LIFE INTEREST TRUSTS

Inheritance tax planning using gifts into trust

Trusts can be a good way of undertaking Inheritance Tax (IHT) planning. For example, if you have children who are wealthy in their own right the outright transfer of additional assets to those children will simply compound their own IHT problem. If the gift is made into a trust however your children can access the funds if required but on their death the assets will not form part of their estate for IHT purposes, meaning that they can pass free of tax to your grandchildren or great-grandchildren.

Making gifts of assets into trust rather than outright gifts to individuals can reduce the risk that those assets will be lost to a third party in the event of the divorce or bankruptcy of any of the individuals. It is also possible for you to be a trustee of the trust. Therefore, you can retain full control over the assets given away and you are able to make decisions about the type of assets held by the trust, but also who can benefit from the trust and when.

Inheritance Tax (IHT) & Capital Gains Tax (CGT) issues

A gift into trust is an 'immediately chargeable transfer' for IHT purposes. This means that if the amount gifted exceeds your available nil rate band (currently £325,000) there will be an IHT charge at a rate of 20% on that excess. If the value given away is kept below the nil rate band IHT the charge is 0% so no tax is payable.

If you ("the Donor") are married or in civil partnership, you both have a nil rate band available so assets worth up to £650,000 can be given away between you without an immediate charge to IHT. After 7 years you will have another nil rate band available and the process can be repeated.

If you transfer assets into trust, even though no IHT may be payable it will be necessary to consider Capital Gains Tax ("CGT"). A benefit of using a trust is that in most circumstances any CGT liability that would otherwise arise on the transfer of assets into the trust can be 'held over' so that it only becomes payable on the eventual disposal of the asset in question. The ability to hold over a CGT liability is not available where gifts are made to individuals and so for gifts of any assets other than cash (which is not subject to CGT) trusts should always be considered.

If the assets held in trust increase in value during the Donor's lifetime that uplift in value will not be subject to IHT on your death whether you survive for a 7-year period. This can be extremely useful where you own an asset which you know is likely to increase significantly in value, such as land with development potential.

Retaining access to income from the capital given away

As a rule, for a gift to be effective for IHT purposes you must not continue to derive any benefit from the asset given unless you pay a full market rent to benefit from it. Falling foul of this rule can lead to the value of the asset given away still being counted as part of your estate for IHT purposes on your death.

If you think that you will require the income gifted to the trust, then a trust is likely not to be the right option for you from a tax perspective.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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