

# Trusts

At the end of this unit, candidates should be able to demonstrate an understanding of the:

- legal principles associated with the creation and management of a trust;
- main types of trusts that are common in the UK;
- taxation considerations relevant to trusts.

## Summary of learning outcomes

1. Understand the structure of a trust and the role of the settlor, trustees and beneficiaries;
2. Understand how trusts are created, the rules that govern them and their main uses;
3. Understand the rules covering the investment of trust assets and the administration of trusts;
4. Understand substituted decision making, the impact of loss of mental capacity and related procedures;
5. Understand the consequences of making a Will and of dying intestate;
6. Understand the bankruptcy rules and the role of the trustee in bankruptcy;
7. Understand how trusts are subject to tax and how a liability can fall to the Settlor, Trustees or Beneficiaries;
8. Understand how life assurance policies and certain pension benefits can be placed in trust and the tax and other implications;
9. Understand the need to review trusts regularly.

## Important notes

- **This syllabus will be examined in the October 2011 and April 2012 sessions. Candidates will be examined on the basis of English law and practice in the tax year 2011/2012 unless otherwise stated.**
- **The general rule is that the exams are based on the English legislative position three months before the date of the exams.**
- **Candidates should refer to the CII update website [www.cii.co.uk/updates](http://www.cii.co.uk/updates) for the latest information on changes to law and practice and when they will be examined.**

## **1. Understand the structure of a trust and the roles of the settlor, trustees and beneficiaries**

- 1.1 The legal structure of a trust/settlement – trustees, beneficiaries, settlor, trust property, the differences between a trust and a contract, Trustee Act 1925;
- 1.2 Trustees – the role, responsibilities and duties, powers, appointment, retirement, death, powers to delegate, charges, expenses, breaches of trust, Trustee Act 2000, Trustee Delegation Act 1999;
- 1.3 Beneficiaries – absolute, life, contingent, reversionary named, classes, power to end a trust, position of minors, Saunders v Vautier;
- 1.4 Main types of trust – bare/absolute, discretionary, relevant property, life interest/interest in possession, flexible/power of appointment, accumulation and maintenance, statutory, resulting, successive, constructive trusts, Married Women's Property Act.

## **2. Understand how trusts are created, the rules that govern them and their main uses**

- 2.1 Creation of trusts – deed, will or statute, secret and unwritten trusts;
- 2.2 Method of creation – express, implied, constructive;
- 2.3 General law governing trusts – the three certainties, Knight v Knight, the perpetuities rule, accumulations, Perpetuities and Accumulations Act 2009;
- 2.4 Main uses of trusts – tax planning and mitigation, intestacy, Wills, pension schemes, family provision, charities, giving property to minors or mentally incapable people, protection from creditors during bankruptcy, business protection.

## **3. Understand the rules covering the investment of trust assets and the administration of trusts**

- 3.1 Trustees' investment powers and duties, The Trustee Act 2000;
- 3.2 Conversion and apportionment;
- 3.3 Varying trusts – permitted variations, Settled Land Act 1925, Matrimonial Causes Act 1973, Variation of Trusts Act 1958;
- 3.4 Charitable trusts – differences with other trusts, tax position, including donations;
- 3.5 Creating offshore trusts – possible main implications; excluded property trusts for non-UK domiciled persons.

## **4. Understand substituted decision making, the impact of loss of mental capacity and related procedures**

- 4.1 How the Mental Capacity Act 2005 operates, including the five key principles and best interest;
- 4.2 Setting up a power of attorney, definition, Powers of Attorney Act 1971, form of attorney, duties;
- 4.3 Enduring Power of Attorney (EPA), definition, EPA Act 1985, duties, registration and restrictions;
- 4.4 Lasting power of attorney, definition, setting up, duties, registration and restriction on attorney;
- 4.5 Office of Public Guardian, procedures, jurisdiction and responsibilities, receivership;
- 4.6 Court Appointed Deputies;
- 4.7 The Court of Protection, jurisdiction, powers, restriction on trust planning and investments;
- 4.8 Independent Mental Capacity Advocates;
- 4.9 Mental Health Act 1983 (as amended) – dealing with a person's property.

## **5. Understand the consequences of making a Will or of dying intestate**

- 5.1 Wills – the duties of executors, mutual Wills, mirror/reciprocal Wills, the desirability of making a Will, executors unable to act;
- 5.2 Dying intestate – the distribution of the estate, the duties of the administrators, procedure for deed of variation, tax considerations and planning implications;
- 5.3 Changing a Will/intestacy after death – disclaimers and deeds of variation, tax considerations and planning implications;
- 5.4 Transfer of spouse's/civil partner's nil rate band;
- 5.5 Revoking or challenging Wills;
- 5.6 Estates of deceased persons – the main Income Tax, Capital Gains Tax and Inheritance Tax considerations.

## **6. Understand the bankruptcy rules and the role of the trustee in bankruptcy**

- 6.1 Bankruptcy – the procedure and timescale;
- 6.2 Bankrupt's property – assets that pass to the trustee, the Enterprise Act 2002;
- 6.3 The trustee in bankruptcy's role – aim, priority for payments, interim creditors, completing the bankruptcy, disabilities of the bankrupt, prior transactions;
- 6.4 Implications of bankruptcy for Investments, life assurance, pensions and trusts;
- 6.5 Alternatives to bankruptcy – individual voluntary arrangements, deeds of arrangement, administration orders.

