PLANNING WITH LOAN TRUSTS

PARAPLANNERS' ASSEMBLY

STEVE SAYER APFS, TEP

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INTRODUCTION

Welcome

By the end of the session, delegates will be able to:

- Understand the IHT advantages offered by, and key technical aspects of, a Loan Trust
- Discuss and explain this subject with a client in a clear and concise way
- Apply this knowledge to appropriate, individual, client scenarios.

AGENDA

- Session is for approx. 60 minutes including time for questions

- INHERITANCE TAX CHANGES FROM 6 APRIL 2023
- IHT PLANNING
- LOAN TRUSTS
- DEEDS OF WAIVER
- PLANNING OPPORTUNITIES
- CASE STUDY 1
- CASE STUDY 2
- IHT & LOAN TRUSTS – A RECAP

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INHERITANCE TAX CHANGES FROM 6 APRIL 2023

EXTRA INHERITANCE TAX

THE IMPACT OF FREEZING THE NRB AND RNRB TO DATE

TAX YEAR CURRENT RATE WAS SET	NRB/ RNRB	ACTUAL VALUE IN 2023/24	VALUE IN 2023/24 IF INCREASED BY 2.5% P.A.	POTENTIAL EXTRA TAX COLLECTED @ 40%
2009/10	£325,000	£325,000	£459,000	£53,600
2020/21	£175,000	£175,000	£188,000	£ 5,200
TOTAL				**£58,800**
TRANSFERABLE NRB AND RNRB (x2)				**£117,600**

House prices have continued to rise and inflation is increasing values of other assets. Average house price in 2023 is approx. £280,000 (56% of the current NRB and RNRB combined) but would have been only 43% of the NRB had it grown with inflation.

Is IHT still a tax for the rich?

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EXTRA INHERITANCE TAX

THE IMPACT OF FREEZING THE NRB AND RNRB LOOKING FORWARD TO 2027/28

TAX YEAR CURRENT RATE WAS SET	NRB/ RNRB	ACTUAL VALUE IN 2023/24	VALUE IN 2027/28 IF INCREASED BY 2.5% P.A.	POTENTIAL EXTRA TAX COLLECTED @ 40%
2009/10	£325,000	£325,000	£506,000	£72,400
2020/21	£175,000	£175,000	£208,000	£13,200
TOTAL				**£85,600**
TRANSFERABLE NRB/RNRB (x2)				**£171,200**

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IHT PLANNING

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INHERITANCE PLANNING

START AS SOON AS POSSIBLE – BUT HOW?

1. Use any available Nil rate band as soon as possible:

   Gifts/settlements to trusts, individuals other than surviving spouse, civil partners

2. But what if access to capital is needed?

DISCOUNTED GIFT TRUSTS
REVERSIONARY INTEREST TRUSTS

LOAN TRUSTS

(3)

LOAN TRUSTS

LOAN TRUSTS

REASONS WHY

OPTIONS	IHT PLANNING	SUCCESSION PLANNING
DISCRETIONARY	ALL GROWTH FREE OF IHT	ACCESS TO CAPITAL
ABSOLUTE	IHT VALUE OF LOAN EFFECTIVELY FROZEN	COMPLEX FAMILIES
	INVESTMENT BOND – CHARGEABLE EVENT REGIME	A TRUST SOLUTION
	LOAN CAN BE WRITTEN OFF OR GIFTED AS NEEDED	PROBATE REQUIREMENTS

LOAN TRUST

HOW THE SCHEME WORKS

SETTLOR

Loan - Interest free, repayable on demand

£500,000 →

Invest in a single premium LA or CRB

TRUSTEES

← £25,000

Up to 5% pa withdrawals can be taken if required and paid to the settlor until the original loan is repaid.

