WAY Investment Services - The WAY Inheritor Plans
Terms & Conditions, Technical Guide and Tax Summary

Introduction

- WAY Investment Services (WAY) only deal with Independent financial advisers (IFAs).
- The purpose of this document is to help investors and their IFAs fully understand the Plans, how they work and the tax implications. Throughout it is assumed that the investor is UK domiciled/UK resident and that the trust is regarded as UK resident for tax purposes. The contents are based on WAY's understanding of current law and HM Revenue & Customs (HMRC) practice, which can change at any time.
- This publication must be read in conjunction with other Plan related literature, including that for the investments to be held within the trust, and then kept safe for future reference.
- Since each Plan caters for different needs, investors must rely on the recommendations of their professional advisers on whether such an arrangement is appropriate for their individual circumstances. WAY cannot give financial advice.

What Plans are available?

- WAY offer the following inheritance tax (IHT) mitigation Plans within its 'Inheritor' range:
  - The WAY Flexible Inheritor Plan
  - The WAY Gifts from Income Inheritor Plan
  - The WAY Discounted Inheritor Plan
  - The WAY Duo Inheritor Plan
- All Plans involve the investor making an effective gift for IHT into a trust but retaining the right to receive reversionary payments on future dates if alive at the time. Depending on the type of Plan, these reversions may be defeasible by the independent trustees.
- Investors must be aged 18 or over and of legally sound mind. There is no upper age limit for the Flexible and Gifts from Income Plans
- For the Discounted and Duo Plans, the investor must be aged under 90 at outset, in reasonably good health and be willing to undergo medical underwriting.

Investment Options

- All Plans require the investor to invest in WAY unit trusts/OEICs either directly (income units/shares only) or indirectly by way of an offshore investment bond wrapper with La Mondiale Europartner SA (LMEP), a life office based in Luxembourg and part of the AEGON group.
- By providing this choice of growth orientated investment, the investor can decide which tax regime they would prefer to apply to future realised gains ie capital gains tax (collectives) or income tax (bond). Tax efficiency is an important factor as it can have a serious impact on returns to beneficiaries.
- Both investment options are available under the Flexible, Gifts from Income and Discounted Plans whereas the Duo Plan only permits direct investment.
- If investing directly, advantage can be taken of WAY's non income yielding Portfolios, which have been specifically designed to be held within the trust to simplify the administration of a collectives based Plan:
  - The funds concerned are:
    - WAY Global Cautious Portfolio Fund
    - WAY Global Blue Managed Portfolio Trust
    - WAY Global Red Active Portfolio Trust
    - WAY MA Cautious Portfolio Fund
    - WAY MA Growth Portfolio Fund
  - By not producing a distributable income, these risk-graded funds of funds/multi asset funds can also effectively replicate many of the benefits associated with bonds but with the added advantage of being able to make use of the trustees' (and the beneficiary's) annual CGT exemption.
  - If income arises to the trustees, this is assessable for tax on the investor (as settlor) but must be paid to the income beneficiaries named under the trust. Investing solely in the above Portfolios or the bond can avoid creating an unnecessary tax liability for the settlor or the need for trustees to pay out income.
- LMEP bond:
  - The bond should be arranged on a multiple lives assured basis so that it remains in force after the settlor dies. This allows the trustees to decide on the most tax efficient way to distribute the trust fund. The settlor is automatically included as a life assured and will usually feature beneficiaries as additional lives assured.
  - The bond will consist of up to 100 policies
  - Please see the associated Key Features document for further details.
- The tax treatment of each Plan can be seen in the Tax Summary at the rear of this publication.
- All application forms, agreements, trust deeds, brochures and fund prospectus are available under 'Downloads' on www.wayinvestments.com
- If the investor wishes to invest directly in collectives but would prefer a wider choice, the Flexible and Gifts from Income Plans, together with a Loan Plan, are available in 'open architecture' format on the Ascentric platform and on Platform One. Further information can be obtained from www.ascentric.co.uk and www.platform1online.com respectively. IFAs must be registered with the appropriate platform to offer these particular versions.

Main aims of the Plans

- Apart from providing investors with the opportunity to reduce their potential IHT liability during lifetime, the Plans also let them retain varying access to the underlying capital. The prime aims of each Plan can be briefly summarised as follows:
- **The Flexible Plan**
  - To remove the sum invested from the investor's estate for IHT after surviving 7 years
  - To allow the investor to receive, at the trustees' discretion, a proportion of the trust fund each year by way of annual reversions
  - To permit the trustees to appoint capital or make loans to beneficiaries at any time.
- **The Gifts from Income Plan**
  - To immediately remove surplus income from the investor's estate for IHT
  - To allow the investor to receive, at the trustees' discretion, up to 50% of the trust fund by way of reversions on both the 5th and 10th anniversaries
  - To permit the trustees to appoint capital or make loans to beneficiaries at any time.
- **The Discounted Plan**
  - TTo remove the sum invested from the investor's estate for IHT after surviving 7 years
  - To achieve an immediate reduction in the investor's taxable estate for IHT
  - To provide the investor with a fixed proportion of the trust fund each year by way of annual reversions.
- **The Duo Plan** (this is effectively a hybrid of the Flexible and Discounted Plans)
  - To remove the sum invested from the investor's estate for IHT after surviving 7 years
  - To immediately reduce the taxable value of the gift should the investor die within 7 years
  - To provide the investor with a fixed cash payment each month for the first 8 years
  - To allow the investor to also receive, at the trustees' discretion, a proportion of the trust fund each year by way of annual reversions
  - To permit the trustees to appoint capital or make loans on a limited basis to beneficiaries whilst the settlor is alive.
- By necessity, all Plans require the investor (settlor) to make the initial investment in his/her name and then transfer the units/shares or the policies into trust after expiry of the relevant cancellation period.
- To maximise flexibility, the Plans can only be taken out by individual investors.
- By only allowing a Plan to be set up by a single settlor and at the same time excluding their spouse/civil partner from benefiting, married couples and registered civil partners can each set up their own individual plans without infringing the gift with reservation provisions. This permits maximum flexibility and can greatly increase the IHT effectiveness of the trust. The trustees have the power to add the widow(er)/surviving civil partner as a potential beneficiary following the settlor's death.
- No medical evidence is required for the Flexible or Gifts from Income Plans.

