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ADVANCE PORTFOLIO BARE TRUST

ADVISER NOTES

These notes give professional advisers general information about the Advance Portfolio Bare Trust. They assume a professional understanding of trusts and taxation and you should not rely on these notes alone when giving advice to your clients.

The growing scope of inheritance tax (IHT)

For many married couples (including civil partners), the introduction of the transferable nil rate band has reduced the potential IHT bill on their estates. Even so many married couples may find their combined estate is still above the level at which IHT becomes payable.

Those not married have one nil rate band which has been extended until 2026.

One effective way to reduce IHT is to make lifetime gifts. Only outright gifts to individuals and gifts to bare trusts (or trusts for the disabled) are treated as potentially exempt transfers.

Many people may be reluctant to commit large sums for outright gifts or where the intended beneficiaries are minors or where there is a possibility of future beneficiaries.

Where control and flexibility over the eventual distribution of funds is important, a bare trust can provide this. Where the individual is certain about their choice of beneficiary and does not need future flexibility, a bare trust may be appropriate.

To be effective for IHT the person setting up the trust must not receive any benefit (actual or prospective) from the trust fund. Therefore, trusts are only suitable for those who do not want to retain any personal benefit from their investment.

The Advance Portfolio Bare Trust

The Advance Portfolio Bare Trust enables someone to make a gift to others. The investments and income of the trust (the trust fund) are held for the benefit of the beneficiaries. The person setting up the trust cannot benefit from the trust fund in any way.

The trustees decide how the trust fund is invested and will make all investment decisions jointly, unless they have delegated those decisions to someone else.

Once the trust has been set up your client cannot change their mind nor can they change the beneficiaries. Therefore you need to take account of the following:

- how the trust works and how it fits with your client’s financial plans
- the inheritance tax implications of the trust
- how the trust fund will be taxed, both income tax and capital gains tax

You must ensure the trust is properly set up. It’s important that the trust deed is correctly completed, witnessed and signed by the right people. If this is not done properly the trust itself may fail or there could be problems at a later date.

The trustees

The person setting up the trust (the donor) will automatically be one of the trustees. If it's a joint investment, both people will be joint donors and both will be trustees.

The donor can appoint other trustees either from the outset or later. After the donor's death the trustees can appoint further trustees.

The donor can remove a trustee provided at least two trustees remain, one of whom is not the donor, their spouse or civil partner.

It is usually suggested that additional trustees should be appointed at outset, particularly because after your client's death the trust will continue.

Having additional trustees means that should the donor die there will be no interruption to the trust caused by probate delays. If there are no additional trustees, no new trustee can be appointed until after probate has been obtained.

The trustees have control of the trust fund and must jointly make many of the key decisions including how the trust fund is invested.

You should explain the role of the trustee to each trustee and help your client decide how many trustees to have and who might be suitable given their circumstances.

You must give each trustee a full copy of the completed trust deed and any deeds appointing new trustees or retiring trustees. You may send them an electronic copy if you wish.

The beneficiaries

The beneficiaries have a fixed right to the trust fund. Your client cannot change their mind and so they must be certain before using this trust.

While the beneficiaries are under 18 (16 in Scotland), the trustees can accumulate any income within the trust fund. During this time the trustees can use the trust fund for the benefit of a young beneficiary, for example, by paying education fees.

Until the beneficiary attains full legal capacity, normally at age 18 (16 in Scotland), the trustees look after the trust fund and make all decisions on behalf of the beneficiary. Once a beneficiary attains legal capacity, they can demand that the trust fund is paid over to them. If it is retained by the trustees, the trustees will need the beneficiary's consent when exercising their powers.

If a beneficiary dies, their share of the trust fund will pass in accordance with their estate. For a minor this usually means to their parents via the intestacy rules.

Inheritance tax

There will be no IHT to pay when the trust is set up. The value of the gift is a potentially exempt transfer. Where there are two donors each is normally treated as making a gift of one-half of the value transferred.

If the donor dies within seven years of setting up the trust IHT may be due on the value of the initial gift to the trust. It will also be included in the calculation of any IHT on their estate.

If a beneficiary dies, the value of their share of the trust fund will be included in their estate for IHT purposes.