'Income' received

Loan outstanding at any time forms part of settlor's estate

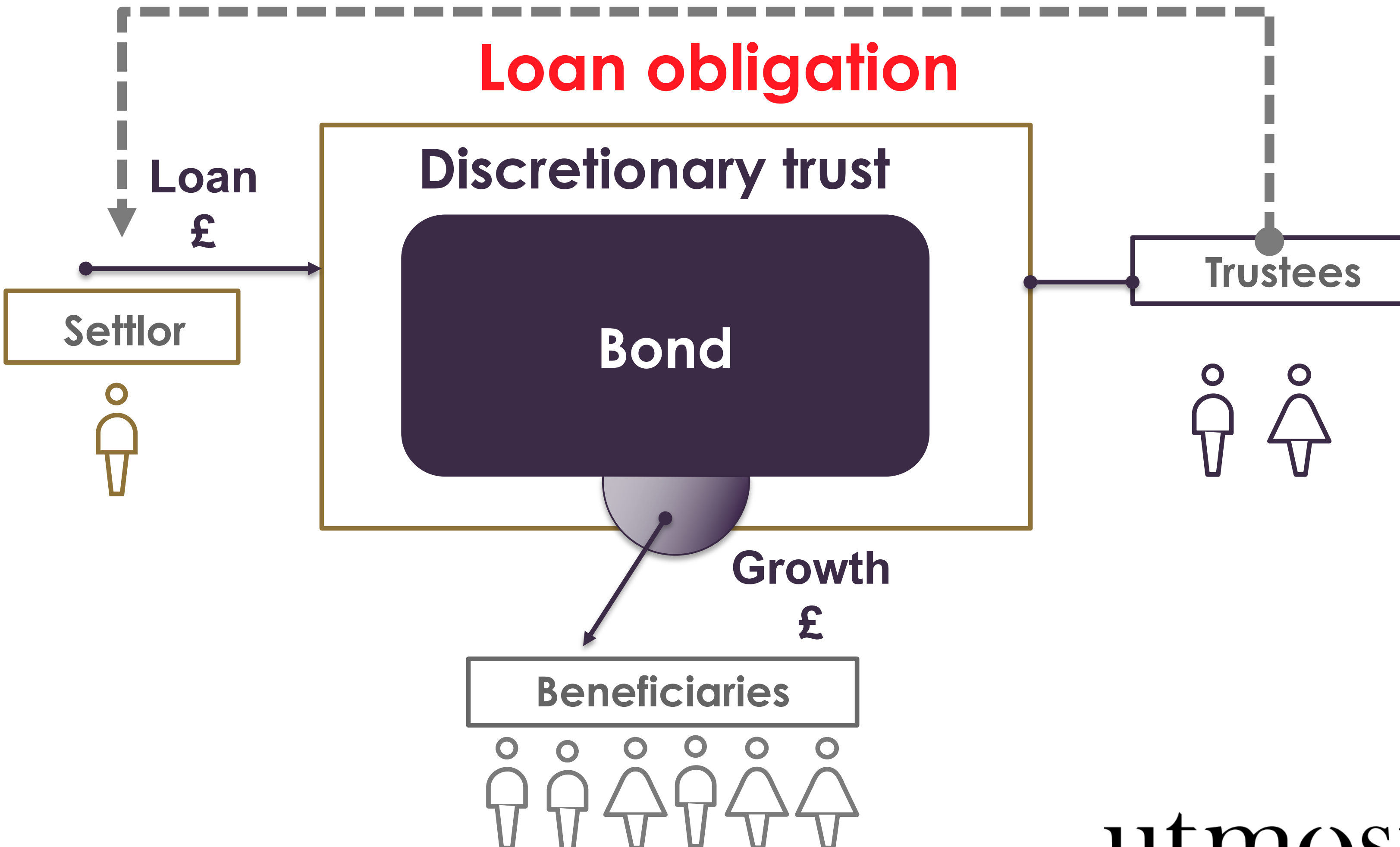
Loan can be waived or gifted at any time

Growth on bond + 5%s (if spent) outside estate for IHT

Growth can be distributed if required

A LOAN TRUST IN ACTION

DISCRETIONARY EXAMPLE



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LOAN TRUST

GENERAL CONSIDERATIONS

- Establish on "sole settlor" basis?
- Two bonds and two trusts required if husband & wife (or civil partners) are each settling loan trusts
- Settlor cannot benefit from trust but;
  - Settlor's spouse can be a potential beneficiary
    - If a husband and wife (or civil partners) each effect a single settlor loan trust they could be regarded by HMRC as **"associated operations" and reciprocal arrangements** if the spouse (civil partner) were to be included as a potential beneficiary under the other's loan trust
    - Therefore it is important to consider the possibility of only having one spouse as potential beneficiary under their spouse's loan trust.
  - Care should be exercised here. If the spouse shares any benefit, received on a distribution by the trustees, with the settlor it could be said that the settlor/donor has not been entirely excluded - IHTM 14338.

LOAN TRUST

GENERAL CONSIDERATIONS

- Establish on “joint settlor” basis?
- Neither settlor can benefit from trust
- On first death, the loan is automatically passed to the surviving spouse
- On the second death any outstanding loan will form part of the ‘survivor’s’ estate
- Payments should be made to a joint bank account
- Possible savings in product and trust charges.

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LOAN TRUST

GENERAL CONSIDERATIONS

CAN ADDITIONAL LOANS AND 'TOP-UPS' CAN BE MADE?

- The settlor cannot benefit further from the trust fund once both of their loans have been repaid, due to the IHT gift with reservation provisions. The trustees would have to keep accurate records to be able to establish the remaining loan entitlements; OR
- A new trust can be settled
- Whichever method is chosen, a new loan agreement is required for the second loan and any subsequent loans. The settlor would not need to set up a separate trust unless they wanted to create a new Loan Trust.

CAN THE LOAN TRUST BE SET UP WITH THE SETTLOR AS SOLE TRUSTEE?

- A person cannot legally make a loan to themselves. A loan is a contract and a person cannot contract with his or her self; a contract needs two parties
- The judgment of Rye v Rye (1962) discusses a similar point. For these reasons we insist that at least one other trustee should be appointed from outset.

LOAN TRUST

DISCRETIONARY OR ABSOLUTE

	ABSOLUTE LOAN TRUST	DISCRETIONARY LOAN TRUST
Creation	No transfer of value	No transfer of value
Beneficiaries	The beneficiaries have an absolute right to benefit, no flexibility to change	Flexibility as to who benefits according to the deed
Growth	Growth part of beneficiaries estate	Not part of any beneficiary's estate
Outstanding loan	Part of settlor's estate	Part of settlor's estate
Tax in structure	No periodic charges	Potential periodic charges
Tax in underlying wrapper	Offshore bond – grows largely tax free (apart from possible withholding tax)	
Distribution	Segment surrender or part withdrawal – possible chargeable event but 5% available	
Control	Trustee	Trustee
Wind up/final distribution	Taxed on beneficiaries whether assigned or not	Within trust 45%. Tax free assignment – individual savings allowances, TSR

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LOAN TRUST

WHY NOT COLLECTIVES?

