Client guide

# Nucleus Bare Gift Trust

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# 1. Introduction

Welcome to the Nucleus Bare 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 nine sections:

1. Introduction
2. What is the Nucleus Bare Gift Trust?
3. When should you use the Nucleus Bare Gift Trust?
4. When should the Nucleus Bare Gift Trust not be used?
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6. Key provisions of the Nucleus Bare Gift Trust
7. The law of the trust
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Where we refer to 'you' in this guide, we mean you as the donor. Note that donor refers to both donors where there are two donors.

This document is provided strictly for general consideration only.

Any action taken or refrained from in connection with the Nucleus Draft Bare 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 Bare Gift Trust in any circumstances whatsoever.

The tax treatment of an investment or savings product depends on the individual circumstances of each client and may be subject to change in future.

# 2. What is the Nucleus Bare Gift Trust?

A trust is an arrangement under which a person or persons (called the trustee(s)) hold(s) property given to them by another person (called the donor) 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 Bare Gift Trust allows you, as an investor or prospective investor in a Nucleus wrap, to make a gift of your investments or the cash intended for the investment, for the benefit of specific people without giving the money or investments directly to them. The trust can be used whether the current investment (or intended investment) is a Nucleus Onshore or Nucleus Offshore Bond or a General Account on the Nucleus wrap.

As the donor of the bare gift trust, you cannot benefit from the investment in the trust in any way. There can be more than one donor, for example where you and your spouse or civil partner jointly create a trust.

The beneficiaries under a bare gift trust have and absolute entitlement to the capital and any income that is produced from the underlying assets, if any. It is therefore crucial that you are certain about who you want to benefit, and to what extent, as you will not be able to change your mind about this.

The main objectives of the Nucleus Bare Gift Trust are, to ensure that the investment is held for the benefit of your chosen beneficiary(ies) outside of your (inheritance) taxable estate, and that the gift you make has no immediate IHT consequences regardless of the amount gifted.

# 3. When should you use the Nucleus Bare Gift Trust?

You should consider using the Nucleus Bare Gift Trust if:

- you wish to make an IHT effective lifetime gift of the investment 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 access to the funds for your own benefit in the future.
- you are certain who is to benefit from your gift and how much the chosen beneficiary(ies) receive.

## 4. When should the Nucleus Bare Gift Trust not be used?

The Nucleus Bare Gift Trust should not be used if:

- you wish to retain access to all or a part of the investment for your own benefit.
- you wish to make a gift, but retain some flexibility or control (subsequent to the gift) over its final destination.

You should discuss your requirements with your financial, legal and tax advisers before creating the trust to understand any implications for you, your trustees and your chosen beneficiaries.

## 5. How is the Nucleus Bare Gift Trust established?

The bare gift trust can be used with either cash available for investment, or with one or more existing investments held by the investor in the Nucleus wrap.

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

When you're making a new investment, you would normally provide the trustees with a cheque made payable to Nucleus Financial Services and the trustees would then collectively make the application to invest. This is done with the help of your financial adviser.

For existing investment accounts holding collectives in the Nucleus wrap, you will assign your beneficial title to the investments to the trustees (the legal ownership of the shares or units is vested with NFS (Nominees) Limited. You must also instruct the nominee company to amend their register to show the trustees as the new owners. 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. Sanlam, Scottish Friendly Assurance or RL360. Again, the necessary wording is included in the trust deed.

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

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

## 6. Key provisions of the Nucleus Bare Gift Trust

- The beneficiary(ies) named in the trust are entitled to the investments held by the trustees absolutely. This means that once the beneficiary reaches the age of 18 (16 in Scotland) they can demand that the trustees pay over the benefits to him/her.
- Neither the donor(s) nor anybody else other than the named beneficiary(ies) can benefit from the trust in any circumstances.
- You, as donor(s), name the individual or individuals who are to benefit from the trust fund. If there is more than one beneficiary, you will state the amount of the trust fund by which they are to benefit, for example if there are two, then this might be on a 50%/50% basis. For tax purposes each of these beneficiaries is treated as owning their share of the trust property and any income arising from the investments.
- The trustees have wide powers to invest, including reinvestment in other assets and generally dealing with the trust property whilst the beneficiary is under the age of 18 (16 in Scotland).

