Renaissance Legal

Guide to Discretionary & Disabled Person's Trusts – what next?

This information sheet explains what you will need to consider when you have created a Discretionary Trust or a Disabled Person's Trust and assets are to be added to it.

We bring together expertise from the three companies in the Renaissance Community - Renaissance Legal, Renaissance Trust and Renaissance Financial - to provide a comprehensive overview for families.

Helpful definitions

A quick-reference guide to legal jargon, helping you understand bringing a Trust into existence:

Trust

The formal transfer of assets from a person(s) to others to hold for the benefit of someone else.

Trustees

The people (or Trust company) holding the assets.

Beneficiaries

The person(s) who will benefit from the assets held in Trust.

Why should I consider adding assets to the Trust during my lifetime?

Most people create a Trust to receive assets when they die. For example, for the family home to be passed down to the next generation. However, for some people, a Trust can be a very useful place to transfer assets before death.

Some of the reasons for doing that are:

- Saving for someone in a protected way – assets in a Trust are managed by Trustees and so it does not matter whether the Beneficiary or Beneficiaries are disabled, vulnerable or lack capacity. The Trustees manage the assets for them.

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- Putting assets into the Trust now will ensure assets are instantly accessible if you die – when a person dies it often takes quite a few months for the Executors of a Will to gain access to the assets. The Executors have to follow a strict procedure to obtain a Grant of Probate before being able to access the assets of someone who has died.
- Inheritance Tax (IHT) planning – transferring assets out of your name now can be part of your IHT planning, thus reducing the amount of IHT your estate will pay on your death.
- Going through the Trust activation compliance now - as you will see from this blog, there is quite a lot of compliance that needs to be undertaken once assets are added to the Trust. By transferring assets to the Trust, you will trigger the need to complete all the compliance, thus making it easier for the Trustees who take over when you are no longer around.

What is "activating the Trust"?

The Trust you have set up will be activated when assets are added to it either by you during your lifetime (as mentioned above), when assets come out of your estate into the Trust on your death, or by someone else adding assets to the Trust.

We consider below what needs to be done when assets are added to the Trust.

HMRC Trust Registration Service

The Trust Registration Service (TRS) was introduced as part of the UK's implementation of the Fifth Money Laundering Directive. This was to ensure that the UK has an up-to-date and effective regime to prevent money laundering and terrorist financing.

From 1 September 2022, all UK Trusts must register details of the Trust and associated persons within 90 days of creation unless they are classed as exempt from registration. You will also find that the Trust has to be registered on the TRS before an investment can be made within the Trust. A TRS registration guide is available upon request for Trustees who wish to deal with registration themselves.

Discretionary Trusts

A Discretionary Trust is a type of Trust that can be used to make provision for a group of people, such as children or other family members. In a Discretionary Trust, the Trustees have complete flexibility in deciding how they use the income and capital of the Trust fund for any of the beneficiaries. Each beneficiary does not have any fixed entitlement to receive money from the Trust, they will only receive a benefit if the Trustees exercise their discretion in favour of any particular beneficiary.

Unless they qualify under the Low Value Exemption, non-taxable Discretionary Trusts (see guidance below on taxable trusts) must register on the Trust Registration Service (TRS) as a **non-taxable trust.** The process is fully digital and must be completed **within 90 days** from the date of the Trust.

The Low Value Exemption applies where a Discretionary Trust meets all of the following criteria and means it is not required to register as a **non-taxable trust** on the TRS:

- It does not hold an interest in UK land or property
- It does not hold assets of appreciable worth which exceed a total value of £2,000
- It has not held property with a total value exceeding £10,000 since the day that the trust was created
- It does not have an annual income exceeding the relevant threshold
- The Settlor has not created other express Trusts which are subject to the Low Value Exemption

The Trustees of a non-taxable trust have 90 days to update the TRS of any changes in the future.

In contrast, Discretionary Trusts with assets that generate income and gains over £500 in any given tax year must register as **taxable trusts**. Further guidance on this can be found here: https://www.gov.uk/trusts-taxes/trusts-and-income-tax. The annual £500 income tax limit is shared amongst all Trusts created by the same person.

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Trustees of taxable trusts must register, and keep the TRS information up to date, with any changes being made within 90 days, and make an annual declaration that the register is correct. This declaration is also confirmed on the Trust's annual Tax Return.