Possible – but tax consequences:

- Income generated (whether accumulated or paid out as a dividend/interest distribution) would be assessed to tax on the settlor.
- In effect, the trust is treated as a 'settlor-interested' trust.
- This will be the case as long as any of the loan remains outstanding and also if the spouse/civil partner of the settlor is included amongst the trust beneficiaries.

The income tax assessment would initially be on the trustees first at the trust rates of 39.35% for dividends and 45% on other income, Income within the standard rate band (up to April 2024) is taxed at basic rates, i.e. 8.75% on dividends and 20% on interest.

The settlor must then include the trust income in their own tax return. This means that a settlor who is not a 45% taxpayer will then be able to claim the excess tax back from HMRC but must pay it over to the trustees.

LOAN TRUST

OUTSTANDING LOANS AT THE DEATH OF THE SETTLOR

WHERE SINGLE SETTLOR TRUSTS ARE USED

1. Depends on the contents of the will – loan will usually fall into residue and will pass in accordance to the will or intestacy. Using separate trusts can allow for more flexibility in planning in respect of the loan on first death, especially where assets may wish to be passed down to children from previous marriages etc. It can be left to a specific individual or trusts on death who will be able to take repayment of the loan in the same way the settlor did.

2. A codicil can be created by the client's solicitor who will provide suitable wording to leave the outstanding loan to the trustees of the loan plan for the benefit of the loan trust beneficiaries.

   "I give to the trustees of my loan plan scheme, made on the 3 May 2023 to the Trustees of the Trust created by me by a Deed of Trust dated 3 May 2023, my entitlement of the outstanding loan together with all rights and benefits arising thereunder for the benefit of the trust beneficiaries."

WHERE JOINT SETTLOR TRUSTS ARE USED

On first death it will pass automatically to the spouse usually free of IHT due to the spousal exemption. On second death it will then form part of the survivor's estate.

OUTSTANDING LOANS – DEATH OF THE SETTLOR

VARIATIONS AND DISCLAIMERS

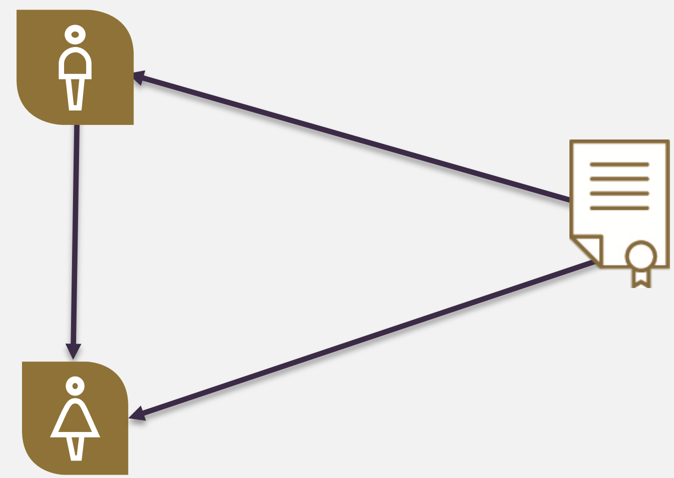
A beneficiary is under no obligation to accept a disposition under a will or under the rules of intestacy and they can either:

- **Vary** – using a deed of variation to pass their gift to a nominated person or trust

OR

- **Disclaim** – in which case the asset pass to the person entitled to the residue of the estate OR where a gift of residue is disclaimed, under the rules of intestacy

- Correcting mistakes



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BUT, WHAT ABOUT DURING LIFETIME?

