The Nucleus Flexible Gift Trust

Client guide

Edition 05

1. Introduction

Welcome to the Nucleus Flexible 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 Flexible Gift Trust?
3. When should you use the Nucleus Flexible Gift Trust?
4. When should the Nucleus Flexible Gift Trust not be used?
5. How is the flexible gift trust established?
6. Key provisions of the flexible gift trust
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Where we refer to 'you' in this guide, we mean you as both the settlor. The word settlor refers to both settlors where there are two settlors.

The expression 'spouse' applies to husbands, wives and civil partners.

This document is provided strictly for general consideration only and is based on the law, as it is understood to be in December 2018. Any action taken or refrained from in connection with the Nucleus Draft Flexible 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 Flexible Gift Trust in any circumstances whatsoever except as provided by law.

2. What is the Nucleus Flexible Gift Trust?

A trust is an arrangement where a person or persons (called the trustees(s)) hold property given to them by another person (called the settlor) 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 on it, but without having to decide immediately who should receive the gift.

The Nucleus Flexible Gift Trust allows you, as an investor or prospective investor in the 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.

For tax purposes the flexible gift trust is an 'interest in possession' trust. This is because under this type of trust a named beneficiary is entitled to the trust income as it arises and the technical term for this is 'interest in possession' (IIP).

In principle, the flexible gift 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.

However, as one of the aims of this trust is to create a settlement under which a named beneficiary is entitled to and receives the trust income as it arises, certain investments, such as those where income is accumulated or where no income is produced, are not suitable. It is essential that only appropriate investments are chosen for this trust. You should discuss this in detail with your financial advisers.

You will be the settlor of the trust and you cannot benefit from the investment in the trust in any way. There can be more than one settlor – for example where you and your spouse 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 there are two separate entitlements: entitlement to the trust income and entitlement to the trust capital.

Under the Nucleus Flexible Gift Trust, the beneficiary(ies) you name at outset is (are) entitled to the trust income as it arises (the IIP). This is why it is important that the trust assets should be collectives that produce and distribute income.

No beneficiary is entitled to the trust capital until the appointor decides who, from the classes of potential beneficiary specified in the trust, should benefit and when. The appointor is initially you and, after your death, the trustees.

The trust capital can be distributed to beneficiaries when the Appointor believes it is appropriate. However, in order for a trust to be legally effective, the benefits must be distributed out of the trust by the end of the trust period – 125 years. For this reason, the named beneficiary(ies) (or their estates if, by then, the named beneficiaries are dead) will benefit if assets are still in the trust at the end of the trust period ie. they haven't been distributed in full by that time.

The main objectives of the Nucleus Flexible Gift Trust are to ensure that the investment is held for the benefit of the beneficiaries outside of your (inheritance) taxable estate and to provide a named beneficiary(ies) with an income whist preserving the flexibility as to who benefits from the trust capital and when.

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

You should consider using a Nucleus Flexible Gift Trust if:

- you wish to make an inheritance tax effective lifetime gift of the investment(s) 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 to be gifted for your own benefit;
- you wish to provide a named beneficiary(ies) with an income from the investments (which also avoids the need for the trustees to pay tax on the trust income at higher rates) but you also wish to retain the flexibility to direct that all or part of the future income should go to another beneficiary and retain the right to decide which of your beneficiaries should benefit from the capital in the trust fund; and
- you are prepared to accept that, in certain cases, you may need to report the trust to HMRC and, where the trust property has substantial value, there may be a periodic (every ten years) inheritance tax charge on the trust as well as a possible charge when capital is paid to a beneficiary (see below).

In principle the flexible gift trust can be used with the Nucleus General Account (except where the general account holds accumulation units or shares) as well as Nucleus Bonds. However, the income tax benefits of this trust (see below) will only be apparent with investments in collectives that produce a distributable income and which are held within the general account.

For IHT and for CGT purposes the flexible gift trust is taxed in the same way as a discretionary gift trust.