Disabled Person's Trust

A Disabled Person's Trust is a special type of Discretionary Trust which has a 'disabled person' as the primary beneficiary and is largely used for the disabled person during their lifetime. You can read more about Disabled Person's Trust in our blog here: https://www.renaissancelegal.co.uk/blog/trusts-for-disabled-people-whats-new/

Disabled Person's Trusts are exempt from registration on the TRS but must still register if the trust has taxable income or gains and submit a Tax Return. If a Disabled Person's Trust does not have to complete a Tax Return or pay tax it does not have to register.

What information is needed on the TRS?

Details of the Settlor (the person who created the Trust), Trustees, Beneficiaries, Protectors and other persons of influence must be held on the TRS. The personal information required can include details such as name, address, date of birth, national insurance number and in some cases passport details.

It is vital that the Trust's TRS position is constantly reviewed so that if registration is required it is completed within 90 days of the change of status arising. Similarly, changes to the personal details of the relevant persons must also be updated on the TRS within the same timeframe. There are significant penalties if the Trust is not registered on the TRS, or the information is deliberately not kept up to date.

Please note that the information needed on the TRS has been changed by HMRC a number of times since it was launched and what has been said above is correct at the time of writing. We would therefore suggest that before loading information on the TRS you check the current requirements.

Disabled Person's Trust - Vulnerable Person's Tax Election

Trusts for disabled persons (both Discretionary Trusts and Disabled Person's Trusts) usually allow income to be distributed at the discretion of the Trustees. Such trusts are taxed at the rate applicable to trusts, which is equivalent to the highest rate of income tax (currently 45%). Trusts also have a capital gains tax allowance equivalent to one-half of the personal allowance.

However, Disabled Person's Trusts are permitted to make a Vulnerable Person's Election to HMRC on form VPE1. This is an election made jointly by the Trustees and the disabled person (or someone on their behalf). If the appropriate criteria are met, HMRC will approve the election and allow all Trust income and gains to be taxed as if they belonged to the disabled beneficiary personally. This allows the Trust to benefit from unused personal income tax allowances, lower rates of income tax and a full capital gains tax exemption. This is particularly beneficial where income is being accumulated.

Investments

If there is capital to be invested in the Trust, part of the Trustees' responsibility is making sure that the type of investment is appropriate for the Trust and that it will meet any present or future needs of the beneficiaries.

Most modern Trusts give Trustees wide investment powers allowing them to invest in most types of investment.

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What are the main considerations the Trustees need to consider when choosing investments?

The Trustees have a duty to consider a number of different factors before deciding on what assets they should invest in.

Some of those factors are:

- The Trustees' attitude to risk - it is important for Trustees to agree the level of risk that they are prepared to take with investments.
- The nature and terms of the Trust.
- The tax position of the Trustees and beneficiaries.
- The need for income or capital growth, or both.
- When payments to or for the beneficiaries will be required.
- The size of the Trust fund.
- Tax reporting obligations.
- Cost of administering the investment.
- The taxation of the investment.
- The time available for Trustees to deal with investment decisions, administration and taxation of the Trust.

Do Trusts need special types of investments?

The short answer is no. However, it is possible for the Trust Deed to include some investment restrictions, so care would need to be taken if this is the case. Otherwise, investments can include:

- Life Assurance products.
- Unit Trusts.
- OEIC.
- Shares.
- Deposits.
- Property.

Depending on the size and purpose of the Trust, there could be a number of different types of investments with a Trust investment portfolio.

Is it worth investing if the Trust only has a small amount of cash?

It depends. Some investments cost more to run and they may also require extra administration and tax reporting obligations. Some Trusts hold small amounts in cash or non-income producing assets to avoid this. Each Trust will need to make a decision based on its personal circumstances.

Do I need to take investment advice?

Many Trustees see value in obtaining investment advice from advisers that understand different Trusts, how they are taxed and what types of investment best suit the beneficiaries. A good adviser should help Trustees meet their duty in creating the right mix of investments that take into account all the considerations noted above. They should also help the Trustees formulate an Investment Policy Statement that sets out these considerations and stipulates regular reviews of performance, and this needs to be reviewed annually.

