Writing your policy under trust

Using a trust provides a number of benefits, specifically:

- You can identify who the beneficiaries should be (and with some trusts you have the ability to change this).
- Your chosen beneficiaries will receive the benefit quickly without the need for probate or prior payment of inheritance tax. For this to be effective, it is essential that you appoint at least one additional trustee to act with you and, of course, to deal with the policy in the event of your death.
- The amounts payable to your beneficiaries are, generally, free from inheritance tax.

There are two main types of trust available to you – flexible/discretionary trusts and absolute/bare trusts. These trusts have different features and different inheritance tax treatment.

Flexible/discretionary trust

A flexible trust, as implied by the name, is one which offers more flexibility than an absolute trust. This would allow you to change the proportions in which each beneficiary benefits from the sum assured, remove beneficiaries or appoint new beneficiaries.

Premium payments will normally be exempt gifts courtesy of the annual £3,000 gift exemption or the normal expenditure from income exemption.

Every ten years, however, there may be a tax charge on the trust itself. This would apply only if the trust was then valued at more than the trust's nil-rate band. The full nil-rate band is, currently £325,000 – had the settlor made any chargeable lifetime transfers in the seven years before setting up the trust (or had any potentially exempt transfers in that period that subsequently failed), the trust's nil rate band would be reduced accordingly.

The tax charge is, currently, a maximum of 6% of any value in excess of the nil-rate band.

The value of the trust will be the greater of the cash value of the policy and the premiums paid under the policy.

Your policy is designed to provide life assurance cover and does not offer a cash-in value so it is likely that the value would be taken as the premiums paid. If, however, you were in serious ill-health at the time of a periodic charge a higher value might be assumed for this purpose.

If a periodic charge should ever apply, then a tax charge may also apply when the sum assured is paid, again, at a maximum of 6% of the amount over the nil-rate band.

Absolute/bare trust

With an absolute trust, there is no facility to alter the shares of any beneficiary. In the event of the death of a beneficiary before payment of the sum assured, for example, their share would pass under their will or the intestacy rules as applicable.

Premium payments would be treated in the same way as if you were to use a flexible trust but there would, under current legislation, be no periodic charge and no risk of an inheritance tax charge on payment of the sum assured.

Split trust / disability benefits reserved

The split trust should only be used (in conjunction with the trusts named above) where the policy contains both a death benefit (including terminal illness) and disability benefits, (critical illness and / or permanent and total disability) and the disability benefits are payable on an 'accelerated' basis, i.e. instead of the death benefits.

As the name implies, this type of trust has two parts to it. It enables the settlor to:

- Reserve their rights to payment of critical illness, permanent and total disability benefits (the retained portion) payable under the policy
- Place the death and terminal illness benefits (the trust property) in trust for the beneficiaries

Trust Registration Service (TRS)

The TRS is a government register of the beneficial ownership of trusts. From 6 October 2020 the scope of the TRS was extended to ensure that the UK has an anti-money laundering and counter terrorist financing regime that is; up to date, effective, and proportionate. The rules will improve transparency about the ownership of assets held in trust.

Express trusts, which are usually created by a written deed, need to be registered unless they are specifically excluded. Protection policies (term or whole of life) which are in trust, where the policy only pays out on the death, terminal or critical illness, or permanent disablement of the person assured, or to meet the cost of healthcare services provided to the person assured, don't need to be registered. Protection policies including an investment element, (i.e. which include a surrender value), will fall within this exempt category. If such a policy is surrendered and the cash sum is retained in the trust, the trust would be required to register from that point. Investment bonds do not fall within this exemption. If the protection policy proceeds are paid out on death into the trust, there's a two-year period of grace from having to register.

These trusts do still have to register as taxable trusts if any UK taxes become payable by the trustees.

The deadline for registration is 90 days from trust creation.

Where the investment within the trust is an offshore bond effected in Ireland, the trust also needs to be registered on the Irish Central Register of Beneficial Ownership of Trusts (CRBOT) although this isn't possible at time of writing while the Irish Revenue simplify the process for non-resident trustees (the current position is shown within the 'CRBOT FAQs and troubleshooting for UK trustees and advisors' document).

The trustees can designate a 'lead trustee' to register the trust or an 'agent'. The 'agent' would need to be a business which operates as an accountancy service provider.