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

The Nucleus Flexible Gift Trust should not be used if:

- you wish to retain access to all or a part of the investment to be transferred to the trust for your own benefit; or
- you wish to make an absolute gift to a specific beneficiary or beneficiaries (with nobody else benefiting or being capable of benefiting from this gift); or
- you have chosen to invest in accumulation units or shares as you prefer to have all the trust income accumulated and added to the trust capital for future use; or
- you do not wish to grant any beneficiary a right to income and prefer to leave income distributions to the discretion of the trustees; or
- you have decided that the sole investment for your trust will be a bond that does not produce any income

5. How is the Flexible Gift Trust established?

The flexible gift trust can be established with either cash available for investment or with one or more existing investments held by the investor in the Nucleus Wrap. As indicated above, certain investments, such as collectives where income is accumulated, will not be suitable for this trust.

The trust is established by you, as the settlor, and your chosen additional trustees completing the flexible gift trust deed having, of course, 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, or arrange for a BACS transfer to the same, and the trustees will then collectively make the application to invest. This is done with the help of your financial adviser.

For existing general 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 vests in NFS (Nominess) Limited. You must also instruct NFS (Nominess) Limited to amend their register to show the trustees as the new owners. A special wording is included in the trust deed to facilitate this.

In the case of an existing onshore or offshore bond held in the Nucleus 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. However, while there is nothing preventing you making an onshore or offshore bond subject to the flexible gift trust, as stated above, as one of the main purposes of the flexible trust is to provide an income to a specified beneficiary (ies), an investment bond, being a non-income producing asset, would probably be an inappropriate investment for this trust.

The draft Nucleus Flexible Gift Trust provides for a maximum of 4 trustees (including the settlor(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 Flexible Gift Trust

- During the trust period (up to 125 years) the appointor (initially you and then the trustees) may appoint the trust benefits (capital or future income) to any of the potential beneficiaries. These beneficiaries include your widow/er, children and grandchildren, brothers and sisters and their issue.
- You can also specify other beneficiaries at the time the trust is established. If after the trust has been established you want to include a person as a beneficiary who is not listed as a potential beneficiary, you can nominate that person to the trustees in writing.
- You can choose whether to include your spouse amongst the beneficiaries by initialling the appropriate box in the trust deed. This can have income tax consequences, as explained below.
- As the trust is an interest in possession trust, the named beneficiary(ies) is/are entitled to the current trust income as it arises. However, no beneficiary is entitled to the trust capital unless and until the appointor makes an appointment in their favour. Furthermore, the appointor has power to appoint future income to another of the beneficiaries at any time.
- You cannot benefit from the trust in any circumstances.
- The named beneficiaries will benefit from the trust fund at the end of the 125 year trust period in the unlikely event that no appointment has been made before then.
- The trustees have wide powers to invest, including reinvestment in other assets and generally dealing with the trust property.

7. The law of the trust

The trust gives you the choice over the law that will govern the trust. It can be 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 compulsion to choose the law of your domicile.

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

8. The trustees

You (or both of you in the case of joint settlors) are automatically included as original trustees. At least one additional trustee should be appointed at outset. This is particularly important if you are domiciled in Scotland as, without an additional trustee, the trust may not be validly created under Scots law.

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. Obviously 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 remains.

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

9. The tax implications of the Nucleus Flexible Gift Trust

In what follows, in all cases, it is assumed that the Settlor and 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 implications. Full details of the tax implications of the Nucleus Flexible Gift Trust are included in the Adviser Guide.

