affiliated company nor any of their representatives, officials or employees can accept any responsibility for any loss occasioned as a result of the use of the Nucleus Draft Flexible Gift Trust in any circumstances whatsoever except as provided by law.

2. What is the Nucleus Flexible Gift Trust?

A trust is an arrangement where a person or persons (called the trustee(s)) hold property given to them by another person (called the settlor) for the benefit of yet another person or persons (called the beneficiary(ies)). The trustees have the control and legal ownership of the trust assets but must act as custodians of them and use them for the benefit of the beneficiaries.

The Nucleus Flexible Gift Trust allows you, as an investor in the Nucleus Wrap, to make a gift of cash for new investments, or existing investments on the Nucleus Wrap for the benefit of other individuals but without giving them ownership and control.

For tax purposes the Flexible Gift Trust is an ‘interest in possession’ (IIP) trust. This is because under this type of trust a named beneficiary is entitled to the trust income as it arises.

In principle, the Flexible Gift Trust can be used whether the current investment (or intended investment) is a Nucleus Onshore or Nucleus Offshore Bond (‘bond’) or a holding of units or shares in a unit trust/ OEIC/investment trust (‘collectives’) that are held in a General Account in the Nucleus Wrap.

However, as this trust aims to provide a named beneficiary with an entitlement to the trust income as it arises, certain investments, where income is accumulated or where no income is produced, may not be suitable. It is essential that appropriate investments are chosen for this trust. You should discuss this in detail with your financial advisers.

You will be the only settlor of the trust and you cannot benefit from the investment in the trust in any way. There can be more than one settlor – for example where you and your spouse jointly create a trust.

With this type of trust you and your professional advisers will need to decide who you want to benefit from this trust when looking at the two separate entitlements: entitlement to the trust income and entitlement to the trust capital.

The named beneficiaries will have entitlement to the trust income during their lifetime. However, no beneficiary is entitled to the trust capital until the appointor decides who, from the classes of potential beneficiary specified on the trust deed. The appointor is initially you and, after your death, the trustees.

The trust capital can be distributed to beneficiaries when the appointor believes it is appropriate. However, in order for a trust to be legally effective, the benefits must be distributed out of the trust by the end of the trust period – 125 years. For this reason, the named beneficiary(ies) (or their estates if, by then, the named beneficiaries are dead) will benefit if assets are still in the trust at the end of the trust period i.e. they haven’t been distributed in full by that time.

3. Nucleus Flexible Gift Trust suitability

You should consider using a Nucleus Flexible Gift Trust if:

- you wish to make lifetime gift of the investment(s) you currently hold in the Nucleus Wrap or of a cash sum that is to be invested in the Nucleus Wrap;
- you do not need to retain access to the funds to be gifted;
- you wish to provide a named beneficiary(ies) with an income from the investments and retain the right to decide which of your beneficiaries should benefit from the capital in the trust fund; and
- you have sought advice about any HMRC registration and reporting requirements associated with this type of trust and are prepared to accept these.

The Nucleus Flexible Gift Trust should not be used if:

- you wish to retain access to all or a part of the investment to be transferred to the trust for your own benefit; or
- you wish to make an absolute gift to a specific beneficiary or beneficiaries; or
- you have chosen to invest in accumulation units or shares as you prefer to have all the trust income accumulated and added to the trust capital for future use; or
- you do not wish to grant any beneficiary a right to income and prefer to leave income distributions to the discretion of the trustees; or
- you have decided that the sole investment for your trust will be a bond that does not produce any income.

4. How is the Flexible Gift Trust established?

The flexible gift trust can be established with either cash or existing investments held by the investor in the Nucleus Wrap.

The trust is established by you, as the settlor, and your chosen additional trustees completing the flexible gift trust deed having, of course, first agreed with your legal advisers that the draft trust provided is suitable for you.

When you are making a new investment, you would normally provide the trustees with a cheque made payable to Nucleus Financial Services, or arrange for a BACS transfer to the same, and the trustees will then collectively make the application to invest via your financial adviser.