Key features of the Trust

- The Plans use a specially designed interest in possession trust (with discretionary powers) that allows its assets to easily pass down the family generations. The trust is modified according to the Plan concerned.
- The trust will not be validly constituted until the investments made by the settlor are transferred into the names of the trustees.
- Under the terms of the trust, the trustees have the power to appoint capital to a wide range of beneficiaries (the Appointed Class). In the meantime, any income received by the trustees, after offsetting expenses, is payable to named Beneficiaries (usually, the settlor's children).
- The Appointed Class automatically includes the income Beneficiaries and their children, grandchildren, great grandchildren (born or future

born), together with their respective spouses/civil partners. The settlor has the opportunity to add other potential beneficiaries (excluding the settlor and his/her spouse or civil partner) when completing the trust deed. Thereafter, the trustees have the power to make additions to the Appointed Class.

- Apart from enjoying an interest in possession from inception, the income Beneficiaries will also eventually become entitled to the trust capital unless the trustees exercise their powers to the contrary. The income share of a Beneficiary cannot be changed by the trustees.
- If an income Beneficiary dies, their right to income will pass to his/her living children in equal shares or be passed further down the bloodline under the 'per stirpes' rule. If there are no descendants alive, his/her share in the income will accrue proportionately to the surviving income Beneficiaries. However, if the deceased is the sole income Beneficiary and is not survived by children/other descendants, the trust will then fail and its assets will pass back into the settlor's estate unless the trustees can make an immediate and absolute appointment of the entire trust fund to somebody in the Appointed Class. If this situation could arise, the settlor should extend the Appointed Class at outset to include alternative beneficiaries, who may potentially benefit in these circumstances, and subsequently keep the trustees up to date with his/her wishes.
- For Flexible and Gifts from Income Plans, capital payments are earmarked for the settlor in the form of 'flexible' reversions. These are subject to the trustees' power to reduce, postpone or defeat them. Under the Discounted Plan, the reversions are fixed and are indefeasible whereas the Duo Plan provides both flexible and fixed reversions.
- All reversions are 'carved out' by the settlor before making the gift. They are held absolutely (ie on bare trust) for the settlor but will cease on his/her death. Subject to these reversions, the trust fund is held for the beneficiaries.
- The trust can also offer great flexibility for the trustees to meet the changing needs of the beneficiaries. Trustees of the Flexible and Gifts from Income Plans have discretion to advance capital or make loans to any beneficiary at any time and, if appropriate, can create further trusts. However, for Duo Plans, these particular powers are restricted whilst the settlor is alive and, in the case of Discounted Plans, cannot be exercised until the settlor has died
- To ensure the Plans based on this trust are IHT effective, neither the settlor nor their spouse/civil partner can be a beneficiary of the trust or a trustee. When the settlor dies, the widow(er)/surviving civil partner can be added to the Appointed Class and, at the trustees' discretion, can benefit from the capital in the form of payments or, perhaps more preferably, by way of loans, which may reduce the value of the survivor's estate for IHT if still outstanding at the time of their death.
- The trust fund is potentially subject to IHT charges every 10 years and whenever capital is paid to a beneficiary.
- The trustees have the discretion to appoint trust capital at any time during the 80 year perpetuity period to any members from the Appointed Class, which automatically includes those beneficiaries entitled to the income. Similarly, the trustees can grant loans to any of the beneficiaries.
- Although not legally binding on the trustees, the settlor should keep the trustees regularly informed of how he/she would like the trust fund distributed by writing them a letter of wishes. Such guidance can be extremely helpful to the trustees, especially in administering the trust after the settlor has died.
- All the trusts are governed by the law of England.

Appointing Trustees

- The nature of the Plans means that the settlor and his/her spouse or registered civil partner cannot be appointed as trustees.
- The settlor must therefore appoint a minimum of 2 trustees (or a corporate trustee) at outset.
- Trustees must be aged 18 or over and have the legal capacity to act.
- If the trustee is also a beneficiary, there must be at least one independent trustee who cannot benefit from the trust.
- The trustees should be responsible individuals since their duties can be onerous. For Flexible, Gifts from Income and Duo Plans, the trustees must be able to act without bias when considering the needs of the settlor and the beneficiaries. In many instances, the appointment of a professional trustee (such as a solicitor or an accountant) will be desirable. However, the means of funding any fees must be taken into account.
- If a trustee dies or wishes to retire, a replacement trustee must be appointed. The settlor has the power to appoint trustees whilst he/she is alive and of legally sound mind. Thereafter the power vests in the trustees. The appropriate deeds can be obtained from WAY. There is no power to dismiss a trustee.

