

The Nucleus Bare Gift Trust

Client guide

Edition

05

1. Introduction

Welcome to the Nucleus Bare Gift Trust guide. This section explains how the document is structured and defines some of the terms we will be using.

This document consists of nine sections:

1. Introduction
2. What is the Nucleus Bare Gift Trust?
3. When should you use the Nucleus Bare Gift Trust?
4. When should the Nucleus Bare Gift Trust not be used?
5. How is the Nucleus Bare Gift Trust established?
6. Key provisions of the Nucleus Bare Gift Trust
7. The law of the trust
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Where we refer to 'you' in this guide, we mean you as the donor. Note that donor refers to both donors where there are two donors.

This document is provided strictly for general consideration only. Any action taken or refrained from in connection with the Nucleus Draft Bare Gift Trust must be preceded by discussion with your legal and other professional advisers. Accordingly, neither Nucleus nor any associated or affiliated company nor any of their representatives, officials or employees can accept any responsibility for any loss occasioned as a result of the use of the Nucleus Draft Bare Gift Trust in any circumstances whatsoever except as provided by law.

2. What is the Nucleus Bare Gift Trust?

A trust is an arrangement under which a person or persons (called the trustee(s)) hold(s) property given to them by another person (called the donor) for the benefit of yet another person or persons (called the beneficiary(ies)). The trustees have the control and legal ownership of the trust assets, but must act as custodians of them and use them for the benefit of the beneficiaries.

Trusts are commonly used in estate planning as they can allow a person to make a gift that will reduce their estate, and so the potential inheritance tax (IHT) on it, but without giving outright control to the recipient of the gift.

The Nucleus Bare Gift Trust allows you, as an investor or prospective investor in a Nucleus wrap, to make a gift of your investments or the cash intended for the investment, for the benefit of other individuals but without giving those individuals outright ownership and control. The trust can be used whether the current investment (or intended investment) is a Nucleus Onshore or Nucleus Offshore Bond (bond) or a holding of units or shares in a unit trust/Oeic/investment trust (collectives) that are held in a general account in the Nucleus wrap.

When you create the bare gift trust you are the donor of the trust and you cannot benefit from the investment in the trust in any way. There can be more than one donor, for example where you and your spouse or civil partner jointly create a trust.

The beneficiaries are known as the beneficial (or equitable) owners of the trust property. In relation to trust assets that include investments they will be able to benefit from the disposal proceeds when an investment is sold, surrendered or otherwise disposed of. Where the trust assets consist of collectives that produce income, the beneficiary under a bare gift trust will be entitled to that income.

Under the Nucleus Bare Gift Trust, the beneficiary(ies) is absolutely entitled, which means that their entitlement cannot be taken away or changed in any way. It is therefore crucial that you are certain about who you want to benefit, and to what extent, as you will not be able to change your mind about this.

The main objectives of the Nucleus Bare Gift Trust are to ensure that the investment is held for the benefit of your chosen beneficiary(ies) outside of your (inheritance) taxable estate, and that the gift you make has no immediate IHT consequences regardless of the amount gifted.

3. When should you use the Nucleus Bare Gift Trust?

You should consider using the Nucleus Bare Gift Trust if:

- you wish to make an IHT effective lifetime gift of the investment you currently hold in the Nucleus wrap or of a cash sum that is to be invested in the Nucleus wrap.
- you do not need to retain access to the funds for your own benefit in the future.
- you are certain who is to benefit from your gift, i.e. you do not wish to retain any flexibility over the choice of your beneficiary(ies) or when and how much the chosen beneficiary(ies) receive.

4. When should the Nucleus Bare Gift Trust not be used?

The Nucleus Bare Gift Trust should not be used if:

- you wish to retain access to all or a part of the investment for your own benefit.
- you wish to make a gift, but retain some flexibility or control (subsequent to the gift) over its final destination.

If the above applies, the bare gift trust will not be suitable, but a different type of trust could be considered. You should discuss your requirements with your adviser.