1. GIFT THE LOAN

   A. TO ANOTHER INDIVIDUAL
   B. TO A SEPARATE DISCRETIONARY TRUST

2. DEMAND REPAYMENT OF THE LOAN AND GIFT THE PROCEEDS?

3. WAIVE THE LOAN

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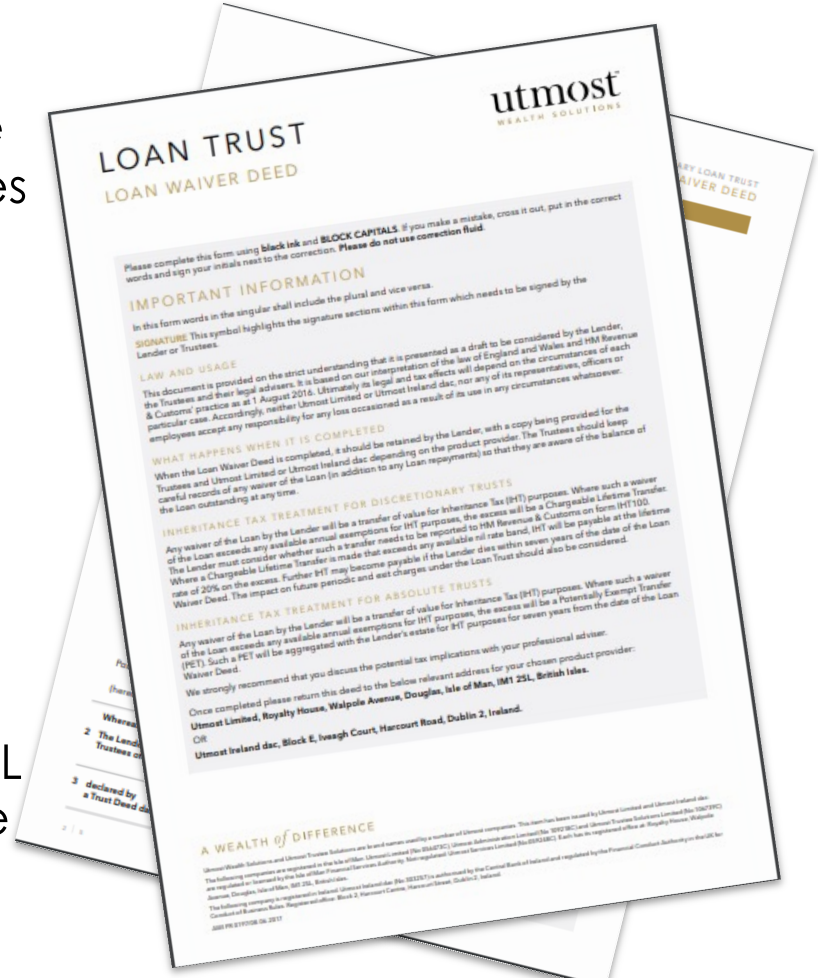
DEEDS OF WAIVER

WAIVNG THE LOAN

It is possible for the settlor to release the trustees from their obligation to repay the loan during their lifetime. If the settlor does waive the loan, the amount waived will constitute a chargeable lifetime transfer by the settlor for IHT purposes. This chargeable lifetime transfer will be deemed to have occurred on the date that the Settlor waived the loan.

This release of a debt, for no consideration, must be done by an appropriate deed (Pinnel's Case, 1602 WL 4 (QB); 77 E.R 237). For our Loan Trusts, the **Loan Waiver Deed** provided by Utmost can be used to achieve this.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LOAN TRUST

LOAN WAIVER DEED

Please complete this form using **black ink** and **BLOCK CAPITALS**. If you make a mistake, cross it out, put in the correct words and sign your initials next to the correction. **Please do not use correction fluid.**

IMPORTANT INFORMATION

In this form words in the singular shall include the plural and vice versa.

SIGNATURE This symbol highlights the signature sections within this form which needs to be signed by the Lender or Trustees.

LAW AND USAGE

This document is provided on the strict understanding that it is presented as a draft to be considered by the Lender, the Trustees and their legal advisers. It is based on our interpretation of the law of England and Wales and HM Revenue & Customs' practice as at 1 August 2016. Ultimately its legal and tax effects will depend on the circumstances of each particular case. Accordingly, neither Utmost Limited or Utmost Ireland dac, nor any of its representatives, officers or employees accept any responsibility for any loss occasioned as a result of its use in any circumstances whatsoever.

WHAT HAPPENS WHEN IT IS COMPLETED

When the Loan Waiver Deed is completed, it should be retained by the Lender, with a copy being provided for the Trustees and Utmost Limited or Utmost Ireland dac depending on the product provider. The Trustees should keep careful records of any waiver of the Loan (in addition to any Loan repayments) so that they are aware of the balance of the Loan outstanding at any time.

INHERITANCE TAX TREATMENT FOR DISCRETIONARY TRUSTS

Any waiver of the Loan by the Lender will be a transfer of value for Inheritance Tax (IHT) purposes. Where such a waiver of the Loan exceeds any available annual exemptions for IHT purposes, the excess will be a Chargeable Lifetime Transfer. The Lender must consider whether such a transfer needs to be reported to HM Revenue & Customs on form IHT100. Where a Chargeable Lifetime Transfer is made that exceeds any available nil rate band, IHT will be payable at the lifetime rate of 20% on the excess. Further IHT may become payable if the Lender dies within seven years of the date of the Loan Waiver Deed. The impact on future periodic and exit charges under the Loan Trust should also be considered.

INHERITANCE TAX TREATMENT FOR ABSOLUTE TRUSTS

Any waiver of the Loan by the Lender will be a transfer of value for Inheritance Tax (IHT) purposes. Where such a waiver of the Loan exceeds any available annual exemptions for IHT purposes, the excess will be a Potentially Exempt Transfer (PET). Such a PET will be aggregated with the Lender's estate for IHT purposes for seven years from the date of the Loan Waiver Deed.

We strongly recommend that you discuss the potential tax implications with your professional adviser.

Once completed please return this deed to the below relevant address for your chosen product provider:

Utmost Limited, Royalty House, Walpole Avenue, Douglas, Isle of Man, IM1 2SL, British Isles.

OR

Utmost Ireland dac, Block E, Iveagh Court, Harcourt Road, Dublin 2, Ireland.