Main duties of the Trustees

- Once the trust is established, the trustees take over the legal ownership of the investments from the settlor.
- The prime role of the trustees is to administer the trust fund in the best interests of the beneficiaries and in accordance with the terms of the trust.
- Since the trustees are now the legal owners of the trust assets, WAY and LMEP can only act on their instructions in respect of dealings concerning the investments.
- Trustees must be seen to exercise their duties seriously, impartially and reach decisions unanimously. Any resulting tax implications must always be borne in mind. All decisions should be formally minuted.
- When a flexible reversion is due, the trustees must decide whether this should go to the settlor or be postponed in part or in full to a future anniversary date or defeated altogether. The trustees are responsible for completing the necessary paperwork within the stated deadlines.
- The trustees should also carry out a review of the trust investments at least once a year (eg on the Plan anniversary) with the settlor's IFA and consider use of their discretionary powers (eg to make capital payments or loans to beneficiaries).
- The trustees must meet any tax obligations and pay over any trust income to the beneficiary(ies) entitled to receive it. If appropriate, they must arrange for trust accounts to be prepared.
- The role of a trustee is discussed more fully in a 'Guide for Trustees of the WAY Inheritor Plans' which is available on request.

Commitments

- The normal minimum investment limits are as follows. These may be altered at WAY's discretion:
    - Gifts from Income Plan:
        - minimum annual investment of £5,000 for at least 4 consecutive years
    - All other Inheritor Plans:
        - minimum lump sum investment is £100,000
        - no further investments can be made
        - the value of the gift must be within the settlor's available nil rate band
- If the investment is being made directly into WAY's unit trusts/OEICs, only income units/shares may be purchased. Accumulation units are not permitted.

Joint bank accounts

- Since the Inheritor Plans can only be set up on a single settlor basis, it is important that the funds for doing so are provided only by the settlor. Ideally, they will come from an account in the settlor's sole name.
- If the money to be invested is held a joint bank account, which is in the names of the settlor and his/her spouse/civil partner and each can access all the funds with a single signature:
    - WAY will accept a cheque drawn on the account but signed only by the settlor on the basis that, if ever asked to do so by HMRC, the settlor can demonstrate that the capital came from his/her resources
    - WAY will refuse to accept a jointly signed cheque.

What are the Risks?

- The amount that the trustees or, where appropriate, the settlor will receive at a later date cannot be guaranteed as this will depend on how well the investments perform and other influencing factors such as currency movements and future changes in charges or tax legislation.
- Future capital payments will be of varying amounts.
- In addition, the future spending power of money received from the Plan will be reduced by inflation if investment returns do not keep pace.
- The value of investments and any income from them can go down as well as up. Some investment funds also carry a higher level of risk than others. Past investment performance is not necessarily a guide to future investment returns. Any other risks associated with the investment funds are shown in the Simplified Prospectus available under 'Downloads' on www.wayinvestments.com
- The settlor cannot be certain of receiving a flexible reversion (Flexible, Gifts from Income and Duo Plans only) since the trustees have discretion to decide otherwise.
- Since tax legislation and HMRC practice may be subject to change, which cannot be foreseen, the tax implications stated in this publication are not guaranteed. The settlor must rely on the advice of his/her legal and financial advisers.
- If the settlor dies during the cancellation period (see below), the trust will not have been properly constituted and the investments purchased for transfer into the trust will form part of his/her estate and pass according to his/her will or under the laws of intestacy.
- These Terms & Conditions should be read in conjunction with the Simplified Prospectus covering the WAY funds and the Key Features documents relating to the LMEP bond. Other risks associated with this investment are shown in those documents.
- Although WAY Portfolio Funds are designed to produce zero income, if income is ever distributed, it will be assessed on the settlor, if living, for income tax but will be payable to the interest in possession beneficiaries, after offsetting any expenses.

Cancellation Rights

- Where an IFA's recommendation has resulted in completion of a Plan Application Pack, the settlor has the right to change his/her mind and cancel the initial investments within 14 days (unit trusts/OEICs) or 30 days (investment bond) of receiving the individual Cancellation Notices from the provider concerned. If this happens, the amount refunded for each investment will be reduced by any fall in value since acquisition.
- The settlor shall be deemed to have received the Cancellation Notice as from 72 hours after the same was put into first class post properly addressed to him/her.
- The trust cannot be established until the Cancellation Rights have expired and the investments have been transferred to the trustees.

Illustrations

- Since each Inheritor Plan is individually tailored to the needs of the investor in terms of the reversion schedule, it is not practical to provide a representative example of how a typical Plan may operate in practice. Investors must therefore rely on the Simplified Prospectus, Reports and Factsheets for information on individual funds, the Key Features relating to the LMEP bond, if appropriate, and the brochure for the relevant Inheritor Plan. A conventional Illustration for the WAY Funds or LMEP can be supplied on request.

Charges

- Details of the charges applying to each WAY fund can be found in the Simplified Prospectus. These charges are inclusive of any charges made by WAY as Plan provider.
- Where relevant, the additional charges levied by LMEP are shown in their respective Key Features documents.
- The cost of advice in the form of commission and/or fees is a matter of agreement between the adviser and the investor.

