

BriefingNote

The responsibilities of a trustee

How is a trustee appointed?

A trustee's responsibilities commence once he/she has accepted the appointment and the trust for which they are responsible has come into being. There are several ways in which this can happen, the most common being:

- by appointment in a deed by which a trust has been created
- by appointment in a deed drawn up specifically for the purpose of appointing a new trustee of an existing trust
- by being named as a trustee, explicitly or implicitly, in a Will by which a trust is created.

What are the duties of a trustee?

The duties of a trustee are various and onerous and many trustees do not appreciate the extent to which they can be held personally liable if things go wrong.

Unless the trust deed provides otherwise, a trustee has the following duties:

- He must exercise the care a businessman would give to his own affairs. If he is a paid trustee the standard is higher and commensurate with his professional expertise.
- He must not benefit from his position, although the Trustee Act 2000 allows for a trustee acting in a professional capacity to be paid for his services.
- He must maintain proper books and records and allow beneficiaries the right of inspection.
- He must act personally and not delegate except so far as permitted by statute.
- He must ensure that the trust assets are transferred into his name (jointly with co-trustees) or to properly authorised nominees acting on the trustees' instructions.

- He must act jointly with his co-trustees and decisions must be unanimous.
- He must act in accordance with the terms of the trust deed.
- He must pay the proper amounts to the beneficiaries.
- He must invest the funds in accordance with the trust deed and maintain a balance between the income and capital beneficiaries. He cannot favour one beneficiary at the expense of another, except in the exercise of discretionary powers, and must act impartially in the best interests of all.

What are the tax implications for a trustee?

A trustee is under an obligation to render an annual tax return in much the same way as a private individual. A trust is regarded as a separate taxpayer. The preparation of the annual tax return can be complicated and the rules are different to those applying to a personal tax return, with different reliefs and rates of tax.

A trustee also has a duty to report to HMRC all occasions when liability for inheritance tax may arise.

What is the liability of a trustee?

A trustee is personally liable, jointly and severally with his co-trustees, for all taxes becoming payable whilst he is a trustee and for all expenses, including professional fees, incurred by him and his co-trustees. He has a right of reimbursement from trust funds, but he is liable in the first instance: if trust funds are insufficient for any reason, he could end up bearing a personal loss.

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How does a trustee resign?

A trustee can resign from office but this does not relieve him of any obligations arising prior to his ceasing to be a trustee. His resignation is only effective if he leaves two other continuing trustees or if someone else suitable is appointed in his place, provided that will then leave at least two trustees (or one in the case of a trust corporation, such as a bank or Mercer & Hole Trustees Limited).

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