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Automatic Exchange Of Information (AEOI)

In addition to TRS registration, new rules were introduced in 2025 requiring certain trusts to register on the AEOI platform with HMRC. The principal purpose of AEOI is to share information with overseas tax authorities where there are connected individuals who are non-UK resident for tax purposes. Despite this, all Trusts now have to consider this requirement, whether or not there is any overseas connection, and the need for a Trust to register depends upon the type of investments held by the Trust, how they are managed and who is trustee. The registration requirement can be summarised in a simple flowchart here. A guide is available upon request for Trustees who wish to register the Trust themselves.

Administration of the Trust

During the time the Trust is in existence and activated due to having assets in it, Trustees have various responsibilities and statutory obligations to meet. Administratively, a Trustee is also likely to fulfil routine annual compliance tasks to properly maintain the Trust which include:

- Maintenance of Trust Bank Accounts.
- Obtaining and maintaining a Legal Entity Identifier (LEI) number from London Stock Exchange where the Trust holds assets such as stocks and shares, and wishes to trade in financial markets.
- Monitoring and recording investment performance.
- Maintaining the Settlor's wishes.
- Preparation of annual Trust Accounts to maintain proper financial records.
- Submission of relevant Tax Elections to minimise the tax burden on the Trust.
- Preparation and submission of annual Tax Returns and payment of correct amounts of tax.
- Understanding the requirements of the beneficiaries, making appropriate distributions and providing annual tax certificate.
- Keeping records of Trustee decisions.
- Registering the Trust on the TRS, making annual declarations and keeping the TRS records maintained.
- Considering the AEOI registration and reporting requirements.

Using assets for the beneficiary

As you will start to understand from the information above, Trustees must keep proper records and ensure ongoing compliance with all decisions and steps taken. One of the most frequent is when assets come out of the Trust.

Let us say the Trustees decide to use assets in the Trust to buy the disabled beneficiary an off-road wheelchair, pay for a holiday or pay for some therapy. The Trustees make the decision to do this and take assets to buy something for the beneficiary. The decision taken needs to be recorded on a Trustees' Resolution and taking assets out of the Trust needs to be formally legalised by completing a Deed of Appointment.

Keeping the Letter of Wishes up to date

There should be a Letter of Wishes with the Trust. The purpose of this is to provide guidance to the Trustees of how the person creating the Trust would like the Trustees to use the Trust fund for the benefit of the disabled person.

It is very important that you keep this up to date. If we have created the Letter of Wishes for you, we will have emailed you a copy in Word format so that you can easily update it. Just type directly into it, print it off, sign and date it and send it to us in the post to store with your original Trust Deed.

We recommend that you re-read the Letter of Wishes annually to ensure it is up to date.

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How we can help?

Our team of experts specialise in Trusts for disabled and vulnerable people and can assist with any questions you may have about adding assets to a Trust.

For a bespoke consultation, please get in touch and speak to one of our specialists on 01273 610 611 or email: info@renaissancelegal.co.uk

About the Renaissance Group

Renaissance Legal is part of the Renaissance Group of companies alongside Renaissance Trust and Renaissance Financial.

Together, the companies offer legal services, financial services, Inheritance Tax planning, welfare benefits advice and Trusts administration.

The expert team at Renaissance Legal can assist you with all aspects of planning for the future, including Wills, Letters of Wishes, Trusts, Powers of Attorney, Estate Administration and Court of Protection work.

If you would like to appoint professional Trustees to manage your Trust or would like advice to help you fulfil your role as a Trustee, our specialist Trust company, Renaissance Trust, can assist in these areas. The specialist team can advise you on the nature and extent of your powers and duties as a Trustee, as well as the ongoing management, administration and compliance aspects.

As lawyers we are not permitted to provide you with financial planning advice. Renaissance Financial, our dedicated financial services company, provides tailored financial advice for families, individuals, Trustees, Deputies and Attorneys in relation to investment and wealth management services - including, retirement and Inheritance Tax Planning, as well as the financial management of Trusts.

This guide is intended as general information for clients and other readers. It is not a substitute for considered advice on specific issues. Any action taken depends on your individual circumstances. Consequently, we cannot accept any responsibility for action which may be taken as a result of reading this guide or for errors or omissions contained within it.