## 7. 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 the same throughout the UK.

## 8. The trustees

You (or both of you in the case of joint donors) 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 should choose your trustees with care.

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 change a trustee, provided at least one trustee other than you or your spouse/civil partner remains. After your death, if any trustee loses mental capacity, they can be dismissed by the majority of the other trustees.

In all cases, the trustees of an English trust must act unanimously.

# 9. The tax implications of the Nucleus Bare Gift Trust

In all cases, it is assumed that the donor, 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 consequences. Further details of the tax implications of the Nucleus Bare Gift Trust are included in the adviser guide for this trust which is available to your adviser.

## 9.1 Inheritance tax (IHT)

### 9.1.1 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 donors, 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, 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 investment 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 exceeds the donor's available annual exemption, currently £3,000 for each donor (£6,000 maximum for each donor if the annual exemption for the previous tax year has not been used), it will be a potentially exempt transfer (PET). This means that, regardless of the amount of the gift, no tax liability will arise at the time of the gift.

A tax liability on the gift could arise if you were to die within seven years of making the gift and if the value of the gift, together with any chargeable transfers made by you in the seven years immediately preceding the gift, exceeds the nil rate band at the date of death, which is currently £325,000. The value of the original gift will also be taken into account in determining the IHT liability on your estate.

### 9.1.2 Additions to the trust by the settlor

Any additional investment will be a further gift and the tax implications will be as described for the initial gift.

### 9.1.3 Death of a beneficiary

The beneficiary(ies) is/are treated as owning the trust property for IHT purposes.

On the death of a beneficiary, the value of the beneficiary's underlying interest in the trust property (i.e. the investments held by the trustees) will be included in their estate.

If the beneficiary is under the age of 18 (16 in Scotland), unmarried and not in a civil partnership, the assets will usually pass to the deceased beneficiary's parents under the intestacy rules.

### 9.1.4 Death of the donor

If your death occurs more than seven years after establishing the trust, the value of the trust investments will not need to be taken into account in determining the IHT liability on your estate on death.

An IHT liability could arise, as explained above, should you die within seven years of creating the trust. This is because the original PET will become chargeable on your death. If the value of the original gift falls within the nil rate band, no liability will arise on the gift itself. However, the nil rate band available to determine the liability arising on your estate on your death (within seven years of the gift) will be correspondingly reduced.

These provisions apply to each donor independently where there are joint donors.

### 9.1.5 IHT while the trust is in existence

As the trust is a bare trust, no other IHT charges will arise in respect of the trust itself.

## 9.2 Capital gains tax (CGT)

### 9.2.1 Creation of the trust

There are no CGT implications if cash is transferred to the Nucleus wrap to buy new collectives to be held in trust.

When an existing general account holding collectives (or some of the collectives in the account) is transferred to the Nucleus Bare Gift Trust this will be a disposal for CGT purposes. The gain will be calculated as if you had sold the collectives at their market value at the time of the transfer to the trust. After deducting your available annual exemption, any gain will be taxed at 18% or 24% depending on your marginal rate of income tax, unless the collective is an offshore non-reporting fund, in which case the gain (without the benefit of the annual exemption) will be taxed as your income. CGT hold-over (deferral) relief is not available on gifts to bare trusts.

There are no CGT implications if an onshore or offshore bond is transferred to a trust, unless the bond had previously been bought from another investor.

### 9.2.2 Trust capital gains (only relevant to collectives held in the general account)

For CGT purposes the bare gift trust is ignored and the beneficiary(ies) is/are treated as the outright owner of the collectives. This means that all capital gains arising when the trustees sell the shares/units are assessed on the beneficiary(ies), regardless of who the donor is. Each beneficiary is entitled to an annual exemption of £3,000 before any tax is actually payable.