For existing general accounts holding collectives in the Nucleus Wrap, you will assign your investment to the trustees and instruct NFS (Nominees) Limited to amend their register to show the trustees as the new owners. A special wording is included in the trust deed to facilitate this.

In the case of an existing onshore or offshore bond held in the Nucleus Wrap, the trust deed incorporates an assignment of the bond to all the trustees. A notice of assignment will have to be given to the relevant life assurance company, i.e. Countrywide Assured, Scottish Friendly Assurance or RL360. Again, the necessary wording is included in the trust deed. However, as stated above, as one of the main purposes of the trust is to provide an income to a specified beneficiary(ies), an investment bond, being a non-income producing asset, would probably be an inappropriate investment.

The draft Nucleus Flexible Gift Trust provides for a maximum of four trustees (including the settlor(s)).

Once the investment is made subject to trust, any subsequent dealings with the investment will be by the trustees rather than you personally.

5. Key provisions of the Nucleus Flexible Gift Trust

During the trust period (up to 125 years) the appointor (initially you and then the trustees) may appoint the trust benefits (capital or future income) to any of the potential beneficiaries. These beneficiaries include your widow/er, children and grandchildren, brothers and sisters and their issue.

You can also specify other beneficiaries at the time the trust is established. If after the trust has been established you want to include a person as a beneficiary who is not listed as a potential beneficiary, you can nominate that person to the trustees in writing.

You can choose whether to include your spouse amongst the beneficiaries by initialling the appropriate box in the trust deed. This can have income tax consequences and tax advice should be sought prior to the trust being established.

As the trust is an interest in possession trust, the named beneficiary(ies) is/are entitled to the current trust income as it arises. However, no beneficiary is entitled to the trust capital unless and until the appointor makes an appointment in their favour. Furthermore, the appointor has power to appoint future income to another of the beneficiaries at any time.

You cannot benefit from the trust in any circumstances.

The named beneficiaries will benefit from the trust fund at the end of the 125 year trust period in the unlikely event that no appointment has been made before then.

The trustees have wide powers to invest, including reinvestment in other assets and generally dealing with the trust property.

6. The law of the trust

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.

The tax implications of the trust are currently the same throughout the UK.

7. The trustees

You (or both of you in the case of joint settlors) are automatically included as original trustees. At least one additional trustee should be appointed at outset.

You and the additional trustee(s) together execute the trust deed.

Anyone over the age of 18 and of sound mind can be a trustee. You may wish to appoint a professional person, such as a solicitor, to be a trustee. Bear in mind that such professionals will normally charge fees to act as a trustee.

You can appoint further trustees later on and you may also dismiss a trustee provided at least one trustee other than you or your spouse remains.

After your death, if any trustee loses mental capacity, they can be dismissed by the majority of the other trustees.

The trustees of an English trust must act unanimously.

8. The tax implications of the Nucleus Flexible Gift Trust

In what follows, in all cases, it is assumed that the Settlor and the Trustees and the Beneficiaries are UK resident – special rules apply where this is not so and specialist advice must be taken. The following is an outline of the key tax implications.

8.1 Inheritance tax (IHT)

Establishment of the trust

For IHT purposes a transfer of value (a gift) takes place at the time the trust is created. Where there are two settlors, each is treated as making a gift of one-half of the value transferred. When a new investment is to be made subject to trust with cash given to the trustees, the value transferred will be the cash gift. When an existing onshore or offshore bond is made subject to trust (which is unlikely given that a bond does not produce an income), the value of the gift will be the value of the bond or the amount of the premium originally paid if greater. When collectives in an existing general account are made subject to trust, the value of the gift will be the value of the shares or units at the time of the gift.

If the amount of the transfer is not exempt (please speak to your adviser about exemptions and exempt gifts), it will be a chargeable lifetime transfer (CLT). This means an IHT lifetime charge will arise if the value of the gift plus any other chargeable transfers made by you in the previous seven years exceeds the nil rate band. A further tax liability could arise if you die within seven years of making the gift.