Common features of the Inheritor Plans

- At least 2 trustees (or a corporate trustee) are appointed by the settlor. The settlor and his/her spouse cannot feature as trustees or as beneficiaries.
- The settlor also decides on the identity of the named Beneficiaries and their respective shares of the trust fund. All percentages must add up to 100%. In addition, the settlor can extend the list of potential beneficiaries.
- The settlor makes an investment into one or more of the WAY range of unit trusts/OEICs either directly or through an offshore bond with LMEP.
- For direct investments, only income units/shares can be purchased. This is because the trustees must be able to separately indentify income and capital elements.
- After expiry /non exercise of the cancellation rights, the units/shares or investment bond will be transferred into trust. This is achieved by way of stock transfer forms (collectives) or a deed of assignment (bond).
- WAY will date the trust deed and also insert relevant details concerning the investments in the various documents.
- Under the terms of the trust, the gifted investment is divided into specified percentage shares (Relevant Shares). These Shares (otherwise known as reversions) are scheduled to revert back to the settlor 'in specie' if he/she is alive on specified annual anniversary dates (Relevant Dates) of the trust. Each Relevant Share consists of a proportionate number of the units/shares or a specified number of policies held by the trustees 'In specie' means that the units/shares or policies are not converted into cash prior to transfer.
- By making all reversions to the settlor 'in specie', the settlor is not forced to encash the investments at a time of low prices. The units/shares or policies will therefore be transferred or re-assigned back in the name of the settlor, who can then decide whether to retain or cash them in.
- Reversions therefore enable the settlor to have potential access to the trust capital and still benefit from any increase in stockmarket performance. Other than this facility, the settlor is excluded from benefitting from the trust fund.
- Please note that the units/shares that form the additional Monthly Relevant Shares provided under the Duo Plan will automatically be sold on each reversion due date and a cash payment then made to the settlor.

Types of Reversion

- The main differences between the Plans primarily originate from the type of reversion each offers.
- Reversions received by the settlor will form part of his/her estate for IHT unless they are realised and spent or given away within an exemption or 7 years of death.

Flexible Plan

- Under this Plan, the size, number and pattern of annual reversions are chosen by the settlor at outset.
- When a reversion falls due and the settlor is alive, the trustees have the discretion to defer it in part or in whole to a future anniversary date or defeat it in favour of the beneficiaries – ie the reversions are 'flexible' or 'defeasible'.
- Should the trustees, after due consideration, decide not to exercise their powers, the settlor will receive the reversion in full.

Gifts from Income Plan

- For this particular Plan, the trust carves out 2 'flexible' reversions for the settlor– 50% of the trust fund value on the 5th anniversary and the remainder on the 10th anniversary. These dates cannot be advanced by the trustees.
- As with the Flexible Plan, receipt of the reversions by the settlor is subject to the discretion of the trustees.

The Discounted Plan

- In this instance, the pattern of reversions is selected by the settlor at the start of the plan and cannot be changed.
- In other words, the reversions are 'fixed' or 'indefeasible' and cannot be postponed or defeated by the trustees. The settlor is therefore absolutely entitled to receive a forthcoming reversion if living on the due date.
- The reversion pattern can be matched precisely to the settlor's needs and is not limited to a fixed percentage each year as found under most conventional discounted gift arrangements.
- The fixed nature of the reversions allows these to be valued to produce a discount to the gift.

The Duo Plan

- Being a combination of the Flexible and Duo Plans, both fixed and flexible reversions apply.
- Fixed monthly cash reversions equivalent to 5% a year of the originally gifted units/shares are payable to the settlor, if living when due, for the first 8 years. This element is valued to produce the discount.
- Flexible reversions of 15% a year of the originally gifted units/shares are also carved out for the first 4 years. These particular reversions can be postponed, reduced or defeated by the trustees.

Discounted and Duo Plans only

How is a discount achieved?

- For these particular Plans, the amount gifted for IHT will be the sum invested less the open market value of the fixed reversions retained by the settlor. As these rights will not have a value on the settlor's death, the gift is immediately discounted.
- When valuing the rights, the actuary will need to take into account the total value of reversions likely to be received by the settlor during his/her lifetime. The lifetime expectancy of the settlor is therefore a crucial factor when calculating the size of any discount.
- HMRC guidelines state that sufficient medical evidence must be available when the gift is made so that any discount can be quantified. If not, no discount will be given.
- Consequently, WAY recommends that every settlor undergoes medical underwriting at the time of application to formally establish their actual state of health.

The advantages of underwriting the Plan at outset

- The level of discount will be known.
- The size of gift for IHT can be determined.
- The investor can decide whether to proceed with taking out the Plan.
- The medical evidence obtained can be used to justify the value placed on the gift if HMRC decide to challenge it.

Underwriting options

- WAY offer the settlor 3 no cost underwriting options at the time of submitting a Plan Application - in advance; concurrent and no underwriting.
- Underwriting in advance:
    - In this instance, the settlor will be underwritten upfront and delay the decision to continue further with the Plan Application until he/she knows the outcome. If the Plan is to be set up, the settlor will then send a cheque for the intended gift to WAY.
- Concurrent underwriting:
    - Under this option, the underwriting will take place at the same time as WAY process the Plan Application. This means that the settlor's money will be immediately used to purchase the chosen investments. However, the units/shares or policies will not be gifted into trust until the underwriting decision has been made and the discount factor is known. The settlor can then decide whether to continue with setting up the Plan or cash in his investments.
- No underwriting:
    - If the settlor is insistent on proceeding without being underwritten, WAY cannot provide a discount certificate. Should the settlor die within 7 years of making the gift, it will not be possible for his/her personal representatives to negotiate a discounted figure with HMRC unless other formal evidence of the deceased's state of health when establishing the Plan is accessible.