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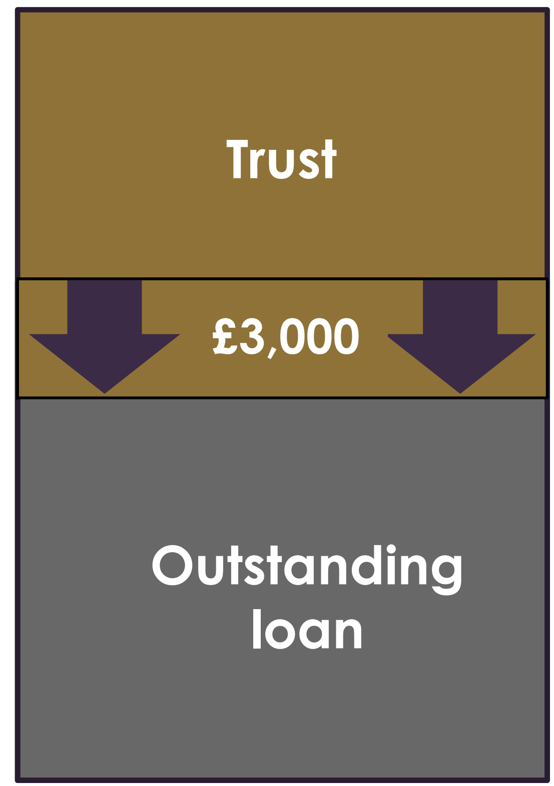
WAIVING THE LOAN

Waived loan - PET	Waived loan – CLT

- As the settlor becomes more comfortable with his/her position and financial needs, he/she could consider waiving some loan in favour of the trust

- This could utilise his/her £3,000 exempt allowance each year, or he/she could waive a larger amount - (CLT)

- This would increase the growth available for the beneficiaries.



WAIVING THE LOAN AFTER SETTLOR’S DEATH

ABSOLUTE LOAN TRUST	DISCRETIONARY LOAN TRUST
Waived loan - PET	Waived loan – CLT

Care: If the widow/er is a beneficiary of a discretionary trust and has been gifted or left the loan on the settlor’s death, any loan waived by the widow/er will be an additional settlement and the GWRB provisions will apply.

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PLANNING OPPORTUNITIES

MINIMISING THE VALUE OF SETTLED PROPERTY

- Loan Trusts – Loan never settled property
  - *Value of the trust property for exit taxes and principal charges are the trust assets less any loan or the capital value of retained benefits.*
- Use of multiple trusts and 'Rysaffe planning'
- Different settlement dates
- No same day additions.

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THE RELEVANT PROPERTY REGIME

THE IMPLICATIONS FOR LOAN TRUSTS CONTINUED

- £300,000 Loan Trust
- £300,000 previous CLTs within seven years
- 5% pa growth over 10 years
- 5% p.a. withdrawals taken used to repay loan to settlor
- Trust assets are £300,000 less outstanding loan of £150,000 to give net trust value **£150,000 plus £300,000 previous chargeable**

transfers with £4,920 periodic charge.

Could IHT saving be accelerated?

A POSSIBLE SOLUTION!

- Rysaffe Trustee Co (CI) Ltd. V IRC (2003)
- Series of trusts created by same settlor over period of different days are not treated as "related" settlements
- Each trust will therefore have its own nil rate band
- Thus, for large loan trusts, create several different trusts to avoid the likelihood of the ten yearly charges biting.

PERIODIC CHARGE

PROFORMA

	£	£
Current value of relevant property		T
Initial value of related trust		R
Total		A
NRB at time of PC	NRB	
Less Settlor's chargeable transfers in 7 years before creating the trust	(S)	
Less Yr 1-10 distributions	(D)	
NRB Remaining		(B)
Value of trust in excess of NRB A-B =		VE
Notional IHT = VE x 20%		N
Effective Rate = N/A x100		ER(%)
Actual rate = ER x 30%		AR(%)
Periodic charge = Loss to trust x AR		EC

EXAMPLE

USING 3 LOAN TRUSTS?

- £300,000 Loan Trust
- £300,000 previous CLTs within seven years
- 5% pa growth over 10 years
- 5% p.a. withdrawals
- Net trust value **£150,000 plus £300,000 previous chargeable transfers with £4,920 periodic charge…or**

	7 year cumulation	Trust fund value at 10 year anniversary	Available nil rate band*	Taxable	Tax at 6%
Trust 1	300,000	£50,000	£68,000	-	Nil
Trust 2	300,000	£50,000	£68,000	-	Nil
Trust 3	300,000	£50,000	£68,000	-	Nil

*Nil rate band of £325,000 assumed to grow by 2.5% CPI from 2027/8 to **£368,000**

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A CALCULATOR

LOAN TRUST PERIODIC CHARGE CALCULATION

20/04/2023		
Amount of loan		£3,000,000
Current NRB		£325,000
Gifts in seven years prior to making a settlement		£ -
Loan Repayment P.A		0.00%
Number of settlements (Rysaffe)		3
Projected value at yr 10	5% growth	£4,140,000
Projected value at r 10	8% growth	£5,490,000
Projected value of each 'Rysaffe' Trust @ 5%		£1,370,000
Projected value of each 'Rysaffe' Trust @ 8%		£1,820,000

SUMMARY		
Periodic Charge		
Number of Trusts	5% Growth	8% Growth
1	£46,338	£127,338
3	£413	£81,413
Projected Trust(s) Value (end yr 10) after TYC*		
1	£1,093,662	£2,362,662
3	£ 1,109,587	£2,378,587

Ten Year Charge (1 settlement)	20/04/2033		
		5%	**8%**
Settlement Value		£4,140,000	£5,490,000
Outstanding Loan		£3,000,000	£3,000,000
Net Value		£1,140,000	£2,490,000
Projected NRB yr 10 (2.5% esc from April 28	£367,708		
Less previous gifts up to the value of the NRB £ -			
Available NRB		£367,708	£367,708
Value of Trust subject to TYC		£772,292	£2,122,292
Ten Year Charge (6%)		£46,338	£127,338