Where the collective is an offshore non-reporting fund, the gain, without the benefit of the annual exemption, will be taxed as income. Tax advice should be sought if the trust holds collectives.

## 9.3 Income tax

The income tax implications in relation to the bare gift trust depends on whether the asset transferred to the trust is an onshore or offshore bond or collectives in the investment account.

### 9.3.1 Creation of the trust

The transfer of an existing bond (UK or offshore) into a trust does not give rise to a chargeable event and so there are no income tax implications.

There are no income tax implications on the transfer of a collective into trust except in the case of offshore non-reporting funds, as explained in section 9.2.1.

### 9.3.2 Encashments by and income arising to the trustees

#### Chargeable event gains under a bond

When a bond is encashed, a chargeable event gain can arise that may be subject to income tax.

Under a bare trust, any chargeable event gains are assessed on the beneficiary, even if the beneficiary is a minor. However if the beneficiary is a minor at the time of the chargeable event, the funds were provided by the parent of the beneficiary and the gains exceed £100 in a tax year, the gains will be assessed on the donor not the beneficiary. This is known as the Parental settlement rules and you should discuss this with your advisers to see if these rules apply to your circumstances.

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 beneficiary (or the parental donor) is a higher rate or additional rate taxpayer. This credit will not be available for gains made under offshore bonds.

#### Income arising to the trustees from investments in collectives

(a) UK and offshore reporting funds

Income tax will be due in respect of income arising to the trustees from investments in collectives. This will apply to both accumulated and distributed income.

Parental settlements rules will also apply if the parents have set up the trust and the investments held are collectives, which produce an income. You should speak to your advisers to see what this might mean for your circumstances.

In all other cases, all trust income will effectively be assessed on the beneficiary entitled to it regardless of the amount.

How the income is taxed will depend on whether the income is treated as an interest distribution or dividend.

An investor is entitled to a personal savings allowance (PSA) of £1000 (if a basic rate taxpayer) or £500 (if a higher rate taxpayer). Interest or interest distributions which fall within the PSA will be tax free.

Interest from UK banks and building societies and interest distributions from open-ended investment companies, authorised unit trusts and investment trust companies is now paid gross.

All dividends are paid gross and without a tax credit. The dividend allowance is currently £500. Dividends in excess of this allowance are taxed at the investor's marginal rate.

(b) Offshore non-reporting funds

Given the nature of such funds, there will normally not be any real income distributions which are subject to income tax. Any income that arises to the fund will, however, suffer income tax when a gain (known as an offshore income gain) is made from realising the investment, for example on the sale of units/shares, as part of the gain will represent that income. An offshore income gain without the benefit of the annual exemption, that arises when the investment is encashed, will be taxed as income. The assessment will be on the beneficiary unless parental settlement rules apply. Please ask your advisers to explain this to you.

In addition to the income tax calculation, a capital gains tax calculation also has to be performed. Any offshore income gain subject to income tax is deducted from the proceeds for capital gains tax purposes which means, in most cases, that there will be no capital gain subject to tax. However, in certain circumstances, this may result in a CGT loss being available.

The death of a beneficiary will also count as a disposal for tax purposes at the market value of the investment at the time of the beneficiary's death. You should get tax advice on what tax would be liable and how this needs to be accounted for within the beneficiaries' estate.

## 9.4 Registering the trust with HMRC

All UK express trusts will need to be registered on HMRC's trust registration service (TRS) unless they are explicitly excluded. It is the responsibility of the trustees to ensure the trust is registered and the record kept up to date. If the trustees need help with this, they should seek advice.

For literature in alternative formats, such as Braille, large print, audio or E-text, please call us on 0131 226 9535, or via the Relay UK service on 18001 0131 226 9535.

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