Underwriting process

- A medical questionnaire, for completion by the settlor, will be included within the Plan Application pack. When returned to WAY, this form will be forwarded to the appointed external underwriter, who, in turn, will

request a General Practitioner's Report from the settlor's GP. A medical examination may also be necessary. WAY currently meets all underwriting costs but performs no other role in this process.
- WAY will issue a certificate to the settlor showing the estimated value of the gift for IHT based on the underwriter's assessment of the settlor's life expectancy. The figure cannot be guaranteed as it is always subject to agreement by HMRC. Please note that the discount will normally only be relevant if the settlor dies within the first 7 years of the Plan. The medical evidence obtained by the underwriter will be forwarded in a sealed envelope to WAY for safekeeping should the settlor die within the 7 year survival period and HMRC dispute the discount.
- WAY will decline the Plan application if the deemed age of the investor, after underwriting, is 90 or over.

Mechanics for setting up a Plan

- Reference must always be made to the specific Plan 'Application Completion Guide' before completing any of the forms making up the Application Pack. The Guides can be found under 'Downloads' on www.wayinvestments.com and include a checklist of items to be submitted.
    - Certain documents must be left undated or partially incomplete for WAY to insert the necessary information at a later date.
- Discounted and Duo Plans:
    - If the settlor has chosen the in advance underwriting option, he/she will first complete/submit the Medical Questionnaire but not forward the remainder of the Application Pack until the discount factor is known and he/she wishes to proceed. Please refer to the Cancellation Rights section.
- Acceptance/processing of the Application Form constitute approval by WAY of the investments proposed for purchase by the settlor and subsequent transfer to the trustees.
- All investments will initially be purchased in the name of the settlor. However, they cannot be transferred into the name of the trustees and thereby properly constitute the trust until expiry/non exercise of the cancellation rights – 14 days for unit trusts/OEICs and 30 days for the bond
- The trust deed will then be returned to the IFA for onward transmission. Strictly speaking, the original document should be kept by the first named trustee.

Delay in processing an Application

- Where documentation received by WAY is incomplete or incorrect, the IFA will be advised that the application cannot be progressed further until the relevant information is received. WAY will not accept any responsibility for any loss incurred by the settlor or the financial adviser resulting from such delay.

Mechanics of Reversions

- The settlor must be alive on the due date of any reversion.
- WAY must therefore be notified immediately if the settlor dies to prevent an irretrievable reversion taking place. The position on death of the settlor is considered in more detail later in this publication.
- Apart from considering any forthcoming reversion, the trustees should also use the Plan anniversary to carry out a review of the trust assets with the IFA and decide, if applicable, to make capital payments to beneficiaries.

Fixed Reversions (Discounted and Duo Plans)

- Discounted Plan
    - In good notice before each Plan anniversary date, WAY will forward stock transfer forms or a deed of assignment to the first named trustee for completion/signature by all trustees so that the 'in specie' reversion can occur
    - At the same time, the settlor is sent a form of renunciation or encashment form should he/she wish to sell/encash the reverted units/shares or policies.
- Duo Plan
    - The cash reversions payable to the settlor are automatically actioned each month by WAY.

Flexible Reversions (Flexible, Gifts from Income and Duo Plans)

- Before each reversion date, the trustees must decide how many units/shares or policies should revert to the settlor or be deferred until a later anniversary date, complete the necessary paperwork and return this to WAY. The trustees will consider the needs of the settlor and the beneficiaries as part of their decision making.
- The process is now summarised. Full details can be found in the Trustee Reversion Pack Completion Guide:
- About 4-6 weeks before a reversion is due, WAY will send a 'reversion pack' to the first named trustee for all trustees to act upon.
- The 'reversion pack' will contain
    - A current valuation of the trust fund, showing how the units/shares or policies are divided between the various reversions, including the one that is imminently due
    - A deed of deferral for completion by all trustees if part/all of the reversion is to be deferred to a future date. This requires details of the units/shares or policies involved and their revised reversion dates
    - A deed of assignment (bond based inheritors only) to be completed in respect of any policies being reverted to the settlor
    - If the trustees decide to transfer units/shares back to the settlor, WAY will have available partially completed stock transfer forms, which can be sent out on request.
- A copy of the accompanying letter and the valuation will also be sent to the settlor and the IFA.
- If the trustees take no action before the Relevant Date, the reversion will be deemed to have been made in full to the settlor under the terms of the trust. The units/shares or policies cannot, however, be transferred to the settlor until the stock transfer forms or deed of assignment are returned, duly completed by the trustees.
    - If the underlying trust portfolio consists of a holding in the WAY Life Settlements Fund, a transfer of shares on the register cannot take place until the 1st of the following month when they can be valued.
- After the Relevant Date, a revised valuation and breakdown of the trust fund will be sent to the trustees by WAY.
- Finally, in the case of the Gifts from Income Plan, annual contributions must cease immediately if the trustees allow a reversion to take place.

