

Gibraltar Trusts

A useful “life” planning tool – it’s not just about tax!



“The trust concept relies on the separation of legal ownership from beneficial ownership.”

What is a trust?

A Trust is created in the form of a legal document called the Trust Deed and is a vehicle used in an individual's financial planning whereby the person setting up the Trust (the 'Settlor') transfers the legal title of any interest he might have in any property to named Trustees who are required to hold the property in accordance with any obligations imposed by the terms of the Deed, and in particular to administer the property for the benefit of such persons (the 'Beneficiaries') as are named in the Trust Deed.

The trust concept relies on the separation of the legal ownership of the property from the beneficial ownership of the same property.

A Beneficiary has recourse in law to compel the Trustees to act in accordance with the terms set out in the Trust Deed.

The Trust does not exist as a separate legal entity (as would for example, a company) but is a relationship between the Trustees and the Beneficiaries.

Discretionary Trusts

The powers and duties of a Trustee are set out in the Trust Deed, however, it is common for Trustees to be given wide discretionary powers so as to take account of changing circumstances. These types of trusts are usually referred to as discretionary trusts.

Duties of the Trustees

The Trustees have a fiduciary duty to look after the assets of the Trust, consider distributions to the Beneficiaries in accordance with the Trust Deed and maintain the proper administration of the Trust, including maintaining the Trust accounts. The Trust Deed will usually allow the Trustees to outsource some of their duties.

Letter of Wishes

A Settlor will normally provide the Trustees with an informal and confidential letter of wishes which will provide guidance as to how the Trustees might exercise their discretion. The letter of wishes is not binding on the Trustees and does not form part of the Trust, although Trustees would normally follow the Settlor's wishes in the administration of the Trust. The letter can be amended or added to at any time during the Settlor's lifetime.

Protector

A Trust Deed can make provision for the appointment of a Protector. A Protector is a person with whom the Trustees can consult when administering the Trust, and in particular cases (set out in the Trust Deed) from whom the Trustees must seek consent before carrying out certain transactions. The role of Protector is one of some responsibility and therefore he is usually a person in whom the Settlor has complete confidence.

Life of a trust

Under Gibraltar law, both the perpetuity and accumulation periods of a Gibraltar trust are 100 years.

Reasons for setting up a Trust

Although tax efficiency is usually the main reason why trusts are set up to hold family wealth, there are in fact many instances when trusts help an individual achieve objectives which might otherwise be hard to implement. The most common reasons for setting up a Trust are as follows:

To manage family wealth – a trust can provide the appropriate distance from family issues to bring formality and control to the management of family wealth;

To act as a living will – a trust can provide certainty to family members as to what happens on the death of key family individuals;

To protect family property and ensure it passes in succession - a trust can name the order of devolution of the trust property over the life of the trust;

To hold property that cannot be held personally - for example by infants, yet to be born persons or incapacitated persons;

To prevent family property to pass to those who might dissipate it - a Trust can enable such persons

to benefit from the property but only under the Trustees control;

Avoid or defer taxation – under a discretionary trust a tax event will usually occur when the Trust makes a distribution (under control of Trustees) and not when an uncontrollable event occurs in respect of the underlying trust property;

Avoid consequences of ownership of an asset – by transferring ownership to the Trustees, the Tettlor will no longer be responsible for the assets, for example when moving to a new tax domicile;

Provide privacy of ownership – trust assets are registered in the name of the Trust and because trusts do not have a physical presence, information relating to trusts is not normally available publicly;

Protection of assets - by severing ownership, a properly structured trust can avoid assets being repatriated, distributed under forced heirship rules or being made accessible to subsequent creditors.

Trust law in Gibraltar

Being a common law jurisdiction, the concept of trusts is recognised and given full legal effect in Gibraltar. The provisions of the Gibraltar Trustee Act are based almost exclusively on the trustee laws of the United Kingdom and. UK case law precedent has legal

force in Gibraltar, therefore providing confidence in the way trust law is applied.

Advantages of a Gibraltar Trust

There are many advantages to setting up a Trust in Gibraltar, the main ones being :

Confidentiality - Except for Asset Protection Trusts there are no filing requirements and no information needs to be disclosed to any authority as long as no liability to Gibraltar tax arises.

Tax benefits - As long as the Trust has no Gibraltar resident Beneficiaries and derives no taxable income locally (interest, listed company dividends and capital gains are not taxable), no tax will be charged on the trust's income.

Residence of Trustees – Trustees of Gibraltar trusts can be resident in Gibraltar without affecting the tax status of the Trust.

Registration as an asset protection trust – Prevents the Trust being set aside by future creditors of the Settlor.

Established infrastructure – Gibraltar boasts a wide choice of experienced and licensed professionals, banks and financial services infrastructure.

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