

Trusts

At the end of this unit, candidates should be able to demonstrate an understanding of the:

- legal principles associated with the creation and management of a trust;
- main types of trusts that are common in the UK;
- taxation considerations relevant to trusts.

Summary of learning outcomes

1. Understand the structure of a trust and the role of the settlor, trustees and beneficiaries;
2. Understand how trusts are created, the rules that govern them and their main uses;
3. Understand the rules covering the investment of trust assets and the administration of trusts;
4. Understand substituted decision making, the impact of loss of mental capacity and related procedures;
5. Understand the consequences of making a will and of dying intestate;
6. Understand the bankruptcy rules and the role of the trustee in bankruptcy;
7. Understand how trusts are subject to tax and how a liability can fall to the Settlor, Trustees or Beneficiaries;
8. Understand how life assurance policies and certain pension benefits can be placed in trust and the tax and other implications;
9. Understand the need to review trusts regularly.

Important notes

- This syllabus will be examined in the October 2009, April 2010 and July 2010 sessions. Candidates will be examined on the basis of English law and practice in the tax year 2009/2010 unless otherwise stated.
- The general rule is that the exams are based on the English legislative position three months before the date of the exams.
- Candidates should refer to the CII update website www.cii.co.uk/updates for the latest information on changes to law and practice and when they will be examined.

1. Understand the structure of a trust and the roles of the settlor, trustees and beneficiaries

- 1.1 The legal structure of a trust – trustees, beneficiaries, settlor, trust property, the differences between a trust and a contract, Trustee Act 1925, Law of Property Act 1925;
- 1.2 Trustees – the role, responsibilities, powers, appointment, retirement, death, powers to delegate, duties to exercise diligence and integrity, charges, expenses, breaches of trust, Trustee Act 2000, Trustee Act (Northern Ireland) 2001, Trustee Delegation Act 1999;
- 1.3 Beneficiaries – absolute, life, contingent, reversionary, joint, named, classes, power to end a trust, position of minors, Saunders v. Vautier;
- 1.4 Main types of trust – bare, successive, constructive, relevant property, life interest, ‘settlement’, discretionary, accumulation and maintenance, flexible power of appointment, statutory including Married Women’s Property Act, resulting trusts.

2. Understand how trusts are created, the rules that govern them and their main uses

- 2.1 Creation of trusts – deed, will or statute, secret and unwritten trusts;
- 2.2 Method of creation – express, implied, constructive;
- 2.3 General law governing trusts – the three certainties, Knight v Knight, the perpetuities rule, accumulations, Perpetuities and Accumulations Act 1964;
- 2.4 Main uses of trusts – tax planning and mitigation, intestacy, wills, pension schemes, family provision, charities, joint holdings of land, giving property to minors or mentally incapable people, protection from creditors during bankruptcy, business protection.

3. Understand the rules covering the investment of trust assets and the administration of trusts

- 3.1 The Trustee Act 2000 etc – trustees’ investment powers and duties;
- 3.2 Conversion and apportionment;
- 3.3 Varying trusts – permitted variations, Settled Land Act 1925, Matrimonial Causes Act 1973, Variation of Trusts Act 1958;
- 3.4 Charitable trusts – differences with other trusts, tax position;
- 3.5 Creating offshore trusts – possible main implications; excluded property trusts for non UK domiciled persons.

4. Understand substituted decision making, the impact of loss of mental capacity and related procedures

- 4.1 How the Mental Capacity Act 2005 operates, including the five key principles and best interest;
- 4.2 Setting up a power of attorney, definition, Powers of Attorney Act 1971, form of attorney, duties;
- 4.3 Impacts on Enduring Power of Attorney (EPA), definition, EPA Act 1985, duties, registration and restrictions on attorney;
- 4.4 Lasting power of attorney, definition, setting up, duties, registration and restriction on attorney;

- 4.5 Office of Public Guardian, procedures, jurisdiction and responsibilities, receivership;
- 4.6 Court Appointed Deputies;
- 4.7 The Court of Protection, jurisdiction, powers, restriction on trust planning and investments;
- 4.8 Independent Mental Capacity Advocates;
- 4.9 Single orders in court;
- 4.10 Mental Health Act 1983 – dealing with a persons property;
- 4.11 Regional/national variations.