Capital payments or loans to beneficiaries

- Although the trustees have discretionary powers to pay capital and make loans to beneficiaries, their ability to do so varies with the type of Plan:
    - **Flexible and Gifts from Income Plans**
      - The trustees have discretion to advance capital or make loans to the beneficiaries at any time
      - However, in the case of the bond based versions, the partial surrender of policies is not permitted whilst the settlor is alive. Such action could give rise to gift with reservation implications. If cash is required for the above purposes during the lifetime of the settlor, sufficient policies must therefore be wholly cashed in and the total proceeds paid over to the beneficiary(ies). For reasons mentioned below, assignment of the policies may be considered as a more preferable route.
    - **Discounted Plan**
      - Since the settlor has the overriding right to receive fixed reversions if living at the time when due, the trustees can normally only consider making capital appointments or loans to the beneficiaries after the settlor has died.
    - **Duo Plan**
      - The existence of fixed reversions to the settlor for the first 8 years means that the trustees are limited to making appointments and loans from capital represented by the flexible reversions only during this period, assuming the settlor is alive.
- If the trustees wish to raise cash to pay out or lend to beneficiaries, they must take into account any income tax or CGT implications. Please remember that capital appointed absolutely to a beneficiary can give rise to an IHT exit charge.
- As an alternative to cashing in investments prior to making a capital payment the trustees could consider making an in specie transfer of the units/shares (and claim CGT hold over relief) or assign an appropriate number of policies to a beneficiary for encashment outside the trust.

If the settlor no longer requires access to capital via reversions

- **Flexible and Gifts from Income Plans**
    - Since the reversions under these Plans are defeasible by the trustees, the settlor should inform them accordingly via a letter of wishes.
- **Discounted Plan**
    - For reasons of IHT efficiency, the trust does not permit the settlor to give up his/her fixed reversions. However, if not required, the settlor could give away the units/shares or policies after receiving them from the trustees.
    - A possible alternative is for the settlor to waive part or all of his entitlement to the reversions. Such action would have IHT implications and the settlor must take professional advice before proceeding further.
- **Duo Plan**
    - As this Plan consists of both fixed and flexible reversions, please refer to the points made above.

What happens on death of the settlor?

- The settlor's personal representatives are responsible for informing WAY of the settlor's death and must supply an office copy of the death certificate, which will be returned after noting in the WAY's records. Any transactions occurring between the date of death and WAY being so informed cannot be reversed.
- Reversions back to the settlor will now cease and the trust capital is held wholly for the benefit of the beneficiaries. The current investments

can remain as assets of the trust.
- There is no obligation for the trustees to distribute the trust fund as the trust is capable of lasting for up to 125 years and so can carry on beyond the settlor's death.
- If appropriate, the settlor's widow(er) or surviving civil partner can now be added by the trustees to the Appointed Class and potentially benefit from the trust fund.
- Distributing capital is not always desirable, particularly where a young beneficiary may be involved. Tax may also be an influencing factor. By continuing with the trust, capital can be appointed over several years, may pass to future generations or perhaps be used to fund loans to the settlor's widow(er)/surviving civil partner to increase the overall IHT effectiveness of the trust. If loans remain outstanding when the surviving spouse or civil partner dies, they will normally be allowable debts in his/her estate for IHT.

Final distribution of the trust fund

General
- Whenever trustees wish to make capital payments, they should consider which is the most tax efficient route so that benefits for the beneficiaries can be maximised. The options available will depend on whether the underlying trust portfolio consists of collectives or investment bond.
- Making capital distributions to beneficiaries may attract IHT exit charges.

Unit trusts/OEICs based Plans
- The trustees could encash the various investments and pay out the proceeds to their chosen beneficiaries. This may create a CGT liability for the trustees.
- As an alternative, the trustees could consider selling sufficient units/shares to utilise their annual CGT exemption (and any brought forward losses) and then transfer an appropriate number of those remaining to each of these beneficiaries. These transfers are also disposals for CGT. However, assuming that holdover relief is available, this can be claimed jointly by both parties to defer the tax arising. The recipient beneficiary would become potentially assessable to CGT on subsequent sale or gifting of the holdings but can offset any gains against his/her own full annual CGT exemption. The beneficiary also has the option to stagger encashment over different tax years.
- Professional tax advice is essential if there is an intention to claim holdover relief. This must be obtained before an 'in specie' transfer to a beneficiary takes place.
- Similar advice should be taken if the proposed sale or transfer of units/shares would produce a capital loss for the trustees.

Bond based Plans
- Rather than encashing the bond and creating a chargeable event gain taxable on the settlor (if alive) or the trustees, the trustees could assign individual policies to the beneficiaries for encashment outside the trust. The resulting gain would then be assessable to income tax on the recipient beneficiary.

TAX SUMMARY

This summary assumes that the settlor, the trustees and the beneficiaries are resident and domiciled in the UK for tax purposes. It further presumes that the underlying investments are WAY's range of UK authorised unit trusts/OEICs (ie excluding the WAY Life Settlements Fund, an offshore fund based in Guernsey) or are represented by an offshore bond with LMEP. Please remember that tax rules can change at any time. The settlor and the trustees must rely on their own tax advice.

Inheritance tax

There are 3 occasions when a potential charge to IHT may arise:
- on transferring assets into the trust
- on every 10th anniversary of the trust
- when capital leaves the trust

End of the Tax Year

- After 5 April each year, the trustees will complete a self assessment tax return and ensure that any tax due on trust income and capital gains is paid by HMRC deadlines. They will provide the settlor with relevant details of the trust income for inclusion in his/her own tax return.

Creation of the trust

HMRC reporting requirements
- Form IHT100 and IHT event form 100A will need to be completed by the settlor/trustees of a Flexible, Discounted or Duo Plan if the cumulative total of all chargeable transfers made by the settlor, including the current gift, made in the last 7 years is more than the current nil rate band.
- If the assets held in the trust are collectives, the first named trustee must register the trust by completing Form 41G (Trust). This will trigger the issue of a tax return soon after the end of the current tax year. The trustees must complete and return it to HMRC within the usual deadlines even if no tax is due. Provided a tax liability has not arisen, HMRC will probably agree, on request by the trustees, that future tax returns need only be submitted every 5 years unless normal self assessment rules require them to do otherwise (eg CGT is due) in the meantime.