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 settlors, 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 (which is unlikely given that a bond does not produce an income), 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 general 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 settlor's available annual exemption, currently £3,000 for each settlor (£6,000 maximum for each settlor if the annual exemption for the previous tax year has not been used), it will be a chargeable lifetime transfer. This means that a liability to IHT at 20% will immediately arise if the value of the gift plus the value of all other chargeable transfers made by you in the previous 7 years exceeds the nil rate band at the time the gift is made (the nil rate band in tax year 2018/19 being £325,000). A further tax liability could arise if you die within 7 years of making the gift – see (d) below.
- In general, provided the amount of the gift does not cause the cumulative chargeable lifetime transfers made by you to exceed 80% of the nil rate band – £260,000 in 2018/19 – the gift need not be reported to HM Revenue and Customs.

9.1.2 Registering the trust with HMRC

The trust must be registered using HMRC's online trust registration service when it first becomes liable to any of the following taxes:

- Capital Gains Tax
- Income Tax
- Inheritance Tax
- Land and Buildings Transaction Tax (in Scotland)
- Land Transaction Tax (in Wales)
- Stamp Duty Land Tax
- Stamp Duty Reserve Tax or Stamp Duty

The relevant deadline for registration is, in the case of income tax or capital gains tax, 5 October following the end of the tax year in which a liability first arises. For the other taxes listed above, the relevant deadline is 31 January following the end of the tax year in which a liability first arises.

9.1.3 Additions to the trust by the settlor

- Any additional investment will be a further gift and the tax implications will be as described above for the initial gift. If regular gifts are made out of income and do not reduce the settlor's normal standard of living, such gifts are likely to be exempt under the normal expenditure out of income exemption.
- Additional investments into the trust can also have an impact on the inheritance tax periodic and exit charges that can apply to the trust (see below).

9.1.4 Death of the beneficiary

Although the named beneficiary is entitled to the trust income, for IHT purposes this makes no difference where an IIP trust is created during the lifetime of the settlor as in the case of a Nucleus Flexible Gift Trust. Different rules apply when a similar trust is created on death but this is outside the scope of this Guide.

The death of a named beneficiary or a potential beneficiary has no IHT implications for the flexible gift trust.

9.1.5 Death of a settlor

- On your death the value of the trust investments will be outside of your estate for IHT purposes. However, there may be IHT implications as regards the gift made to the trust.
- Inheritance tax could become payable where the value of the original gift to the trust (net of any available exemptions) exceeded the nil rate band (so that there was a 20% lifetime charge on that excess) and you die within 7 years of creating the trust. This further tax liability (up to 20%) could be reduced by taper relief if you survive for at least 3 years. If the value of the original gift is within the available nil rate band no liability will arise on the gift itself, either when made or on death within 7 years.

9. The tax implications of the Nucleus Flexible Gift Trust

For non-exempt lifetime transfers to the flexible gift trust the nil rate band available to determine the liability to IHT arising on your estate on your death within 7 years of the gift to the trust will be correspondingly reduced by so much of the gift that fell within the nil rate band.

These provisions will apply to each settlor independently where there are joint settlors.

9.1.6 IHT during the trust's existence

Although this is not a fully discretionary trust, since 2006 Flexible IIP trusts created during lifetime have been treated in the same way as fully discretionary trusts, i.e. they are subject to special IHT rules called the 'relevant property regime'. Under these rules there may be IHT charges:

- on every ten-year anniversary of the trust – 'the Periodic Charge' or
- whenever property leaves the Flexible trust environment (e.g. when capital is advanced to a beneficiary) – 'the Exit Charge'

9.1.7 The Periodic Charge

Periodic charges may be applied to the value of the assets in the trust on every ten-year anniversary of the trust. The rate of IHT charged will be determined by calculating the IHT liability on an assumed transfer by an assumed transferor. Broadly speaking, it will be necessary to take account of:

- the value of the property in the trust on the ten-year anniversary
- the settlor's cumulative total of chargeable transfers made in the seven years immediately before the trust was created and any sums paid out of the trust in the ten years prior to the anniversary

If the trust fund at the anniversary includes income that has been accumulated by the trustees and added to the trust capital, there will be a reduction in the rate that applies to this capital to take account of the time before the accumulated income was added to the capital.

