

# WEALTH PRESERVATION TRUST

## TAX NOTES UNITED KINGDOM

### INHERITANCE TAX

1. The investor(s) assign(s) policy rights to the trust. This will be a transfer of value for the purposes of S3(1) Inheritance Tax Act 1984 (IHTA '84). If the assignment is to a bare trust, it will be a potentially exempt transfer (PET) for inheritance tax purposes and will fall outside of the estate of the investor(s) after seven years. Should an investor die within seven years of making the transfer, it will become a failed PET and will be subject to inheritance tax, although a discount may be available depending on the number of years by which the investor survived the transfer.
2. If the assignment is to the flexible trust, it will immediately be subject to inheritance tax as a chargeable lifetime transfer. Given that the flexible trust falls within the relevant property regime (S58(1) IHTA '84), it will also be subject to inheritance tax on each ten-year anniversary of its settlement (under S64 IHTA '84) and on transfers out of the trust (under S65(1) IHTA '84).
3. Growth in the value of the policy over and above the value of the underlying portfolio will take place outside the investors' estate and any payment on death of the last surviving life assured will also vest outside the investors' estate for inheritance tax purposes.
4. The investor(s) retain(s) a "carved out" entitlement to capital. This entitlement is not subject to the gift with reservation rules in s102(1) Finance Act 1986 provided that it is properly carved out of the transfer. This was confirmed by Her Majesty's Revenue & Customs (HMRC) in a letter to the Law Society of England & Wales dated 18 May 1987 and was reaffirmed in *Ingram v IRC* [2000] 1 A.C.
5. In addition to the general rule on gifts with reservation, Schedule 20 Paragraph 7 Finance Act 1986 establishes a further anti-avoidance provision.

It provides that:

"(1) Where arrangements are entered into under which:

- (a) there is a disposal by way of gift which consists of or includes, or is made in connection with, a policy of insurance on the life of the donor or his spouse or on their joint lives, and
- (b) the benefits which will or may accrue to the donee as a result of the gift vary by reference to benefits accruing to the donor or his spouse (or both of them) under that policy or under another policy (whether issued before, at the same time as or after that referred to in paragraph (a) above), the property comprised in the gift shall be treated for the purposes of the principal section as not enjoyed to the entire exclusion, or virtually to the entire exclusion, of the donor."

Utmost Luxembourg S.A. believes that Paragraph 7 will not apply to the Wealth Preservation Trust given that the investor(s) is/are not entitled to benefits under the terms of the policy. Rather, the entitlement arises under the terms of the trust and it is for the trustees to determine how that entitlement is satisfied in practice.

### INCOME TAX

1. Partial surrenders for the investor(s) will not be chargeable events, provided they are limited by reference to a maximum of 5 % of the initial investment per policy year (S507(5) Income Tax (Trading and Other Income) Act 2005 (ITTOIA '05)). However, excess withdrawals will generate chargeable event gains.
2. Withdrawals and Regular Withdrawals from the policy (as defined in the policy conditions), taken by the trustees after the death of the investor(s), will also attract income tax if they exceed the allowable amount mentioned in 1.
3. Full surrender of the policy (after the death of the investor(s)) and payment following the death of the last surviving life assured will be chargeable events for the purposes of S484 ITTOIA '05 and will attract income tax generally in the hands of the beneficiary/ies of the bare trust or in the hands of the trustees of the flexible trust under S467(1) ITTOIA '05.
4. Utmost Luxembourg S.A. considers that the Wealth Preservation Trust does not fall foul of HMRC's guidance notes on pre-owned assets tax. HMRC has also confirmed previously in writing that the rules on pre-owned assets are not intended to apply to discounted gift schemes.

The Wealth Preservation Trust has been approved by leading tax Counsel. A copy of Counsel's opinion is available on request.

**This summary was compiled in July 2014 and the information above was valid at that date. It provides a summary and does not attempt to cover all related matters or situations. It is not intended to give specific legal or tax advice; investors should therefore seek their own independent advice relating to their specific circumstances.**

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