Farm Finance

No going back: With a lifetime trust, you have to physically transfer the money or assets; they are no longer yours and cannot be taken back out

Trusting in the present

Putting assets into a trust during your lifetime is very different to creating a trust in your will – and while it is only justified in a minority of cases, it can still be the best way to safeguard assets

Advice
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Last week, I wrote about making provision in your will for the establishment of a discretionary trust after your death. Here, I deal with setting up a lifetime discretionary trust which involves putting assets into a trust during your lifetime, to protect them.

With a lifetime trust, you have to physically transfer the money or assets; they are no longer yours and cannot be taken back out.

This is very different to creating a trust in your will, where the trust only comes into being on your death; if your circumstances alter, you can simply make a new will.

Purposes of a trust

The reasons for setting up a trust can be many and varied but generally will be based on a desire to protect your assets for your dependents or successors.

The following are the most common situations why a person (the settlor) might set up trusts that come into force during their lifetime.

- To ring-fence and protect certain assets
- To hold assets for young children
- To preserve assets for future generations, rather than passing all assets to the next generation only
- To provide for a child with a disability or special needs
- Protecting against relationship property claims
- To provide for spendthrift beneficiaries
- To provide for a non-marital partner

Protection of certain assets

Property transferred to the trust is no longer owned by the settlor (or the beneficiaries) and therefore should not be subject to claims from future creditors, provided certain conditions are met at the time of settlement.

For example, placing your assets in trust to protect them from existing creditors or an impending family law case will generally not work.

However, doing so because of some perceived future risk may be perfectly in order.

Holding assets for young children

It is only in very rare cases that a lifetime trust would be set up for this purpose as generally trusts in favour of young children will only come into force after the person has died.

There may, however, be situations where the parent wishes to ring-fence certain money or investments to ensure that they can only be used for the benefit of the children, perhaps protecting it from a perceived threat.

Preserving assets for future generations

There will be cases where someone will wish to preserve certain assets for the benefit of future generations as well as the immediate generation. This may be because of a fear that the assets might be squandered or sold by the present generation.

Protecting family members with illness or special needs

A trust may be used to provide for children or other family members who require medical care or have special needs, or who are unable to manage their own affairs through either age or infirmity.

Provisions can be made in the trust to protect against other family members who may intend to assume control of the family assets for themselves, following the death of the person who wishes to provide for the family member with special needs.

Protecting against relationship property claims

Parents may be concerned that assets transferred to their children may be at risk if, for example, that child's marriage ends.

By placing the assets in a trust rather than transferring them, your children can continue to receive the benefit of those assets without the assets forming part of their personal property and therefore not subject to claims from partners.

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While this may sound like a great idea, there will be tax consequences (see below).

Providing for a non-marital partner

Trusts can provide for the long-term protection of a non-marital partner in the event of the settlor falling ill.

The income or capital needs of the dependent partner can be provided for through the trust as their needs arise rather than transferring assets where a substantial tax bill could arise.

Taxation

Capital Acquisitions Tax (CAT) applies in the same way as trusts created on foot of a will: it can only arise when the beneficiary receives a benefit from the trust which exceeds their tax-exempt threshold.

The principal difference between trusts created during one's lifetime and trusts that come into effect after death is that in the former, taxes such as Capital Gains Tax (CGT) and Stamp Duty may arise on the transfer of assets into the trust.

The act of transferring assets to the trust constitutes a disposal for tax purposes which is no different to selling that asset on the open market and may be subject to CGT on any gain arising, subject to the normal reliefs.

There will be Stamp Duty at 7.5pc on any non-residential property being transferred into the trust or 1pc in the case of residential property.

Where cash is transferred into the trust, no Stamp Duty or CGT liability will arise.

Any transfers of assets or payments out of the trust to the beneficiaries can be subject to CAT, CGT or income tax, depending on the nature of the payment.

As for trusts created on foot of a will, Discretionary Trust Tax will apply where the settlor is dead and the beneficiaries are all over 21, in which case there is an initial charge of 6pc payable and an annual charge of 1pc.

Advice

Setting up a lifetime trust is not a very common occurrence and will only be justified in a small minority of cases.

It is an irreversible commitment and demands the best professional legal and taxation advice.

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