The maximum IHT liability will be 6% of the amount by which the value of the trust property exceeds the nil rate band available to the trust but frequently it will be much less or even nil. How much, if any, of a nil rate band will be available to the trust will largely depend on the history of gifts made by the settlor before they created the trust and any trusts created on the same day.

In cases where the settlor has not made any chargeable transfers in the 7 years before the trust is created, no payments have been made out of the trust in the previous ten years and there has been no added property, there will be no liability provided the value of the trust fund at the time of the periodic charge does not exceed the nil rate band applicable at that time. Any excess over the then nil rate band will suffer IHT at an effective rate of 6%.

Example

Alan creates a flexible gift trust on 10 November 2018 by investing £285,000 in a general account in the Nucleus Wrap. He has made no chargeable transfers in the previous 7 years. No payments are made out of the trust in the first 10 years.

On 10 November 2028 the trust fund (ie. the value of the shares in the account) is worth £500,000 and the nil rate band is £450,000. The IHT charge will be calculated as £50,000 @ 6% = £3,000. This equates to 0.6% of the total value of the trust fund.

Should all of the trust fund be distributed before the tenth anniversary then, provided there was no entry charge, it is likely that no tax charge will arise (see next section). If assets remain in the trust after the distribution, or if further assets are added to the trust, the trustees will need to seek specialist tax advice.

9.1.8 The exit charge

Exit charges will be based on the value of property leaving the trust.

Exit charges within the first 10 years of the trust's existence will be nil if the value of the initial transfer going into the trust (including the cumulative total of the settlor's chargeable transfers in the previous 7 years and the value of any added property) is below the available nil rate band when the exit occurs. If an exit charge does arise, it will increase according to the number of quarters that have expired since the trust was created.

The amount of any exit charge occurring after the first ten-year anniversary will depend on the rate of tax charged at the last ten-year anniversary (if any) and the length of time (in quarters) that the property has been in the trust since the last ten-year anniversary. If there was no charge at the last ten-year anniversary there will usually be no exit charge.

Exit charges should not arise on loans made by the trustees to beneficiaries.

Certain transactions, such as capital payments to the beneficiaries, may also have to be reported to HM Revenue & Customs even if no actual tax liability arises.

If there are joint settlors for IHT purposes, the trust is effectively treated as two separate trusts, each created by one settlor.

The IHT rules on the taxation of Flexible trusts are quite complex and may change in the future. You should discuss them in more detail with your professional adviser if you think they may apply in your situation. The IHT rules are explained fully in the Adviser Guide to this trust which is available to your adviser.

9. The tax implications of the Nucleus Flexible Gift Trust

9.2 Income Tax

The income tax implications depend on whether the assets held by the Trustees are Collectives in the General Account (see 9.2.2.1 below) or an Onshore or Offshore Bond (see 9.2.2.2 below). As indicated earlier, the latter are not likely to be appropriate investments for the Flexible Gift Trust, however we explain the rules here for completeness.

As one of the main purposes of the flexible gift trust is to provide income to a specified beneficiary(ies) then minimising the tax/tax administration on the trust income will be important. Under the flexible gift trust the trust income will, subject to one exception, be assessed on the beneficiary entitled to it, rather than the trustees (who would be taxed at higher rates than most individuals). The exception to this is where the settlor's spouse is a potential beneficiary – see below.

As there is no assessment on the trustees, this also avoids or helps minimise trust administration, as there will be no need for the trust income tax returns to be made by the trustees.

In the unlikely event that the trustees invest in an onshore or offshore bond (these being non-income producing assets) no income tax considerations arise for the trustees until the bond is encashed. Similar considerations will be relevant to offshore non-reporting funds – see below. However, serious administration problems would result if the trustees invested in collectives where the income was accumulated rather than distributed. These investments should thus be avoided.