Flexible, Discounted and Duo Plans
- After deduction of any available annual £3,000 exemption, the gift into trust is a chargeable lifetime transfer for IHT. The value of the gift into a Discounted or Duo will be discounted by the value of the settlor's retained right to fixed reversions.
- If the gift, together with any other chargeable transfers made by the settlor in the previous 7 years, is within the current nil rate band, no charge to IHT will arise.
- If the gift takes the settlor's cumulative total over the nil rate band, the excess is immediately taxed at the lifetime IHT rate of 20%, assuming the trustees pay the tax. This is known as the 'entry charge'.
- Additional IHT may be payable if the settlor dies within the 7 years. Taper relief would be available if the settlor survives for 3 years and reduce any tax liability that falls upon the transfer.
- If the IHT is paid by the settlor rather than the trustees, the settlor is treated as making a chargeable transfer of the gift and the tax. The gift therefore has to be 'grossed up' to reflect the total loss to the settlor's estate. In this instance, the settlor effectively pays a rate of 25% on the excess over the nil rate band.
- If the settlor lives for 7 years, the gift is outside the settlor's estate. However, it may be taken into account if subsequent potentially exempt transfers are made and then become chargeable following death of the settlor.
- Any growth in the value of the trust fund is outside the settlor's estate.
- If the settlor dies within 7 years, the original value of the gift remains in the estate and will use up part of the nil rate band when calculating IHT.
- Reversions retained by the settlor do not represent a gift with reservation as they are carved out prior to the gift and are held absolutely for him/her.
- If the trustees defer a flexible reversion (Flexible and Duo Plans) in part or in total, this does not constitute a transfer of value because reversions are always subject to the trustees' overriding power to postpone or defeat them and so do not have a market value.
  - Although deferred reversions greatly enhance the flexibility of a Plan, they can also affect the IHT position of the trustees by increasing the value of the trust fund for periodic charge calculations.
- The value of fixed reversions are in the settlor's estate during lifetime but have a nil value on death because they cease to be payable.

Gifts from Income Plan
- This particular Plan is designed to take advantage of the "Normal Expenditure out of Income" exemption.
- The regular annual contributions will be regarded as exempt and immediately fall out of the settlor's estate, regardless of their size, provided they satisfy all the following conditions:
  - they form part of a regular pattern of gifts
  - they are made out of after tax income (including income from ISAs)
  - they leave the settlor with sufficient income to maintain their normal standard of living without having to resort to capital.
- All investment growth is also outside the settlor's estate.
- The units/shares gifted into trust are purchased by the settlor out of surplus income for the purpose of making the gift.
- This exemption has to be claimed retrospectively on death by the settlor's personal representatives, who will submit HMRC IHT Form IHT403 as part of the probate process. Since it is important that the settlor keeps a record of the gifts, it is recommended that he/she has a IHT403 on file and inserts the required details each time a gift is made so that the relevant information is readily available on death.
- As in the case of the Flexible Plan, the reversions are not regarded as a gift with reservation and do not give rise to a transfer of value if deferred by the trustees.

During lifetime of the trust

The trust fund is potentially subject to a periodic IHT charge on each 10th anniversary of its creation and an exit charge when capital is distributed to a beneficiary. The maximum charge in both instances is 6%. Any tax due is payable by the trustees.

For significant sums, it may be possible to reduce the impact of the periodic charge by creating a series of separate trusts on different days so that each effectively has their own nil rate band. The order of gifts can also perform an important role. The settlor should seek the advice of their financial adviser in this respect before setting up the Plan(s).

HMRC reporting requirements
- On each 10th anniversary, the trustees will generally only have to complete IHT Form 100 and IHT event form 100d if the value of the trust fund is more than 80% of the settlor's available nil rate band
- Similarly, when capital is distributed to a beneficiary, IHT Form 100 and

IHT event form 100c will only have to be submitted to HMRC if the value of the trust fund exceeds 80% of the available nil rate band

Periodic charge

- In simple terms, a periodic charge will occur if the value of the trust fund on the 10th anniversary plus the cumulative total of any chargeable transfers made by the settlor in the 7 years before creating the trust and any capital payments made to the beneficiaries in the last 10 years (excluding reversions paid out to the settlor) exceed the then nil rate band. The excess will be charged to IHT at 6%.
- Chargeable transfers include chargeable lifetime transfers and any potentially exempt transfers that have subsequently become chargeable due to the settlor's death.
- In the case of the Discounted Plan, the value of the trust fund is reduced by then value of the settlor's retained rights (ie the settlor is assumed to be 10 year's older). Please note that no reduction is allowed if the settlor is over age 89 or very ill at the time.

Exit charge

- Exit charges will generally be nil in the first 10 years of the trust if the initial transfer into the trust did not trigger an IHT liability and there are no related trusts (ie other trusts set up on the same day) or any additions to the trust since inception.
- Reversions to the settlor or loans granted by the trustees to beneficiaries are not subject to exit charges.
- If the trustees decide to exercise their power of appointment and distribute capital to a beneficiary, an exit charge may arise on the value of the property leaving the trust.
- This is based on the tax rate applicable at inception or at the last periodic charge and will be scaled down according to the number of complete 3 month periods that have expired since then.
- If the tax rate at the last periodic charge was zero, there will be no exit charge.