If you were to die within seven years of making gifts to trusts there could be tax implications, when considering the order of gift rules and the value of your other assets. To understand any tax implications which could apply on your death or the death of a named beneficiary, please seek regulated tax advice.

Registering the trust with HMRC

All UK express trusts, unless they are exempt will need to be registered by the trustees on the Trust registration Service (TRS). Proof of registration should be provided by the trustees when requested and the register must be kept up to date. Registration must be done within 90 days of the trust being created. There may be other HMRC reporting requirements the trustees need to do, and they should seek professional advice so they fully understand their HMRC registration and reporting requirements.

Additions to the trust by the settlor

Additional investments which are not exempt, will also be gifts classified as CLTs, this could have additional tax consequence both at the time and ongoing and advice should be sought on the impact of making additional investments to an existing trust.

IHT during the trust's existence

IIP trusts which are created after 6 March 2006 are subject to an IHT regime called the 'relevant property regime'. Under these rules there may be IHT charges:

- on every 10-year anniversary of the trust – 'the Principal Charge' or
- when the trustees distribute capital to a beneficiary – 'the Exit Charge'

The Principal Charge

Principal charges may be applied to the value of the assets in the trust on every 10-year anniversary of the trust. The tax charge will be based by looking at the following on the tenth anniversary:

- value of the trust fund
- any additions to the trust
- any related trusts created on the same day
- any chargeable transfers made in the previous seven years to creating this trust
- the available nil rate band
- any capital distributions to the beneficiaries

If you want to know more about how this is calculated and how this could impact the trust, please speak to your regulated advisers.

The exit charge

Exit charges will be based on the value of capital being distributed to the beneficiaries, the timing and the nil rate band available.

There should be no exit charges within the first 10 years if the gift (including the cumulative total of the settlor's chargeable transfers in the previous seven years and the value of any added property) is below the available nil rate band when the exit occurs. If an exit charge does arise, it will increase according to the number of quarters that have expired since the trust was created.

The amount of any exit charge occurring after the first 10-year anniversary will depend on the rate of tax charged at the last 10-year anniversary (if any) and the length of time (in quarters) that the property has been in the trust since the last 10-year anniversary.

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

To understand how these exit charges are applied and calculated you should seek professional tax advice.

8.2 Income Tax

The income tax implications depend on whether the assets held by the trustees are collectives in the General Account or an Onshore or Offshore Bond. As indicated earlier, the latter are not likely to be appropriate investments for the Flexible Gift Trust, however we explain the rules here for completeness.

Creation of the trust

There are no income tax implications on the transfer of a collective into trust except in the case of offshore non-reporting funds, in which case the gain (based on the market value of the investment at the date of transfer less the acquisition price but without the benefit of the annual exemption) will be taxed as your income.

Although unlikely to occur, the transfer of an existing onshore or offshore bond into a trust does not give rise to a chargeable event and so there are no income tax implications on transfer.

During the Trust's existence

Income arising to the trustees from investments in collectives

As the named beneficiary is entitled to the trust income, any income must either be paid over to the beneficiary, or at least be identified and be capable of being held absolutely for the said beneficiary. For this reason, collectives where income is accumulated are not suitable for this trust.

It is essential that you discuss the choice of investments and how the income should be paid to the beneficiary with your adviser.

The income tax position will depend on whether the settlor's spouse is included as a potential beneficiary:

(i) UK funds and offshore reporting funds

(a) Where the settlor's spouse is excluded from all benefit under the trust

Under a flexible gift trust the named beneficiary(ies) is entitled to income when it arises and if mandated to them – taxed on that income at their marginal rate in the same way as if they had received it directly.

The trustees themselves are taxed only on any income that they receive. If the income is received by the trustees gross they have a tax liability at basic rate. This tax is effectively paid on behalf of the beneficiary who receives an equivalent tax credit. If all the income is paid directly to the beneficiary entitled to it, the trustees have no liability.