5. Understand the consequences of making a will or of dying intestate

- 5.1 Wills – the duties of executors, revoking a will, mutual wills, mirror/reciprocal wills, the desirability of making a will, implications in England, Scotland, Northern Ireland and Wales;
- 5.2 Dying intestate – the duties of the administrators, procedure for deed of variation for an intestate estate, implications in England and Wales, tax considerations and planning implications, transfer of nil rate band;
- 5.3 Changing a will after death – disclaimers and deeds of variation, tax considerations and planning implications, transfer of nil rate band;
- 5.4 Revoking or challenging wills.

6. Understand the bankruptcy rules and the role of the trustee in bankruptcy

- 6.1 Bankruptcy – the procedure, trustees, timescale;
- 6.2 Bankrupt’s property – assets that pass to the trustee, the Enterprise Act 2002;
- 6.3 The trustee’s role – aim, priority for payments, interim creditors, completing the bankruptcy, disabilities of the bankrupt, prior transactions;
- 6.4 Investments and pensions – effects of the bankruptcy, trusts;
- 6.5 Alternatives to bankruptcy – individual voluntary arrangements, deeds of arrangement, Administration orders;
- 6.6 Tax implications of bankruptcy, impact on the bankrupt;
- 6.7 Life assurance and pensions policies owned by a bankrupt – held under trust and where no trust exists.

7. Understand how trusts are subject to tax and how a liability can fall to the Settlor, Trustees or Beneficiaries

- 7.1 Income Tax – the tax liability of trustees and their responsibilities under self assessment;
- 7.2 Income Tax – bare trusts, discretionary and accumulation and maintenance trusts, distributions and accumulations the basic rate Income Tax band and the rate applicable to trusts, vulnerable beneficiaries, when income might be taxed on the settlor or beneficiary of a trust;
- 7.3 Capital Gains Tax – disposals, annual exemption, rate of CGT, main residence, accumulation and maintenance trusts, discretionary trusts, settlor retaining an interest, offshore trusts, bare trusts, impact on beneficiary;
- 7.4 Trusts for the vulnerable – Income Tax, CGT and IHT;

- 7.5 IHT – on the creation of trusts, on disposals and deemed disposals by trustees of a trust with an interest in possession created pre or post March 2006, discretionary trusts accumulation and maintenance trusts and certain offshore trusts, the use of will planning and using the Nil Rate Band;
- 7.6 Estates of deceased persons – the main Income Tax, Capital Gains Tax and Inheritance Tax considerations;
- 7.7 Pre-owned Assets Tax, impact on taxation and planning.

8. Understand how life assurance policies and certain pension benefits can be placed in trust and the tax and other implications

- 8.1 Life policies under trust – Married Woman’s Property Act 1882 (MWPA), other statutory trusts, non-statutory trust policies, assignment into trust planning considerations;
- 8.2 Life assurance policies written under seal;
- 8.3 Trustees’ responsibilities with life and pensions policies under trust – policy benefits, dealings by beneficiaries. Inheritance Tax implications;
- 8.4 Taxation of trusts of life assurance policies – UK Income Tax, Capital Gains Tax, IHT, assignment of a policy, the death of the assured, the death or change of a beneficiary;
- 8.5 Main uses of trust policies implications for the settlor, trustees and beneficiaries;
- 8.6 Tax treatment of policies with non-UK resident trustees and or settlors;
- 8.7 Pensions – death benefits, occupational and non-occupational pensions – Inheritance Tax treatment – the use of trusts.

9. Understand the need to review trusts regularly

- 9.1 The impact of events which may give rise to the need for a review of a trust;
- 9.2 Will and post death planning arrangements – changes in personal, business and family circumstances, relevant case law, legislative and economic changes that may trigger a review.