Other taxes

HMRC reporting requirements

Collectives:

- The trustees are obliged to complete an annual return of income and capital gains - Form SA900 (Trust and Estate Tax Return) plus relevant supplementary forms. Tax due must be paid out of the trust funds.
- The trustees will provide the settlor with appropriate information regarding the trust income for self assessment purposes.
- Apart from the 1st year, HMRC may agree that returns are only required every 5 years if no income arises to the trustees and capital gains, if realised, are within the trustees' annual CGT allowance.

Investment bond:

- The trustees will need to submit a tax return if a chargeable event gain is produced and is assessable on them.
- Similarly, the settlor must include details of any gain taxable on him/her under self assessment.

Capital Gains Tax (collectives only)

- Transferring the unit/shares into trust is a disposal for CGT and could give rise to a CGT liability for the settlor if they have grown in value since being purchased.
- Subject to an annual exemption, the trustees are liable to CGT at 28% on chargeable gains arising to them. Examples include investment sales, passing reversions back to the settlor and appointing capital to beneficiaries. Deferral of a reversion is not a disposal for CGT purposes.
- Trustees are eligible for an annual CGT exemption equal to 50% of that available to an individual.
- If the settlor has created more than one trust (excluding pensions) since 6 June 1978, the trustees' annual exemption will be shared equally between them, subject to a minimum of 10% of an individual's allowance for each trust.
- Where units/shares are reverted back to the settlor, their individual base costs will reflect the current value at the date of transfer.
- In specie transfers by the trustees to UK resident beneficiaries should be eligible for holdover relief, which would need to be claimed jointly by both parties. Under this relief, the beneficiary effectively inherits the trustees' base costs for future CGT purposes.
- If units/shares revert back to the settlor, this is a disposal for CGT and may give rise to a tax liability for the trustees. Furthermore, if they are retained by the settlor instead of being cashed in and the proceeds spent, they will form part of his/her estate for IHT. CGT holdover relief cannot be claimed in these circumstances.

Income Tax

Unit trusts/OEICs

- Since the trust is regarded as settlor-interested for income tax, any trust income is assessed on the settlor as it arises. The Plan will cease to be settlor interested on death of the settlor.
- Trustees pay tax at the basic rate but will not be subject to further liability if the income is received with a tax credit (i.e. 10% and 20% for dividends and interest respectively).
- Trust expenses are not an allowable deduction for income tax but will be used to determine the amount of income, if any, payable to the income Beneficiaries.
- If the settlor is liable to extra tax on the trust income, he/she has a statutory right to recover this from the trust. If the settlor chooses not to reclaim the tax, HMRC may deem the tax paid to be a further gift (although this is likely to be covered by the annual or normal expenditure exemption). However, WAY do not recommend reclaiming the tax as it may give rise to gift with reservation implications.
- Beneficiaries in receipt of trust income are not liable to further tax but cannot reclaim or offset any of the tax deducted at source from that income.

Offshore investment bond

- 5% annual cumulative allowance (ie partial surrenders):
    - To avoid any gift with reservation issues (IHT), the 5% facility cannot be used by the trustees during the lifetime of the settlor
    - Otherwise, the allowance can be used by the trustees to make cash payments without immediate income tax implications
    - Under the allowance, the trustees can withdraw up to 5% of the original investment each year for 20 years
    - Any unused allowance can then be carried forward for use in later years, subject to a 100% maximum
    - The 5% withdrawals are tax deferred and will be brought into account on final encashment to determine the size of the gain potentially chargeable to tax
    - If withdrawals exceed the cumulative 5% allowance, the excess is taxable as a chargeable gain.
- The main occasions creating a chargeable (i.e. taxable) event are:
    - Partial surrenders exceeding the 5% tax deferred allowance
    - Final encashment
    - Death of the last life assured.
- The identity of the taxable person if the trustees incur a chargeable event gain depends on when the chargeable event occurs:
    - If the chargeable event occurs during the settlor's lifetime or in the tax year of his/her death, the settlor is liable at their highest rate
    - If the chargeable event happens in a tax year after that in which the settlor died, the trustees are subject to tax at 50% (2010/11)
    - The taxable person must declare a gain to HMRC if tax is now due.
- Where the chargeable event gain is assessable on the settlor:
    - The whole gain is taxable as the top part of the settlor's income and chargeable to income tax at the appropriate rate(s) without the benefit of a tax credit
    - If relevant, the gain can make use of any unused personal allowance and/or 10% band
    - If the gain places the settlor into the higher rate tax band (50% in 2010/11), top slicing relief will apply to reduce/remove any additional liability
    - If already a higher rate taxpayer, the settlor will pay 50% on the entire gain
    - The gain can also affect any current entitlement to age allowance, tax credits and personal allowance.
- Where the chargeable event gain is assessable on the trustees:
    - The trustees are liable to tax at 50% on the entire gain, with no tax credit available to offset against the tax liability.
- Assignments to beneficiaries:
    - The assignment of the bond (or individual policies) is not a chargeable event
    - For tax purposes, the beneficiaries are deemed to have owned the bond/policies since inception
    - Any subsequent chargeable gain will be taxed with reference to the beneficiary's own tax posiition.

Pre-owned asset tax

- HMRC have confirmed that the Plans are not caught by this particular tax.

Information in this document is based on WAY's understanding of current law and HMRC practice as at June 2010. Every care has been taken to ensure the material is correct. WAY does not offer investment and tax advice and can accept no liability for any actions based on the contents of this publication. The investor must obtain legal, tax and other appropriate advice on his/her own individual circumstances from his/her professional advisers before entering into a Plan. Legislation and taxation could change in the future.

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