Ten Year Charge (3 Settlements)			
Settlement Value		£1,370,000	£1,820,000
Outstanding Loan		£1,000,000	£1,000,000
Net Value		£ 370,000	£ 820,000
Projected NRB yr 10 (2.5% esc from April 26)	£367,708		
Less previous gifts up to the value of the NRB £ -			
Available NRB		£367,708	£367,708
Value of Trust subject to TYC		£ 2,292	£ 452,292
Ten Year Charge @ 6%		£ 138	£ 27,138

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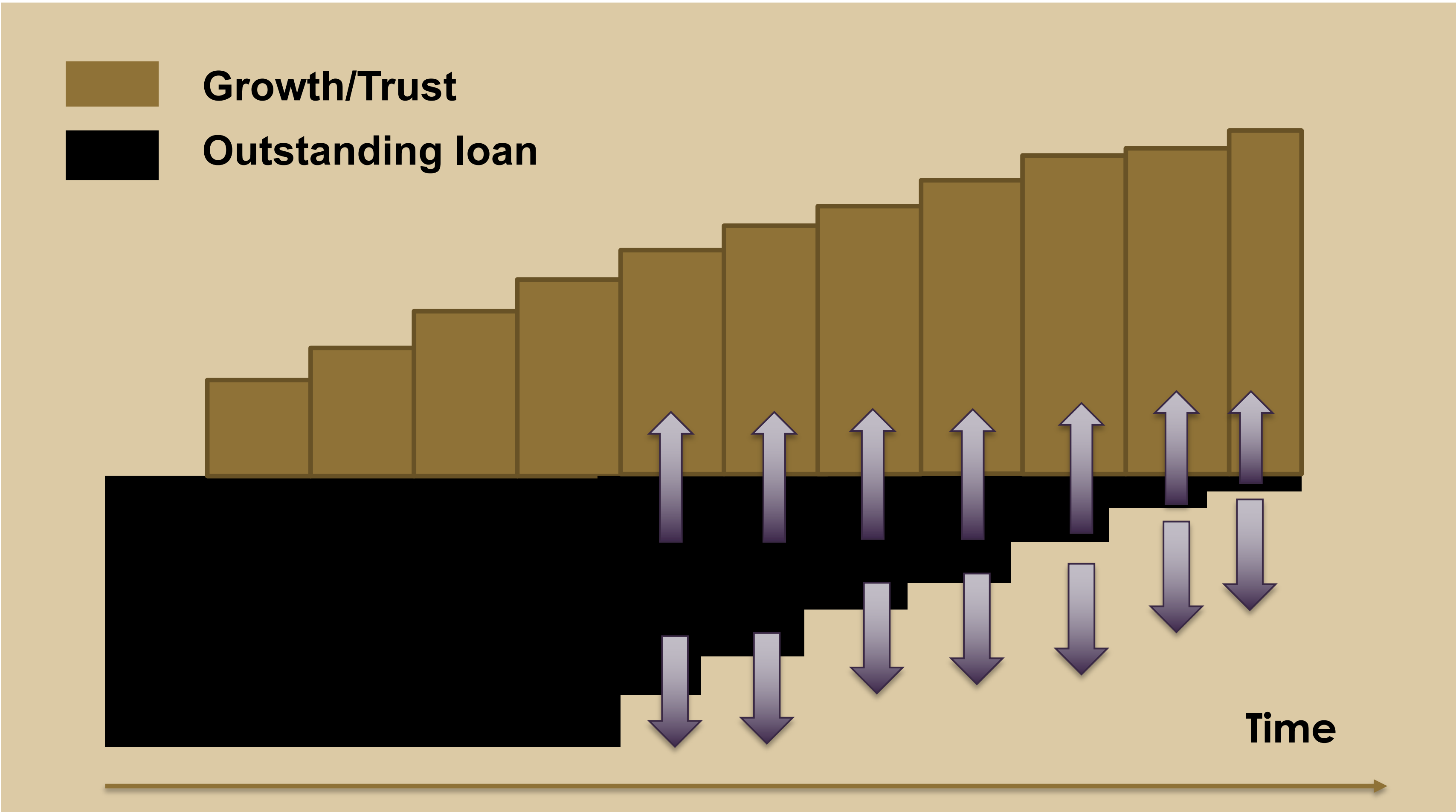
CASE STUDY 1

A SIMPLE CASE STUDY

THE WIDOW

- Mary is 65 and widowed
- Following her husband's death, she has an estate of £1.85m including cash paid from a life insurance policy
- She is comfortably meeting her expenditure with pension income
- She has two children and is concerned about IHT / estate planning but does not wish to give her capital away
- Mary has a cautious investment outlook
- Her mother died a couple of years ago having spent the last few years of her life in a care home. Mary would like to retain the capacity to self-fund should she also need care in the future.

BENEFITS FOR MARY'S ESTATE



LOAN TRUST

ADVANTAGES

- Mary has full access to capital invested (with income tax considerations) as required
- She has control as to who benefits if she also acts as a trustee
- Any growth achieved is outside of her estate which could help prevent tapering of the Residence Nil Rate Band and saves IHT!
- Level of IHT mitigation can be accelerated by making withdrawals to re-pay the loan and/or using deed of waiver to write loan off
- Well established!