9.2.1 Creation of the trust

There are no income tax implications on the transfer of a collective into trust except in the case of offshore non-reporting funds, in which case the gain (based on the market value of the investment at the date of transfer less the acquisition price but without the benefit of the annual exemption) will be taxed as your income.

Although unlikely to occur, the transfer of an existing onshore or offshore bond into a trust does not give rise to a chargeable event and so there are no income tax implications on transfer.

9.2.2 During the Trust's existence

9.2.2.1 Income arising to the trustees from investments in collectives

As the named beneficiary is entitled to the trust income, any income must either be paid over to the beneficiary, or at least be identified and be capable of being held absolutely for the said beneficiary. For this reason, collectives where income is accumulated are not suitable for this trust.

It is essential that you discuss the choice of investments with your adviser.

The income tax position will depend on whether the settlor's spouse is included as a potential beneficiary:

(i) UK funds and offshore reporting funds

(a) Where the settlor's spouse is excluded from all benefit under the trust

Under a flexible gift trust the named beneficiary(ies) is entitled to income when it arises and is/are taxed on that income at their marginal rate in the same way as if they had received it directly, i.e. the income is taxed as dividend income or savings income as appropriate, including the appropriate tax credit, rather than 'trust income'.

The trustees themselves are taxed only on any income that they receive. Following the abolition of tax credits, if the income is received by the trustees gross they have a tax liability at basic rate, i.e. 20% for savings income and 7.5% for dividends. This tax is effectively paid on behalf of the beneficiary who receives an equivalent tax credit. If all the income is paid directly to the beneficiary entitled to it, the trustees have no liability.

(b) Where the settlor's spouse may benefit under the trust

If you choose to include your spouse as a potential beneficiary under the flexible gift trust (and you are married), all trust income will be taxed on you at your personal rates of income tax, despite the named beneficiary's entitlement to the said income. This means that the income received by the named beneficiary will not be subject to tax in their hands but will be assessed on you. You will not be able to claim this tax back from the trust.

This rule does not apply if only your widow or widower can benefit.

Special rules apply if you are non-UK domiciled and trust income arises on overseas investments but this is not something contemplated with investments in the Nucleus Wrap.

(ii) Offshore non-reporting funds

Although investment in these non-income producing investments is unlikely under the flexible gift trust, where the collective is an offshore non-reporting fund there will normally not be any real income distributions from the fund. Clearly, if you wish your beneficiary to receive the trust income and to achieve the tax advantage of there being no income tax assessment on the trustees, then such an investment will not be suitable. However, as with bonds (see below), since no real income will be produced for the trustees, there will be no added difficulties for the trustees if they find themselves holding such a fund.

9. The tax implications of the Nucleus Flexible Gift Trust

When units/shares in an offshore non-reporting fund are disposed of, e.g. on sale, the gain (known as an offshore income gain) realised by the investor (the trustees) will be taxed as income. The offshore income gain will be calculated in the same way that a capital gain would be calculated but without the benefit of the annual capital gains tax exemption. This means that any income that arises to the fund effectively suffers income tax when an offshore income gain is made by the investor.

Who is assessed to tax on an offshore income gain made by the trustees depends on whether the settlor's spouse can benefit under the trust or not.

(a) Where the settlor's spouse is excluded from all benefit under the trust

As the offshore income gain is not 'real' income, it does not belong to the named beneficiary and so it will not be assessed on the named beneficiary. Instead, the trustees are liable to tax at the special rate of 45% on offshore income gains. Any part of the offshore income gain that falls within the £1,000 standard rate band will be taxed at 20%, with income in excess of £1,000 being taxed at 45%.

Where a payment is made out of the trust by the trustees to a beneficiary it is treated as capital without any liability to tax.

(b) Where the settlor's spouse may benefit under the trust

If you choose to include your spouse as a beneficiary under the flexible gift trust (and you are married), offshore income gains will be taxed on you at your personal rates of income tax in the same way as trust income (see above). This rule does not apply if only your widow or widower can benefit.

