

Trusts – Parties to a Trust



In all trust arrangements, there will be 3 separate parties to the trust.

Settlor

All trusts will have a settlor. The settlor is the person who makes the settlement – i.e. the person who transfers the assets to the Trustees.

The settlor is the benefactor – i.e. the creator of the trust. A “settlement” is simply another word for a “trust”.

A trust may have more than one settlor – i.e. more than one person can transfer assets to the same trust – but in the majority of instances, a trust will simply have one settlor.

The Trustee(s)

When a settlor creates a trust he transfers assets to Trustees. On creation of the trust, legal ownership will pass from the settlor to the trustees.

Trustees, like a company or an individual, are a separate legal person and have a legal personality which is separate from the individuals making up the bodies of trustees.

Trustees will themselves have income tax, capital gains tax and inheritance tax liabilities.

Generally speaking, any person may act as a trustee as long as they are mentally capable of doing so. The settlor will specify in the trust deed who shall be the trustees of the trust. Most trusts have a minimum of 2 Trustees. There is no legal obstacle to a settlor appointing himself as a Trustee. Indeed, in many family trusts, the settlor will act as a trustee along with a professional such as the family solicitor. This gives the settlor power to have some say in how the income and capital of the trust should be distributed.

For tax purposes, even though an individual may fulfil 2 roles - one a settlor and one as a Trustee – it is important to keep these legal persons completely separate.

Within the trust deed, the settlor will often have power to either appoint additional Trustees or to remove existing Trustees.

The Beneficiaries

Within the deed, the settlor will nominate the person or persons who shall be the beneficiaries of the trust. In general terms, the beneficiaries are the only persons who are entitled to use or enjoy the income or assets of the trust.

Trustees may not benefit from the trust, although professional Trustees are allowed to receive reasonable remuneration for acting as trustees either under statute or by a provision of the trust deed.

The settlor may not benefit from the trust property, unless he or she is included within the class of beneficiaries. There is nothing to prevent a settlor from being able to benefit from the property they have given to the trustees, although there are anti-avoidance provisions to prevent a trustee from obtaining a tax advantage from doing so.

It is not altogether unfeasible that an individual could be a settlor, a Trustee, and a beneficiary of the trust, although this is unusual.

Please note that this document does not constitute financial advice.

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