5. How is the Nucleus Bare Gift Trust established?

The bare gift trust can be used with either cash available for investment, or with one or more existing investments held by the investor in the Nucleus wrap.

The trust is established by you, as the donor, and your chosen additional trustees completing the bare gift trust deed, having first agreed with your legal advisers that the draft trust provided is suitable for you.

When you are making a new investment, you would normally provide the trustees with a cheque made payable to Nucleus Financial Services and the trustees would then collectively make the application to invest. This is done with the help of your financial adviser.

For existing investment accounts holding collectives in the Nucleus wrap, you will assign your beneficial title to the investments to the trustees (the legal ownership of the shares or units is vested with NFS (Nominees) Limited. You must also instruct the nominee company to amend their register to show the trustees as the new owners. Special wording is included in the trust deed to facilitate this.

In the case of an existing onshore or offshore bond held in the wrap, the trust deed incorporates an assignment of the bond to all the trustees. A notice of assignment will have to be given to the relevant life assurance company, i.e. Sanlam, Scottish Friendly Assurance or RL360. Again, the necessary wording is included in the trust deed.

The draft Nucleus Bare Gift Trust provides for a maximum of four trustees (including the donor(s)).

Once the investment is made subject to trust, any subsequent dealings with the investment will be by the trustees rather than you personally.

6. Key provisions of the Nucleus Bare Gift Trust

- The beneficiary(ies) named in the trust are entitled to the investments held by the trustees absolutely. This means that once the beneficiary reaches the age of 18 (16 in Scotland) he or she can demand that the trustees pay over the benefits to him/her. This effectively means that the Nucleus Bare Gift Trust is most suited for a gift to minor beneficiaries who the donor is certain they want to benefit.
- Neither the donor(s) nor anybody else other than the named beneficiary(ies) can benefit from the trust in any circumstances.
- You, the donor(s), name, as beneficiary(ies), the individual or individuals who are to benefit from the trust fund and, if more than one, the shares in which they are to benefit, otherwise they will benefit equally. For tax purposes each of these beneficiaries is treated as owning their share of the trust property, i.e. the investments held by the trustees and any income arising from the investments.
- The trustees have wide powers to invest, including reinvestment in other assets and generally dealing with the trust property whilst the beneficiary is under the age of 18 (16 in Scotland).

7. The law of the trust

The trust gives you the choice of law to govern it – either the law of England or the law of Scotland. If you are domiciled in Scotland you would usually choose Scots law to apply to your trusts but there is no requirement to choose the law of your domicile.

The tax implications of the trust are the same throughout the UK.

8. The trustees

You (or both of you in the case of joint donors) are automatically included as original trustees. At least one additional trustee should be appointed at outset. You and the additional trustee(s) together execute the trust deed.

Anyone over the age of 18 and of sound mind can be a trustee. You should choose your trustees with care.

You may wish to appoint a professional person, such as a solicitor, to be a trustee. Bear in mind that such professionals will normally charge fees to act as a trustee.

You can appoint further trustees later on and you may also dismiss a trustee provided at least one trustee other than you or your spouse/civil partner remains.

The trustees of an English trust must act unanimously. In Scotland trustees may act by majority.

9. The tax implications of the Nucleus Bare Gift Trust

In what follows, in all cases, it is assumed that the donor, the trustees and the beneficiaries are UK resident; special rules apply where this is not so and specialist advice must be taken. The following is an outline of the key tax consequences. Full details of the tax implications of the Nucleus Bare Gift Trust are included in the adviser guide for this trust which is available to your adviser.

