WARDS SOLICITORS your local legal specialists

# Vulnerable/Disabled Persons Trusts

A trust for a vulnerable/disabled person is a trust set up for the benefit of such an individual aged under 18 and at least one of whose parents has died (bereaved minor), or someone who is disabled.

For more information on bereaved minor trusts see our separate legal guide.

## What are the criteria to qualify as a disabled person for trusts purposes?

*The 2 main criteria are:*

a) The person is incapable of managing their affairs because of a mental disorder recognised by the Mental Health Act 1983

b) or the person is receiving or would be entitled to receive any of the following (Inheritance Tax Act 1984):

- Attendance Allowance
- Disability Living Allowance with care at highest or middle rate or mobility at the higher rate
- Personal Independence Payment (PIP)
- Increased disablement pension
- Constant attendance allowance
- Armed Forces independence payment

The Trust must benefit only or mainly the Disabled person during their lifetime.

## Tax Treatment

Trusts for vulnerable or disabled persons can benefit from favourable tax treatment. This is in recognition that parents and family members of the disabled person themselves may want to provide for the future financial security of those who are unable to manage funds for themselves because of physical or mental impairment. The conditions for obtaining this tax treatment vary depending on the type of tax involved.

Where the conditions apply the trustees pay no more than the tax that the person would have paid if they had received the income and gains directly.

For capital gains tax (CGT) and income tax, the rules aim to tax the income and gains of the trust using the person's own allowances, reliefs and rates of tax.

## Capital Gains Tax

Disposals and acquisitions of assets within the trust will be assessed for capital gains tax purposes.

Trusts for vulnerable/disabled beneficiaries enjoy a full annual exempt amount (£12,300 for the 2021/2022 tax year) rather than just half (£6,150) which is the case for all other trusts.

To be able to benefit from the full annual allowance however any capital applied during the beneficiary's lifetime must have been applied for their benefit.

The Trust must pay capital gains tax on any profits exceeding that allowance.

The special rate applicable to disabled trusts is worked out by firstly c alculating w hat t he trust would have to pay, then
working out what the disabled beneficiary would have to pay if the gains had come directly to them and finally by c laiming t he d ifference between these 2 amounts.

A disabled person will be charged 0% on any gains up to the annual allowance of £12,300, then for assets other than residential property 10% on gains within the basic tax band and 20% on gains above. No capital gains tax is payable on the sale of a main residence and 18% to 28% on the sale of second homes.

A Trust that is not a disabled trust will be charged 0% tax on gains up to £6,150 and then 20% on all gains above £6,150. Trusts have to further pay 28% on the gains made in the sale of all residential property, whether it is a main residence or not.

## Income Tax

Income tax will be charged as if it had been received by the disabled person. Their personal allowance of £12,570 will apply and 20% will be charged on income up to £50,000. This compares to the Trust £1000 allowance taxed at 20% and

45% rate chargeable over that amount.

To be able to benefit from this any income applied during the beneficiary's lifetime must be applied for their benefit.

## Inheritance Tax

A standard discretionary trust is subject to a potential 20% charge on the value of the assets put into trust, a % charge on the value of the trust every ten years and a charge every time assets leave the trust, at a rate of up to 6%.

In the case of a disabled trust however there are no Inheritance tax assessments until the disabled beneficiary dies. The IHT assessment is then based on the value of the trust and the disabled deceased's estate which will be added together to assess liability for tax on each. If the value of the estate and the trust together are within the disabled person's inheritance tax allowance then neither will pay IHT.
If IHT is due, this is apportioned between the trust and estate according to the value of each. Tax is payable at 40%.

**If you require further information, please contact Mary Harty on 0117 9292811 or by email at: mary.harty@wards.uk.com**

July 2022