Reading list

The following list provides details of various publications which may assist with your studies. Periodicals and publications will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

Note: The examination will test the syllabus alone.

The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/PFS members can borrow most of the study materials from CII Knowledge Services and may be able to purchase some at a special discount. For further information on lending and discounts go to www.cii.co.uk/knowledge

Trusts. London: CII. Coursebook J02.

The taxation of trusts: a step by step practical approach. Bristol: SDB Training. Annual.

Equity and trusts. Alastair Hudson. 5th ed. London: Routledge-Cavendish, 2007.

Equity and trusts. Margaret Halliwell. 4th ed. London: Old Bailey Press, 2003.

Equity and trusts in a nutshell. 7th ed. Michael Haley. London: Sweet & Maxwell, 2007.

The law of trusts. J G Riddall. 6th ed. London: Butterworths, 2002.

The modern law of trusts. Parker and Mellows. 9th ed. London: Sweet & Maxwell, 2008.

A practitioner’s guide to trusts. John Thurston. 6th ed. Haywards Heath, West Sussex: Tottel, 2008.

The SIFA handbook of trustee investment. Ian Muirhead, Brian Murphy. 4th ed. Epsom, Surrey: SIFA, 2008.

A step-by-step guide to wills and probate. A K Biggs, K Donnelly. 3rd ed. London: Callow, 2000.

Wills, administration and taxation: a practical guide. J S Barlow, L C King, A G King. 9th ed. London: Sweet and Maxwell, 2008.

Reference materials

Lamont’s glossary: the definitive plain English money and investment dictionary for the finance professional and money-minded consumer. Barclay W Lamont. 9th ed. Surbiton, Surrey: Lamonts Glossary Ltd, 2004. Also available online at www.cii.co.uk/knowledge/dictionaries (CII/PFS members only).

PFS focus. London: CII Knowledge Services. Comprehensive archive of PFS publications, including technical and regulatory bulletins and technical tips. Available online at www.cii.co.uk/knowledge/pfs (CII/PFS members only).

St James’s Place tax guide. Walter Sinclair. Basingstoke, Hampshire: Palgrave Macmillan. Annual.

Taxation. London: CII Knowledge Services. Tax tables and other data, updated as necessary. Available online at www.cii.co.uk/knowledge/marketdata (CII/PFS members only).

Tolley’s tax guide. Arnold Homer, Rita Burrows. London: LexisNexis Butterworths. Annual

Tolley’s tax planning. London: LexisNexis. Annual.

Trusts law: text and materials. Graham Moffatt. 4th ed. Cambridge: Cambridge University Press, 2005.

Zurich tax handbook. A Foreman, G Mowles. Harlow [Essex]: Pearson Education. Annual.

Periodicals

Financial Adviser. London: FT Business. Weekly. Also available online at www.ftadviser.com

Financial Solutions. London: Personal Finance Society. Six issues a year. Also available online at www.cii.co.uk/knowledge/financialsolutions (CII/PFS members only).

Financial Times. London: Financial Times. Daily. Also available online at www.ft.com

Money Management. London: FT Business. Monthly.

Money Marketing. London: Centaur Communications. Weekly. Also available online at www.moneymarketing.co.uk

Examination guides

Guides are produced for each sitting of written answer examinations. These include the exam questions, examiners' comments on candidates' performance and key points for inclusion in answers. You are strongly advised to study guides for the last two sittings. Please visit www.cii.co.uk to buy online or contact CII Customer Service for further information on +44 (0)20 8989 8464. Older examination guides are available (for members only) at www.cii.co.uk/knowledge/examguides.

Exam technique/study skills

There are many modestly priced guides to study skills and exam techniques in bookshops. You will also find advice at www.cii.co.uk/careersupport (CII/PFS members only).

For a more interactive approach, you should consider: Winning the brain game. London: CII, 2006. CD–Rom.