9.1 Inheritance tax (IHT)

9.1.1 Establishment of the trust

- For IHT purposes a transfer of value (a gift) takes place at the time the trust is created.
- Where there are two donors, each is treated as making a gift of one half of the value transferred.
- When a new investment is to be made subject to trust with cash given to the trustees, the value transferred will be the cash gift.
- When an existing onshore or offshore bond is made subject to trust, the value of the gift will be the value of the bond or the amount of the premium originally paid if greater.
- When collectives in an existing investment account are made subject to trust, the value of the gift will be the value of the shares or units at the time of the gift. The IHT implications will be as set out above.
- If the amount of the transfer exceeds the donor's available annual exemption, currently £3,000 for each donor (£6,000 maximum for each donor if the annual exemption for the previous tax year has not been used), it will be a potentially exempt transfer (PET). This means that, regardless of the amount of the gift, no tax liability will arise at the time of the gift.

A tax liability on the gift could only arise if you were to die within seven years of making the gift and even then only if the value of the gift, together with any chargeable transfers made by you in the seven years immediately preceding the gift, exceeds the nil rate band at the date of death (the nil rate band in tax year 2018/19 being £325,000). The value of the original gift will also be taken into account in determining the IHT liability on your estate, (see section 9.1.4 for further information).

9.1.2 Additions to the trust by the settlor

- Any additional investment will be a further gift and the tax implications will be as described for the initial gift. If regular gifts are made out of income and do not reduce the donor's normal standard of living, such gifts are likely to be exempt under the normal expenditure out of income exemption.

9.1.3 Death of a beneficiary

- The beneficiary(ies) is/are treated as owning the trust property for IHT purposes.
- On the death of a beneficiary, the value of the beneficiary's underlying interest in the trust property (i.e. the investments held by the trustees) will be included in the estate of the beneficiary. If there is more than one beneficiary then the value included in their estate will be the value of their share of the trust fund.
- If, as will usually be the case, the beneficiary is under the age of 18 (16 in Scotland), unmarried and not in a civil partnership, the assets will usually pass to the deceased beneficiary's parents under the intestacy rules.

9.1.4 Death of the donor

- On your death more than seven years after establishing the trust, the value of the trust investments will not need to be taken into account in determining the IHT liability on your estate on death.
- An IHT liability could arise, as explained above, should you die within seven years of creating the trust. This is because the original PET will become chargeable on your death. Even then, if the value of the original gift falls within the nil rate band, no liability will arise on the gift itself. However, the nil rate band available to determine the liability arising on your estate on your death (within seven years of the gift) will be correspondingly reduced.

These provisions apply to each donor independently where there are joint donors.

9.1.5 IHT while the trust is in existence

As the trust is a bare trust, no other IHT charges will arise in respect of the trust itself. In particular, there will be no periodic charges or charges when payments are made to the beneficiary, such charges are only relevant to other types of trust called settlements. The Nucleus Bare Gift Trust is not a settlement.

9. The tax implications of the Nucleus Bare Gift Trust

9.2 Capital gains tax (CGT)

9.2.1 Creation of the trust

There are no CGT implications if cash is transferred to the Nucleus wrap to buy new collectives to be held in trust.

When an existing general account holding collectives (or some of the collectives in the account) is transferred to the Nucleus Bare Gift Trust this will be a disposal for CGT purposes. The gain will be calculated as if you had sold the collectives at their market value at the time of the transfer to the trust. After deduction of your available annual exemption, any gain will be taxed at 10% and/or 20% depending on your marginal rate of income tax, unless the collective is an offshore non-reporting fund, in which case the gain (without the benefit of the annual exemption) will be taxed as your income. CGT hold-over (deferral) relief is not available on gifts to bare trusts.

There are no CGT implications if an onshore or offshore bond is transferred to a trust, unless the bond had previously been bought from another investor.

9.2.2 Trust capital gains (only relevant to collectives held in the general account)

For CGT purposes the bare gift trust is ignored and the beneficiary(ies) is/are treated as the outright owner of the collectives. This means that all capital gains arising when the trustees sell the shares/units are assessed on the beneficiary(ies), regardless of who the donor is. Each beneficiary is entitled to an annual exemption (equal to £11,700 in tax year 2018/19) before any tax is actually payable.

Where the collective is an offshore non-reporting fund, the gain, without the benefit of the annual exemption, will be taxed as income (see section 9.3 for the explanation of the income tax implications).