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CASE STUDY 2

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A SLIGHTLY MORE COMPLEX CASE STUDY

John is single and aged 62.

Semi- retired business consultant.

Both his two previous marriages have ended in divorce.

Three children from his first marriage, two from his second and three grandchildren.

House worth £1.5m.

Apartment £350,000.

Savings and investments £2.0m.

Private Pension – no immediate need of capital.

A SLIGHTLY MORE COMPLEX CASE STUDY

AN EXAMPLE OF A LOAN TRUST IN PRACTICE

A loan of £1million is made to the discretionary trustees.

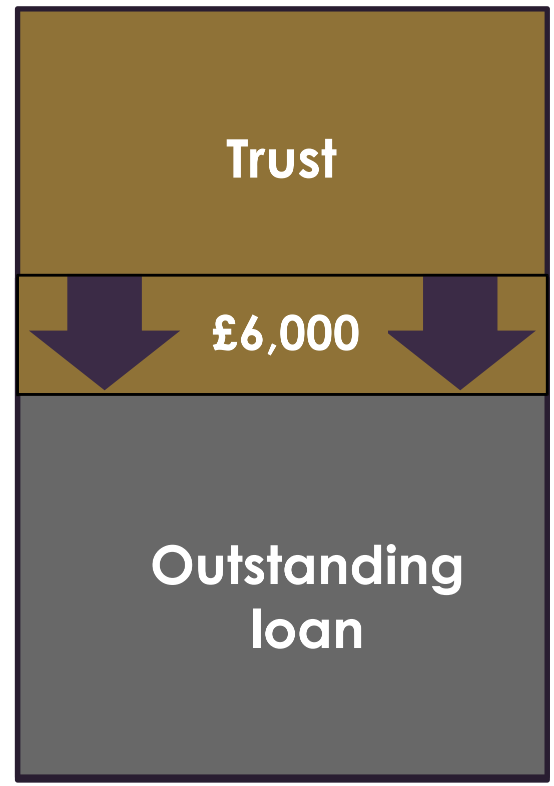
The Trustees invest the loan in an Utmost International bond. As part of their regular review the Adviser asks the Settlor if they wish to gift any part of the loan.

YEAR 1

The Settlor wishes to utilise unused IHT annual allowance exemption(s) and gift £6,000 of the loan.

WHAT DOES THIS MEAN?
The Settlor can waive their entitlement to £6,000 of the loan by completing the 'Deed to Waive Loan'. The £6,000 is an exempt gift for IHT purposes.

The Settlor's outstanding loan is now £994,000.



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A SLIGHTLY MORE COMPLEX CASE STUDY

AN EXAMPLE OF A LOAN TRUST IN PRACTICE

7 years later
The Settlor is in a position to make a larger gift and gives away £325,000, the prevailing NRB, of the unpaid loan because their financial circumstances have changed and they no longer require access to this amount of capital.

WHAT DOES THIS MEAN?
The Settlor can waive their entitlement to £325,000 of the loan by completing the 'Deed to Waive Loan'. The Settlor's outstanding loan is now £669,000

YEAR 10
The Settlor requests that the trustees set up annual withdrawals from the bond as repayment of the loan.

WHAT DOES THIS MEAN?
The Trustees complete a Bond request for a withdrawal or surrender' form requesting withdrawal to be paid annually to the Settlor.

Trust

£325,000

£653,000

WHAT ABOUT THE RYSAFFE ADVANTAGE?

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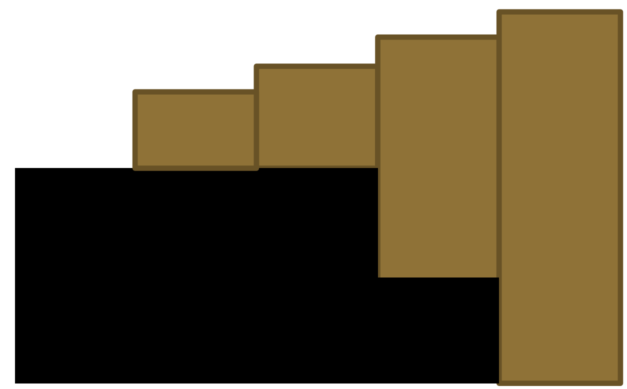
A SLIGHTLY MORE COMPLEX CASE STUDY

1. £500,000 Discretionary Loan Trust
2. Part of the loan can be repaid and spent
3. Loan can be gifted to trigger a PET – may help with future RNRB planning

1. £500,000 Discretionary Loan Trust
2. Beneficiaries can be changed as family situation changes
3. Loan can be written off - care CLT
4. Loan can be gifted to trigger a PET



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IHT & LOAN TRUSTS – A RECAP

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LOAN TRUST

ADVANTAGES RECAP

- Settlors rights limited to the repayment of the loan
- Loan repayment is capital – no income or capital gains tax
- Establishment of the trust has no immediate IHT implications
- The GWRB rules will not apply as the settlor is not a beneficiary of the trust
- POAT rules do not apply
- A discretionary trust gives maximum flexibility
- Loan repayments do not give rise to an exit charge.

