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...also known as a **Special Needs Trust** or **Vulnerable Persons Trust**

One of the primary purposes for creating a trust is to protect the interests of a loved one. In some cases, trusts are used to protect those who are incapable of looking after their financial affairs. For such individuals, a trust can be a way of ensuring they can maintain their quality of life while protecting their means-tested benefits.

What is a trust?

A trust is a legal arrangement, where one or more people ('the settlor') transfers asset to others ('the trustees') for the benefit of a third party ('the beneficiary').

What is a Disabled Persons Trust?

The definition of a disabled person was updated by new laws in 2013 and 2014. Where previously a discretionary trust would have been used to protect a disabled person, it is now possible to use a specific type of trust designed especially for a disabled person ('a Disabled Persons Trust'). Provided certain conditions are met, a Disabled Persons Trust has more favourable tax treatment for inheritance tax, capital gains tax, and income tax purposes than a discretionary trust.

What are the conditions?

The rules now provide that a person shall be a 'disabled person' for these purposes when they meet one or more of the following conditions:-

- A person is incapable of administering his or her property or managing his or her affairs because of a disorder within the meaning of the Mental Health Act 1983 (i.e. any disorder or disability of the mind);
- A person is receiving any of the following:-
 - Attendance allowance
 - Disability living allowance with an entitlement to the care component at the higher or middle rate, or the mobility component at the higher rate
 - Personal independence payment with an entitlement to the daily living component
 - Increased disablement pension
 - Constant attendance allowance
 - Armed forces independence payment
- A person who may become entitled to any of the benefits listed above.

How is a Disabled Persons Trust different to a discretionary trust?

As mentioned above, the primary difference between a Disabled Persons Trust and a discretionary trust is the tax treatment.

Discretionary trust

Depending on the value of the trust assets there may be an inheritance tax charge:-

- when assets are put into the trust
- on each ten year anniversary of the trust
- when assets are transferred out of the trust

This type of trust is also subject to a very high rate of income tax.

Disabled Persons Trust

Although trusts for disabled beneficiaries have been in existence for some time, their tax treatment has only recently changed making them potentially more suitable in most circumstances.

The inheritance charges which may apply to a discretionary trust (i.e. ten year anniversary charges and exit charges) do not apply. On the death of the disabled person, the trust assets are counted as part of their estate and are taxed as such.

The way in which the income is paid to the disabled person also differs in that the trustees decide how the income should be paid to the disabled person. This could have a crucial impact on whether the disabled person can claim any means tested benefits in the future - so it is important to seek legal advice on the terms of the trust.

When should I consider using a Disabled Persons Trust?

If the following apply, we would recommend that you consider the preparation of a Disabled Persons Trust:-

1. You have at least one potential beneficiary who qualifies as a disabled person;
2. You have assets above the inheritance tax nil rate band, currently in the sum of £325,000 (or expect to do so in the future- perhaps through an inheritance)
3. The disabled person is in receipt of, or will be entitled to claim, means tested benefits (this would include funding for their care)
4. You want to ensure the disabled beneficiary is treated as the *primary* beneficiary.

How can Greenwoods GRM help?

The Private Client Team at Greenwoods will be able to advise you as to whether this trust is suitable for your circumstances and will explain fully all of the options available to you. We are experienced in working in the role of a professional trustee or working behind the scenes advising the trustees as and when necessary.

Contact +44 (0)1733 887665 and ask to speak to a member of our Private Client Team.

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Whilst Greenwoods GRM LLP stands by the views and advice given in this document, the fact that two situations are rarely the same means that you should seek legal advice before relying on its contents.