9.3 Income tax

The income tax implications in relation to the bare gift trust depend on whether the asset transferred to the trust (if other than cash) and subsequently held by the trustees is an onshore or offshore bond (see chargeable event gains under a bond in section 9.3.2 below) or collectives in the investment account (see income arising to the trustees from investments in collectives in section 9.3.2 below).

9.3.1 Creation of the trust

The transfer of an existing bond (UK or offshore) into a trust does not give rise to a chargeable event and so there are no income tax implications.

There are no income tax implications on the transfer of a collective into trust except in the case of offshore non-reporting funds, as explained in section 9.2.1.

9.3.2 Encashments by and income arising to the trustees

Chargeable event gains under a bond

When a bond is encashed, a chargeable event gain can arise that may be subject to income tax.

Subject to one important exception (see immediately below), under a bare trust any chargeable event gains are always assessed on the beneficiary, even if the beneficiary is a minor (i.e. under the age 18) and not married or in a civil partnership. The referred-to exception is that during the minority of the beneficiary, where the funds were provided by the parent of the beneficiary and the gains exceed £100 in a tax year (when added to the income on all other gifts made by that parent to that child), the gains will be assessed on the donor parent.

A 20% tax credit will apply if the bond is a Nucleus Onshore Bond which means that a liability will only arise if the beneficiary (or the parental donor) is a higher rate (40%) or additional rate (45%) taxpayer. This credit will not be available for gains made under offshore bonds. Please refer to the relevant Nucleus Onshore and Offshore Bond literature for full details of the relevant bond taxation.

9. The tax implications of the Nucleus Bare Gift Trust

Income arising to the trustees from investments in collectives.

(a) UK and offshore reporting funds

Income tax will be due in respect of income arising to the trustees from investments in collectives. This will apply to both accumulated and distributed income.

If the beneficiary is a minor child of the donor, and that beneficiary is unmarried and not in a civil partnership, then any income from the shares/units held in the general account will be assessed on the donor if, together with any other income on gifts made by the donor to that child, it exceeds £100 gross in a tax year.

In all other cases, all trust income will effectively be assessed on the beneficiary entitled to it regardless of the amount.

How the income is taxed will depend on whether the income is treated as an interest distribution or dividend.

From tax year 2016/17 an investor is entitled to a personal savings allowance (PSA) of £1000 (if a basic rate taxpayer) or £500 (if a higher rate taxpayer). Interest or interest distributions which fall within the PSA will be tax free.

Interest from UK banks and building societies and interest distributions from open-ended investment companies, authorised unit trusts and investment trust companies is now paid gross.

From tax year 2016/17 all dividends are paid gross and without a tax credit. From tax year 2018/19, the annual tax-free dividend allowance is reduced to £2,000. Dividends in excess of this allowance are taxed at the investor's marginal rate, i.e. 7.5% (basic rate), 32.5% (higher rate) and 38.1% (additional rate).

(b) Offshore non-reporting funds

Given the nature of such funds, there will normally not be any real income distributions which are subject to income tax. Any income that arises to the fund will, however, suffer income tax when a gain (known as an offshore income gain) is made from realising the investment, for example on the sale of units/shares, as part of the gain will represent that income. An offshore income gain without the benefit of the annual exemption, that arises when the investment is encashed, will be taxed as income. The assessment will be on the beneficiary unless the beneficiary is a minor, unmarried child of the donor, in which case the assessment is on the parental donor. The death of a beneficiary will also count as a disposal for tax purposes at the market value of the investment at the time of the beneficiary's death. Any income tax liability will be assessed on the deceased beneficiary (or where appropriate their parent) and would have to be met by their personal representatives. Any such income tax arising will be an allowable deduction for the purpose of calculating any IHT liability on the death of the beneficiary.

Special rules apply if you or the beneficiary is non-UK domiciled and trust income arises on overseas investments, but this is not something contemplated with investments in a Nucleus wrap.



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