Income tax

The income of the trust fund belongs to the beneficiaries (whether distributed or accumulated) and is taxed on them along with any other income they have.

Trust income that are interest distributions may be covered by the beneficiary's personal savings allowance (£1,000 for somebody who is not a higher/additional rate taxpayer). Trust income that is dividend income may be covered by the dividend allowance of £2,000. Either form of income may be covered by the beneficiary's personal allowance. Foreign withholding tax cannot be reclaimed.

Special rules apply if the beneficiary is the donor's minor unmarried child. If the child is entitled to gross income of more than £100 in a tax year (from all gifts from the donor) that income will be assessed as the donor's income.

Capital gains tax (CGT)

If an existing investment is being put into a trust, this will be a disposal for CGT purposes and your client will need to pay any capital gains tax due.

As the trust fund belongs to the beneficiaries any capital gains arising when the trustees sell any of the investments will be taxed as the beneficiaries' gain. The beneficiaries have their own annual exemption (£12,300 in tax year 2022/2023).

HMRC Trust Register

We will require proof of registration with the HMRC Trust Register before we can complete set up of your account. A pdf downloaded from the Register is sufficient.

Frequently asked questions

Should both spouses set up their own individual Bare Trusts?

There is no reason why not but they can also set up a trust jointly.

Is the Bare Trust available for joint donors?

Yes, but only where the couple are married or registered civil partners. In those circumstances the account must be set up in joint names and the trust deed executed by both. Each will normally be treated as gifting 50% of the assets.

What is the role of the nominee company and why is the Notice of Trust necessary?

As the underlying investments are held in the name of a nominee, in order to perfect the gift the donor also instructs the nominee company to re-register the beneficial title in the name of the trustees.

Does HMRC need to be informed about the bare trust?

No. Unlike a discretionary trust, there is no need to tell HMRC.

Are there any particular points to completing the trust deed?

There are guidance notes on the deed to help you but as the deed is an important legal document you must take care to complete it correctly.

In Scotland the process of delivery or intimation is required to ensure the trust is effective. This means an additional trustee must be appointed at outset and they must receive a full copy of the trust deed.

Do you need to see the original trust deed?

No. Your client will want to keep the trust deed safe and so it's best to avoid its potential loss through the postal system. You can scan a full copy of the trust deed into your computer and email us a copy. You may also find this a more convenient way to send a copy to the additional trustees.

What if an additional trustee is temporarily away and unable to sign immediately?

They should still be appointed with their details included on the trust deed – a copy of this is sent to us. To avoid any later misunderstanding, you may wish to get a written statement from the trustee to confirm they are happy to act in the trust.

Can the trustees encash investments from the portfolio and pay the proceeds to the beneficiaries?

We will make all payments to the trustees who need to maintain a separate trustee bank account. If the beneficiary is a minor child, the trustees would normally then pay the beneficiary's parent or guardian to use for the child's benefit.

Can an investor get their money back after making the investment?

The investor will get the usual cancellation rights for new investments. If they exercise those cancellations rights they will get a refund (subject to any shortfall) and the trust will have no assets and therefore no practical effect.

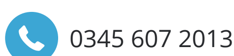
Can an existing portfolio be put into trust at the same time as making a further investment using one trust deed?

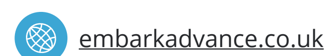
No. In this event the existing portfolio should be put into trust first. The donor can then gift cash to the trustees who can then apply for the further investment.

Important note for existing portfolios

Where an existing portfolio is placed into trust, when we record the trust we will allocate a new portfolio number so that we can administer the assets as part of a trust fund. We will confirm this new reference number to you after we have received a copy of the trust deed. You should complete the trust deed with the original portfolio number as this correctly identifies the assets being placed into trust.

These notes are part of a series provided by Advance by Embark for professional advisers only. They are based on our understanding of law and practice in April 2021, which can change over time. No investment or tax decision should be made on the basis of these notes alone. It is assumed that advisers have a professional understanding of trusts and taxation. These notes are not intended to be comprehensive nor a substitute for ongoing professional study. Where appropriate specialist legal and tax advice should be obtained.





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