

Advantages of Trusts

The increasingly severe tax treatment of trusts is evidence of the Government's view that the main objective of those who set up trusts is to reduce tax. However, research has indicated that settlors' greater concern is to retain some control over their assets.

The issue of control is of particular importance where the beneficiaries of the trust are younger children or grandchildren, who may be insufficiently mature to cope with a windfall.

In such cases the entitlement could be confined to income, thus preserving the capital value of the trust assets. A discretionary trust would enable the trustees to tailor the distributions according to the needs of the beneficiaries, for example in relation to education.

A trust can also protect assets against claims by third parties. If a beneficiary is declared bankrupt, the ability of the trustees in bankruptcy to access the trust fund would be confined to any income entitlement – and in the case of a discretionary trust there would be no such entitlement!

The exception would be if the trust had been set up in order to defeat the claims of creditors – which would be assumed to be the case if the transfer into trust were within two years of a bankruptcy petition or within five years if the settler were bankrupt at the time of the transfer.

Trusts can also be used to protect assets against claims arising on divorce and to preserve entitlements to local authority funding of care for the elderly, which is dependent on recipients' financial assets not exceeding defined levels. Again, a discretionary trust would be the appropriate way of conferring benefits but not entitlement.

Joint Account Issues

Joint bank and building society accounts are often recommended to family members, part of the reason being the assumption that in the event of the death of a holder his or her rights can be transferred without having to wait for the grant of Probate. However, this may not necessarily be the case.

Accounts from which money can be withdrawn on the signature of either of the joint account holders give the survivor the legal title to the account but not necessarily the right to retain the funds for their own benefit.

Beneficial ownership may depend on the way in which the account has been funded and on the intention of the parties. If one joint account holder has provided all the funds in the account, the law presumes that in the event of the death of that holder the survivor would hold the money on trust for the estate of the deceased holder.

If, on the other hand, there is evidence that in opening the joint account the deceased holder intended to make a gift of the funds, then this assumption could be overturned. However, when each party has contributed, the situation can be more complicated and may give rise to delays while the Revenue authorities decide how much belongs to the deceased and how much to the survivor.

The way in which the holders report interest receipts in their tax returns will be a helpful indication of their intentions. However, if significant sums are involved, it might be sensible for the holders to sign a 'declaration of trust', to put matters beyond doubt.

Absolute Investment Returns

Traditionally, investment managers have compared their performance to an appropriate stock market index, as a benchmark, but some investors are becoming dissatisfied with this approach, which tends to encourage managers to replicate the index rather than earning their keep by backing their own judgment.

It can be little consolation to an investor who has lost money to be told that they have lost less than the index.

It is against this background we are seeing a growing popularity for 'absolute return' funds. Absolute return funds come in a variety of forms. Some are equity-based, some are based on fixed interest securities, and some are multi-asset. Some are single manager funds, others multi-manager. Some aim simply to beat the return on cash, and others aim to achieve a defined 'target' return.



What these funds have in common is that they utilise the flexibility provided by an EU Directive to invest in 'derivatives', such as futures and options, and to switch to cash at the managers' discretion.

Funds which include derivatives require management skills and techniques beyond those required for the management of 'long-only' funds consisting only of stocks and shares. Ironically, however, the use of derivatives can serve to reduce risk, and many absolute return funds are categorised as 'cautious'.

There is much to be said for regarding absolute return as the 'all weather' core for a portfolio, and they can provide welcome stability at times when volatility is high, particularly if the manager has the ability to make the all-important calls between asset classes.

However, it must be remembered that absolute return funds can lose money, and indeed have done so. Also, that they may not participate fully in stock market rallies.

Straws in the wind

The centre of gravity of the financial world is moving East.

Did you know:

- That India has more children graduating with honours degrees than America has children.
- That China has more English speakers than the United States.

April 2010



No responsibility can be accepted for the accuracy of the information in this newsletter and no action should be taken in reliance on it without advice. Please remember that past performance is not necessarily a guide to future returns.

The value of units and the income from them may fall, as well as rise. Investors may not get back the amount originally invested

CLAIRVILLE YORK LIMITED, THE BELLBOURNE, 103 HIGH STREET, ESHER, SURREY, KT10 9QE

TEL: 01372 470477 – Fax: 01372 469777 – E-MAIL: enquiries@cyfsl.co.uk

Authorised and Regulated by the Financial Services Authority. Reference Number 207474