Probate Trust

The Probate Trust is designed to speed up the payment of policy proceeds on death by avoiding the need for probate in respect of the trustee owned policy.

Structure of the Trust

- The trust is discretionary in nature.
- There's a wide range of potential beneficiaries – including the settlor.
- The trust can accommodate single owner policies but not jointly owned policies.

Life/Lives Assured

- The objective is to speed up the payment of the policy proceeds on death, it would be normal for the "settlor" to be the sole life assured.
- It's possible to have policies with two lives assured held within the trust. In such a case, the trustees would have to instruct a surrender of the policy if the settlor was the first of the lives assured to die.
- It's possible to assign existing policies to the trustees.

How does the Probate Trust work?

- The bond is transferred to trustees during the client's lifetime (or at issue).
- Payments can be made to the beneficiaries (including the settlor) at any time.
- The trust will continue to the end of the trust period or until all the assets have been distributed.
- After the client's death, the trust can continue or be wound-up with the proceeds paid out.

Ongoing Adviser Charges for advice given to Trustees

- Prudential will facilitate ongoing adviser charges for advice given to the trustees. In view of the fact that the trustees are not party to the bond application form, the ongoing adviser charge instruction section on the application form must be left blank. Instead, the trustees will need to complete the appropriate adviser instruction form.
- Where Prudential facilitates payment of ongoing trustee advice, then this will be funded by withdrawals from the bond and will impact on the 5%tax deferred allowance.

Important information on the Probate Trust

Beneficiaries

Both the beneficiaries and their share of the trust fund can be changed.

Reporting requirements

- Transfers must be notified to HMRC if above 80% of the settlor's inheritance tax nil rate band at the time of transfer.
- IHT returns are required for the purposes of the periodic charge every 10 years and exit charges whenever capital is paid out of the trust (a reporting limit of 80% of the trustees' inheritance tax nil rate will apply).

Tax treatment

Income Tax

- The death of the sole life assured will trigger a chargeable event. The gain is treated as income of the settlor in the year of death.
- Where there's a second life assured the policy will continue after the first death. If it's surrendered in the tax year in which the settlor died, the tax charge will fall on the settlor. (If the intention is to speed up payment of the proceeds then the trustees will presumably surrender the policy as soon as possible after the settlor's death).
- If the policy is surrendered in a later tax year, the charge will fall on the trustees if UK resident.
- It would be possible to use assignment strategies but these would delay payout.

Capital Gains Tax

There should be no capital gains tax implication flowing from the use of the Probate Trust.

Inheritance Tax

- The gift into trust, less any available exemptions, is a chargeable lifetime transfer. This will give rise to an immediate charge if the value, added to any relevant previous chargeable transfers, is more than the nil rate band.
- On death within seven years there may be an additional charge.
- There may be an IHT charge if the value at the 10th anniversary exceeds the Nil Rate Band (NRB) at that time. Any capital payments subject to exit charges in the first 10 years will reduce the NRB. Likewise any chargeable transfers made by the settlor in the 7 years prior to set up will reduce the NRB.
- There may be an exit charge on capital distributed from the trust.
- As the settlor is a potential beneficiary, this will be a gift with reservation. The value of the bond will be in the settlor's inheritance tax estate at the time of his/her death. Because of the potential double charge (a chargeable lifetime transfer and a gift with reservation), a special relief known as 'Double Charge Relief' is available. This double charge is unlikely to be an issue in the vast majority of cases.

Double Charge Relief

The legislation recognises the possibility of a "double IHT charge" and provides that the IHT charge is limited to the higher of the charge flowing from the chargeable life time transfer or the gift with reservation. This is known as Double Charge Relief.

Your client might need to pay tax depending on their circumstances and the options they choose. Tax rules can also change in future.

How does Double Charge Relief work?

Make two separate calculations of the total tax payable as a result of the death

Firstly:

- charging the Gift With Reservation as part of the "death estate",
- ignoring the value transferred by the original lifetime transfer

and secondly:

- charging the lifetime transfer in the usual way as a immediately chargeable transfer,
- ignoring the value of that property at the date of death.

Use the charge on the calculation which produces the higher amount of inheritance tax payable.

Local Authority Contributions Long Term Care Costs:

The settlor has made a transfer of the policy to trustees (or has applied for a bond to be issued to trustees). This is a "deprivation of assets". If the settlor subsequently seeks local authority support towards the cost of long term care, this deprivation may be taken into account in assessing the level of support.

The investment choices

For new bonds, there are four options from Prudential and Prudential International:

- Prudential Investment Plan
- Prudential Onshore Portfolio Bond
- Prudential International Investment Bond
- Prudential International Investment Portfolio.

The value of an any investment, and any income taken from it, can go down as well as up, so your client might get back less than they have put in.

Additionally, you may be able to use the Probate Trust with an existing Prudential or Prudential International Bond.

Full terms and conditions are available on request.

To find out more, please contact your Account Manager
or visit our website at **pruadviser.co.uk**

pruadviser.co.uk

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