

Trusts for Disabled People

A 'disabled persons trust' ('DPT') is a term used to describe a trust where the primary beneficiary is a 'disabled person'. When drafted correctly, a DPT can have huge tax advantages whilst ensuring that assets can be managed and protected for the benefit of the vulnerable individual.

Who qualifies as a 'Disabled Person'?

In order to benefit from the tax advantages afforded by a DPT, the main beneficiary of the trust must fall within the definition of a 'Disabled Person' under the relevant tax legislation.

This means that they must be entitled to receive certain non-means testes benefits (such as Attendance Allowance, Disability Living Allowance or Personal Independence Payment) and/or be incapable of administering their property or affairs because of a 'mental disorder' as defined within the Mental Health Act 1983. This includes conditions such as learning disabilities, personality disorders and autistic spectrum disorders.

What is the benefit of setting up a DPT?

There are many benefits to setting up a DPT for a vulnerable person.

Primarily, a DPT can provide maximum protection for the funds for the vulnerable person's benefit. There will be restrictions as to how the trust fund can be used, to ensure the vulnerable person is the primary beneficiary.

The DPT allows a protective environment in which funds can be held, managed and invested by Trustees for the benefit of the vulnerable person. Within this structure, assets are usually ringfenced and disregarded for means-tested care and benefit assessments.

A DPT, when structured correctly, will ensure that the trust fund does not attract the usual tax charges which apply to some other trusts. For example, for some trusts, tax will be payable every 10 years that the trust is active, as well as on every payment made to a beneficiary out of the trust. A qualifying DPT would be exempt from those charges.

Are there any restrictions?

Yes. In order to qualify for special tax treatment, the DPT must contain a restriction to limit the amount of the fund which can be paid to a beneficiary other than the disabled person. This is so that people do not seek to mask trusts as DPTs to take advantage of their tax regime.

The usual restriction ensures that a maximum of 3% of the trust fund or £3,000 (whichever is lower) can be paid out of the trust in any year to a beneficiary other than the disabled person.

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