THE STEPS REQUIRED

THE ORDER

1. A trust is established with the promise of a loan being made to the trust by the settlor (the trust deed). **Effective Date – The Trust Deed should be completed and dated prior to completing the Loan Agreement in Part 2**
2. The settlor makes a loan of cash to the trust - this loan is interest free and repayable on demand by the settlor to the trustees (the loan agreement)
3. The trustees use the loan to purchase a unit-linked life assurance policy or capital redemption policy (the bond).
4. The trustees repay the loan through ‘ad hoc’ or regular withdrawals using the 5% annual tax-deferred entitlement available under a bond (the loan repayments)
5. Other documents as required.

Our current trust deeds are designed to protect the trustees from becoming personally liable to repay any shortfall.

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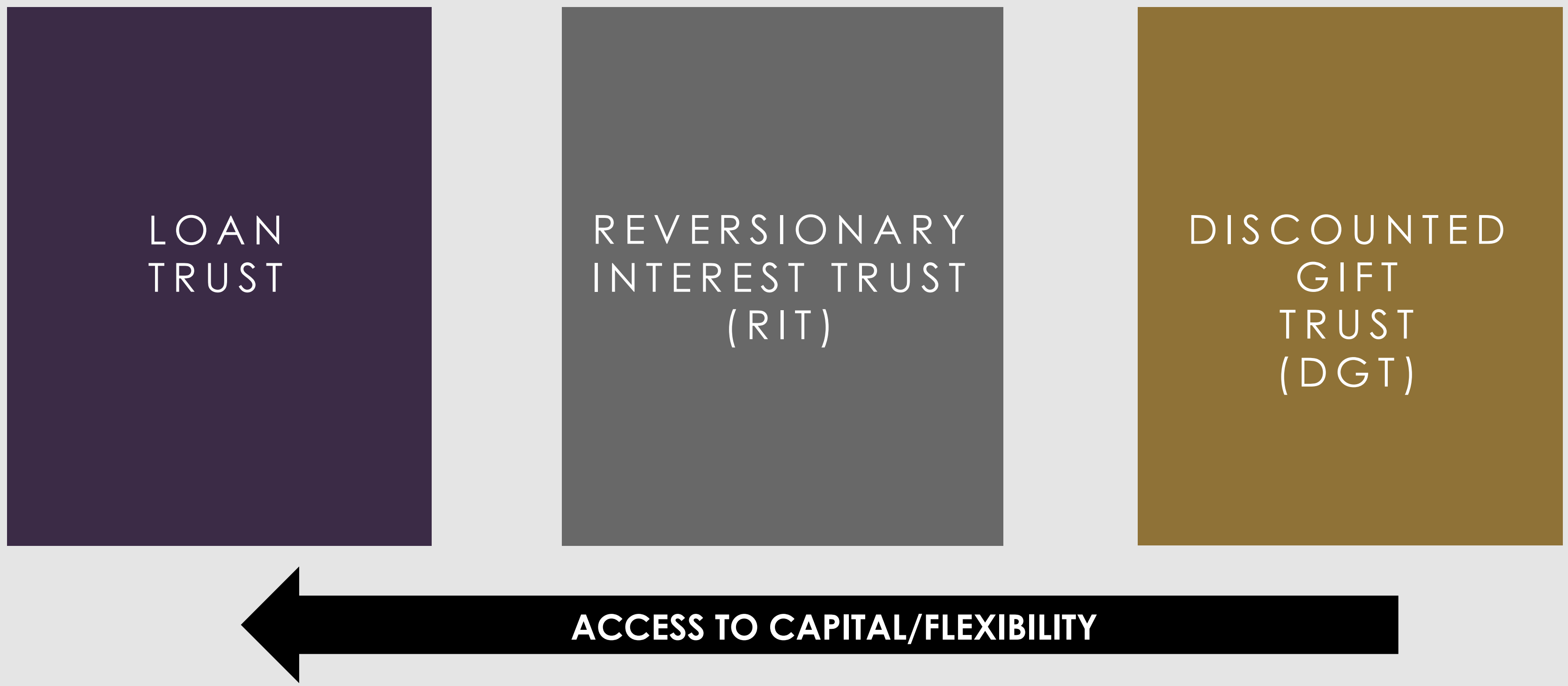
TRUST BASED IHT SOLUTIONS



LEARNING OBJECTIVES - RECAP

By the end of the session, delegates will be able to;

- Understand the IHT advantages offered by and key technical aspects of a Loan Trust
- Discuss and explain this subject with a client in a clear and concise way
- Apply this knowledge to appropriate, individual, client scenarios.

PLANNING WITH LOAN TRUSTS

PARAPLANNERS ASSEMBLY

STEVE SAYER APFS, TEP

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IMPORTANT INFORMATION

The information contained in this document does not constitute advice. It is designed for financial adviser use only and is not intended for use with individual investors.

Information regarding tax and practise is based on our interpretation of current legislation and HM Revenue & Customs policy/practice in the UK, Isle of Man and Ireland as at 24 April 2023. Tax treatment is subject to change and individual circumstances. There is therefore a risk that the value of the tax treatment provided by a bond may change.

International bonds are intended to be a medium (at least 5 years old) to long term (over 10 years) investment. The value of investments may fall as well as rise and is not guaranteed. Your client or their trustees may get back less than originally invested.

www.utmostinternational.com

Calls may be monitored and recorded for training purposes and to avoid misunderstandings.

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