However, despite this, the trustees will still be liable at the 45% trust rate described above, effectively paying tax on your behalf. You will receive a credit for the tax paid by the trustees. If you are not a higher rate or additional (45%) rate taxpayer and the trustees have paid income tax on the income at 45%, you can reclaim any excess tax paid by the trustees from HM Revenue and Customs. Even if you are a higher rate (i.e. 40%) taxpayer, but not a 45% taxpayer (i.e. your taxable income is less than £150,000), you will be able to recover the 5% tax difference. Any tax recovered must be paid to the trustees.

Where a payment is made out the trust by the trustees to a beneficiary it is treated as capital without any liability to tax.

As you can see from the above tax rules, offshore non-reporting funds are not really suitable for a flexible gift trust as (a) they do not produce real income for the intended beneficiary and (b) they do not avoid the 45% trust rate paid by the trustees.

Special rules apply if you are non-UK domiciled and offshore income gains arise but this is not something contemplated with investments in the Nucleus Wrap.

9.2.2.2 Chargeable event gains under a bond

When a bond is encashed, a chargeable event gain can arise that will be subject to income tax. Who that gain is taxed on depends on whether the settlor is UK resident and, if so, whether the settlor is still alive:

- During the settlor's lifetime and in the tax year in which the settlor's death occurs

  For income tax purposes, any chargeable event gains arising under the bond will be assessed on the settlor provided the settlor is alive and UK tax resident. If there are joint settlors, each will be assessed on one half of the gain. A 20% tax credit will apply if the bond is a Nucleus Onshore Bond, which means that a liability will only arise if the settlor 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.

  If the settlor is non-UK resident and the trustees are UK resident then the trustees are assessed to tax.

- After the end of the tax year in which the settlor's death occurs

  Following the settlor's death, any chargeable event gains arising in a tax year after that in which the settlor died will be assessed on the trustees if they are UK resident.

  The first £1,000 of gain (assuming the settlor has not created any other trusts) is taxed at the 'standard rate', which is 20%, and the rest at the special rate of 45%. A 20% tax credit will apply if the bond is an onshore bond but this is not available for offshore bonds.

  If the trustees are not UK resident there are special rules to tax UK resident beneficiaries when and to the extent that they receive benefits – specialist advice should be sought if this applies.

9. The tax implications of the Nucleus Flexible Gift Trust

9.3 Capital Gains Tax (GCT)

9.3.1 Creation of the trust

There are no CGT implications if cash is transferred to the Nucleus Wrap to buy new collectives or bonds to be held in the trust or if an onshore or offshore bond is transferred to the trust, unless the bond had previously been bought from another investor.

When an existing general account holding collectives (or some of the collectives in the Account but, in any case, excluding any offshore non-reporting funds) is transferred to the Nucleus Flexible Gift Trust this will be a disposal for CGT purposes. The gain will be calculated in the usual way and, after deduction of your available annual exemption, will be taxed at 10% and/or 20% depending on your marginal rate of income tax. If the collective is an offshore non-reporting fund the gain, without the benefit of the annual CGT exemption, will be taxed as your income as described in 9.2.1 above. There will be no CGT implications.

As the transfer to a flexible gift trust is also a chargeable transfer for IHT purposes, it might be possible for any chargeable gain to be held over, i.e. deferred until a subsequent disposal by the trustees.

This relief will not be available if your spouse or minor children can benefit under the trust or where the collective is an offshore non-reporting fund.

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

- The trustees are assessed to CGT on any capital gains arising when they sell the shares/units in a collective unless it is an offshore non-reporting fund when the gain will be subject to income tax – see section 9.2.2.2.
- Unless the settlor has created more than one settlement the trustees are normally entitled to an annual CGT exemption equal to £5,850 in 2018/19 before any tax is actually payable. The trustees pay tax at a special trustee rate, which is 20% on capital gains that exceed their available annual exemption.

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