## 7. Understand how trusts are subject to tax and how a liability can fall to the Settlor, Trustees or Beneficiaries

- 7.1 Self assessment – trustees and their liabilities, responsibilities;
- 7.2 Income Tax: applicable to the main types of trust (see 1.4) distributions and accumulations the basic rate Income Tax band and the rate applicable to trusts, when income might be taxed on the trustees, settlor or beneficiary of a trust;
- 7.3 Capital Gains Tax – applicable to the main types of trust (see 1.4): disposals, annual exemption, settlor retaining an interest, when gains might be taxed on the trustees, settlor or beneficiary of a trust;
- 7.4 IHT – affecting the main types of trust (see 1.4): on the creation of trusts, when the settlor dies and any periodic and exit charges on disposals and deemed disposals by trustees;
- 7.5 Impact of changing beneficiaries entitlements on pre/post March 2006, life interest/interest in possession, flexible/power of appointment, accumulation and maintenance trusts;
- 7.6 Trusts for the vulnerable – Income Tax, CGT and IHT;
- 7.7 Pre-owned Assets Tax, in connection with IHT planning.

## 8. Understand how life assurance policies and certain pension benefits can be placed in trust and the tax and other implications

- 8.1 Life policies under trust – applicable to the main types of trust (see 1.4): – assignment of new and existing policies into trust, planning considerations;
- 8.2 Trustees' responsibilities with life and pensions policies under trust – policy benefits, dealings by beneficiaries. Inheritance Tax implications;
- 8.3 Taxation of life assurance policies under trust – UK Income Tax and IHT considerations;
- 8.4 Tax treatment of policies with non-UK resident trustees and or settlors;
- 8.5 Main uses of trust policies implications for the settlor, trustees and beneficiaries;
- 8.6 Pensions – death benefits, occupational and non-occupational pensions – Inheritance Tax treatment – the use of trusts.

## 9. Understand the need to review trusts regularly

- 9.1 The events that may trigger a review of a trust;
- 9.2 The factors to consider when reviewing a trust.

## Reading list

The following list provides details of various publications which may assist with your studies. Periodicals and publication will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

**Note: The examination will test the syllabus alone.**

The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/Personal Finance Society members can borrow most of the additional study materials below from Knowledge Services. CII study texts can be consulted from within the library. For further information on the lending service, please go to [www.knowledge.cii.co.uk/library/services](http://www.knowledge.cii.co.uk/library/services).

Trusts. London: CII. Study text J02.

The taxation of trusts. Totnes, Devon: SDB Training. Annual.

Equity and trusts. Alastair Hudson. 5th ed. London: Routledge-Cavendish, 2007.

Trusts and equity. Richard Edwards, Nigel Stockwell. 9th ed. Harlow [Essex]: Pearson Education, 2009.

Equity and trusts in a nutshell. 7th ed. Michael Haley. London: Sweet & Maxwell, 2007.

Equity and trusts. Michael Haley, Lara McMurtry. 2nd ed. London: Sweet & Maxwell, 2009.

The modern law of trusts. Parker and Mellows. 9th ed. London: Sweet & Maxwell, 2008.

A practitioner's guide to trusts. John Thurston. 7th ed. Haywards Heath, West Sussex: Bloomsbury Professional Ltd, 2009. Available online via [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk) (CII/Personal Finance Society members only).

Understanding equity & trusts. Alastair Hudson. Routledge, 2008. Available online via [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk) (CII/Personal Finance Society members only).

Wills, administration and taxation: a practical guide. J S Barlow, L C King, A G King. 9th ed. London: Sweet and Maxwell, 2008.

Further articles and technical bulletins are available at [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk) (CII and Personal Finance Society members only).

## Reference materials

Core tax annuals, 6v (Capital Gains Tax; Corporation Tax; Income Tax; Inheritance Tax; Trusts and estates; Value-added tax). Various authors. Haywards Heath, West Sussex: Bloomsbury Professional. Annual. Available online via [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk) (CII/Personal Finance Society members only).

Lamont's financial glossary: the definitive plain English money and investment dictionary. Barclay W Lamont. 10th ed. London: Taxbriefs, 2009. Available online via [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk) (CII/Personal Finance Society members only).

St James's Place tax guide. Walter Sinclair. Basingstoke, Hampshire: Palgrave Macmillan. Annual.

Tolley's tax guide. Arnold Homer, Rita Burrows. Croydon, Surrey: Tolley. Annual

Tolley's tax planning. Croydon, Surrey: Tolley. Annual.

Trusts law: text and materials. Graham Moffatt. 4th ed. Cambridge: Cambridge University Press, 2005.

Zurich tax handbook. A Foreman, G Mowles. Harlow [Essex]: Pearson Education. Annual.

## Periodicals

Financial Adviser. London: FT Business. Weekly. Also available online at [www.ftadviser.com](http://www.ftadviser.com).

Financial Solutions. London: Personal Finance Society. Six issues a year. Available online via [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk) (CII/Personal Finance Society members only).

Financial Times. London: Financial Times. Daily. Also available online at [www.ft.com](http://www.ft.com).

Money Management. London: FT Business. Monthly.

Money Marketing. London: Centaur Communications. Weekly. Also available online at [www.moneymarketing.co.uk](http://www.moneymarketing.co.uk).

## Examination guides

Guides are produced for each sitting of written answer examinations. These include the exam questions, examiners' comments on candidates' performance and key points for inclusion in answers. You are strongly advised to study guides for the last two sittings. Please visit [www.cii.co.uk](http://www.cii.co.uk) to buy online or contact CII Customer Service for further information on +44 (0)20 8989 8464. Older examination guides are available (for members only) via [www.knowledge.cii.co.uk](http://www.knowledge.cii.co.uk).

## Exam technique/study skills

There are many modestly priced guides available in bookshops. You should choose one which suits your requirements.