

“ Plain speaking legal advice ”

## Trusts for the Disabled

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A special form of non-interest in possession Trust is a Trust for the disabled. Such a Trust is, in reality, a discretionary Trust specially formulated to assist disabled persons, without prejudicing any rights and benefits that disabled persons may be entitled to from the government or local authorities.

Such Trusts merit special attention because of the beneficial tax advantages according to them.

Under the Inheritance Tax Act 1984, section 89(1), where property is transferred into settlement after 1981 and held on Trusts...

(a) under which, during the life of a disabled person, no interest in possession in the settled property subsists and

(b) which secure that not less than half of the settled property which is applied during his life is applied for his benefit...

the disabled person is treated as beneficially entitled to an interest in possession of the settled property.

Section 89(4) defines a disabled person as one who, when the property was transferred into settlement, was either incapable by reason of mental disorder within the meaning of the Mental Health Act 1983 of administering his property or managing his affairs, or was in receipt of an attendance allowance or disability living allowance by virtue of entitlement to the care component at the highest or middle rate.

The significance of these provisions is that the disabled person is to be treated as if he had an interest in possession in the Trust property, even though in reality it is a discretionary Trust. Normally an inter vivos discretionary Trust is an immediately chargeable transfer and, consequently, subject to an immediate payment of inheritance tax, charged at half the death rate (20% rather than 40%); and to the extent that the total of the transfers which are neither exempt nor potentially exempt, during the seven years preceding the transfer, exceed the settlor's lifetime allowance.

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A further charge to inheritance tax is made every 10 years from the creation of the discretionary Trust. If any of the settled property ceases to be subject to the discretionary Trust, a further charge to inheritance tax is made.

Under section 89 these provisions do not apply to Trusts for disabled people.

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