(b) Where the settlor's spouse may benefit under the trust

If you choose to include your spouse as a potential beneficiary under the flexible gift trust (and you are married), all trust income will be taxed on you at your personal rates of income tax, despite the named beneficiary's entitlement to the said income. You will not be able to claim this tax back from the trust.

This rule does not apply if only your widow or widower can benefit.

Special rules apply if you are non-UK long term resident and trust income arises on overseas investment. You will need specialist advice regarding overseas income and if you are considered a non-UK resident to the UK.

(ii) Offshore non-reporting funds

These investments, do not produce an income and so are unlikely to be suitable for this type of trust while the named beneficiary is alive and requires an income.

When units/shares in an offshore non-reporting fund are disposed of, e.g. on sale, the gain (known as an offshore income gain) realised by the investor (the trustees) will be taxed as income. The offshore income gain will be calculated in the same way that a capital gain would be calculated. Any offshore income gain subject to income tax is deducted from the proceeds for capital gains tax purposes.

Who is assessed to tax on an offshore income gain made by the trustees depends on whether the settlor's spouse can benefit under the trust or not.

Income tax could be assessed on either the trustees or you as the settlor depending on whether or not your spouse is an income beneficiary. To understand the implication and how income tax could be charged, please speak to your regulated tax adviser.

Special rules apply if you are non-UK long term resident and offshore income gains arise but this is not something contemplated with investments in the Nucleus Wrap.

Chargeable event gains under a bond

When certain actions are taken such as a encashment a chargeable event gain can arise that will be subject to income tax. Who that gain is taxed on depends on whether the settlor is alive and a UK resident in the tax year when the event occurs.

For income tax purposes, any chargeable event gains arising under the bond will be assessed on the settlor provided the settlor is alive and UK tax resident in that tax year when the event occurs. If there are joint settlors, each will be assessed on one half of the gain. A basic rate tax credit will apply if the bond is a Nucleus Onshore Bond, which means that a liability will only arise if the settlor is a higher rate or additional rate taxpayer. This credit will not be available for gains made under offshore bonds.

If the settlor is non-UK resident and the trustees are UK resident then the trustees are assessed to tax.

A basic rate tax credit will apply if the bond is an onshore bond but this is not available for offshore bonds.

If the trustees are not UK resident there are special rules to tax UK resident beneficiaries when and to the extent that they receive benefits – specialist advice should be sought if this applies.

The settlor, trustees and beneficiaries should seek tax advice to understand the implications of how a chargeable event is taxed and on whom depending on when this occurs and be prepared to report and pay the tax due if required to do so.

8.3 Capital Gains Tax (CGT)

Creation of the trust

There are no CGT implications if cash is transferred to the Nucleus Wrap to buy new collectives or bonds to be held in the trust or if an onshore or offshore bond is assigned to the trust, unless the bond had previously been bought from another investor.

When an existing General Account holding collectives is transferred to the Nucleus Flexible Gift Trust this will be a disposal for CGT purposes. The gain will be calculated in the usual way and, after deduction of your available annual exemption, will be taxed depending on your marginal rate of income tax. If the collective is an offshore non-reporting fund the gain, without the benefit of the annual CGT exemption, will be taxed as your income.

As the transfer to a flexible gift trust is also a chargeable transfer for IHT purposes, it might be possible for any capital gain to be held over, i.e. deferred until a subsequent disposal by the trustees.

Please seek professional advice from your financial and tax advisers if you are considering a claim for gift hold-over relief.

Trust capital gains

The trustees are assessed to CGT on any capital gains arising when they sell the shares/units in a collective unless it is an offshore non-reporting fund when the gain will be subject to income tax.

Unless the settlor has created more than one settlement the trustees are normally entitled to an annual CGT exemption, of £1,500, before any tax is actually payable. The trustees pay tax at a special trustee rate, which is 24% on capital gains that exceed their available annual exemption.

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