



Adviser charging and trusts

Briefing Note

It is important to consider the treatment of adviser charging on trust-based arrangements; who pays the charges and what they are paying for. It helps to remember that who receives the advice or service should pay for it. With trust arrangements, this could be the client, who becomes the settlor or donor, the trustees or, in some circumstances, both.

There can be different steps to setting up a trust. In some instances the client invests in a bond, or a series of bonds, which is then assigned into a trust, but it may be that a gift is made to the trust and the trustees invest the money. The right party needs to pay for the advice they have received.

In most cases, any ongoing advice on the trust and the underlying investment is provided to the trustees and therefore should be paid for from trust assets. However, the settlor or donor may want advice, for example on loan repayments and they should pay for that advice, not the trustees.

It is common for the original client or a beneficiary to be a trustee, so it should be recorded whether any advice provided is to them in their personal capacity or to them as a trustee.

- **Client paying fees on behalf of trustees**

If an individual pays any fees from their personal wealth for advice and services provided to the trustees, this would be classed as a gift into the trust, and be a further gift for inheritance tax (IHT) purposes.

If this payment is not covered by the annual gift exemption of £3,000 or, if regular, the normal expenditure out of income exemption, the type of gift would depend on the type of trust. For a bare trust it would be a potentially exempt transfer and for a discretionary trust, a chargeable lifetime transfer.

- **Trustees paying fees on behalf of client**

If the donor or settlor of a trust benefits either directly or indirectly from any fees paid by the trustees, the effectiveness of the trust could be

jeopardised. Many trusts exclude the donor or settlor from benefiting, so this would be a breach of trust rules. In any event, if the trustees did allow them to benefit, the original gift to the trust could be treated as a gift with reservation of benefit.

It must be remembered that in some instances VAT should be added to an adviser charge deduction.

Looking at the different trust arrangements available:

Existing trusts

The advice regarding a trust's underlying assets is provided to the trustees and they should meet the cost of any advice or services provided, from trust assets. If this is not possible, then ongoing charges could be met by an individual. Any payments made will be gifts to the trust, although these will be exempt from IHT if they are covered by the annual gift allowance or, if regular, the normal expenditure out of income exemption.

Discounted Gift Trust

With Canada Life, the client invests in an investment bond and this is immediately assigned to a trust.

The initial advice is given to the client, who becomes the donor or settlor. The fees for this advice should either be paid direct to the adviser or deducted from the amount before any money enters the bond.

The ongoing advice is provided to the trustees and so should be paid for from the trust. As a DGT does not provide a great deal of flexibility, the majority of ongoing advice will be on the underlying fund selection which may be covered by a discretionary fund adviser fee. However, advice in other areas would have to be paid for by adviser charges.

Wealth Preservation Trust

A series of maturing policies is set up by the client and then assigned into the trust; therefore, the cost of the initial advice should be met by the client.

The ongoing advice is provided to the trustees and should be paid for from the trust. A discretionary fund

adviser fee could be used to cover the advice on the underlying assets, but advice in any other area, such as regarding the maturities and whether they should be deferred, should be paid for through adviser charges.

If any advice or services are provided to the settlor, for example regarding the maturities or tax, then they should pay for this advice and not the trustees as this could jeopardise the IHT effectiveness of the trust.

Controlled Access Account

A cash gift is made into a bare trust by the donor, expressing the wish that the trustees invest in a series of maturing policies for the chosen beneficiaries. The cost of the original advice to set up the trust should therefore be met by the donor. The advice to invest is provided to the trustees and should be paid for by them from the cash in the trust. The balance is then invested in the underlying investment.

The ongoing advice is provided to the trustees. Up until the beneficiary's 18th birthday, the ongoing advice could include advice and services around the maturities, as well as the underlying investments. The cost of advising on the underlying investment could be met through a fund adviser fee; however, the ongoing advice cannot be paid for by adviser charges as the policies are non-surrenderable.

Any ongoing costs will need to be met by an individual, such as the donor. The payments made will be gifts to the trust, although these will be exempt from IHT if they are covered by the annual gift allowance or, if regular, the normal expenditure out of income exemption.

Once the child beneficiary has reached their 18th birthday and the maturity dates are fixed, then it is envisaged that the majority of advice will be around the underlying investments.

Gift and loan trusts

The original advice is to a client and will include a recommendation to set up a trust with a small gift, and then to lend the trust a larger sum of money.

This advice is clearly given to the client personally and therefore should be paid for by the client direct and not from the money used to either set up the trust or lent to the trustees. These belong to the trustees.

The advice to invest is provided to the trustees and should be paid for by them from the money lent to the trust. The balance is then invested in the underlying investment.

An example of this would be:

EXAMPLE

Amount available from client	£100,010
Less cost of advice to client	£2,000
Less gift to set up the trust	£10
Amount lent to trustees	£98,000
Less cost of advice to trustees	£1,000
Amount available for investment	£97,000

The £10 gift should be paid to the trustees when the trust is established and any adviser fee being paid by the settlor or donor should be paid direct to the adviser, not through an investment provider.

The amount being paid to the investment provider would be either £97,000, if the trustees are paying the charge direct or £98,000 if the provider is facilitating the adviser charge.

The cost of any ongoing advice regarding the trust provided to the trustees is payable by the trustees, and could be covered by fund adviser fees and adviser charges. If any advice or services regarding repayments are provided to the donor/settlor, the cost should be met by them and not the trustees.

This document is based on Canada Life's understanding of applicable UK tax legislation and current HM Revenue & Custom's practice, as at March 2020 and could be subject to change in the future. It is provided for professional advisers only. Any recommendations are the adviser's sole responsibility.

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