

## Q&A





## **Trusts for Vulnerable Clients**

***Aileen Keogan, Aileen Keogan Solicitor & Tax Consultant***

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## Issues Covered

- Trusts for persons with special needs
- The 'improvident' beneficiary
- Provision for young children – which trust?

- 
- Types of trusts
  - Succession and Taxation issues
  - Based on current legislation



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## Issues Covered

- Persons with special needs
- The 'improvident' beneficiary
- Young children

## Special Needs

- Inheritance for child – succession planning
- Personal injuries award
- Public appeals fund



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## Special Needs



- Vulnerability – protection required
- Avoiding wardship
- Maximise distributions
- Social Welfare means testing
  - Weekly allowance, free medical
  - Free transport, sheltered accommodation

# Special Needs Trust Succession



- **Protection through Discretionary (Disc) Trust**

- Vulnerability of child – asset protection
- Means testing criteria – excludes Disc Trust
- Wardship avoided
- Flexibility – provision for rest of family after
- Consider inter vivos if extended family to also leave legacies

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# Special Needs Trust Succession Taxes



- Income tax, CGT applies
- CAT on payments from trust ... unless
  - S84 CATCA03 exemption
    - medical expenses
  - S17(1)(d) CATCA03 exemption
    - Discretionary trust levies (DTT) – exempt levies
  - ss82(2)&(4) CATCA03
    - Support, maintenance education (child)

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## Section 84 exemption



- Exemption from CAT
  - For benefits taken exclusively to discharge medical expenses of a permanently incapacitated individual
- Revenue interpretation
  - The benefit must state the qualifying purpose – intention of disponent - Revenue eBrief 48/2018 [Updated CAT Manual-Part 22 of Revenue's Tax and Duty Manual (previous eBrief 73/2011)]
    - Intestacy n/a on that basis!
    - Letters of wishes – useful regarding intention
    - But June 2019 TAC decision – intention of beneficiary



## Exemption from levies



- s17(1)(d) CATCA03 exemption
- Discretionary trust levies (DTT)
- Exclusive to individuals where such individuals, is or are, because of age or improvidence, or ophysical, mental or legal incapacity, incapable of managing that individual or those individual's affairs

## Exemption from levies



- Ensure no other taxable beneficiary => person with needs and/or charities
- Watch out other siblings even if <21 years old
- Triggers DTT on death of beneficiary unless
  - Structure to preserve wealth on death of person with special needs
    - Trust period length
    - Provision for rest of family post death

## Exemption from levies



### What if other young children in family?

- Concern Revenue interpretation no other 'exempt' beneficiary – not no other 'chargeable' beneficiary
- Separate trusts if other young children under age 21
- If % allocation for needs not fully apparent - adjust once youngest is 20 to top up special needs trust

# Children's Exemptions



- S82 CATCA03 amended by FA 2014
- Both (gifts and inheritances) now also restricted by age to
  - Minor child
  - Under 18 years of age or under 25 years of age receiving full-time education or instruction at any university, college, school or other educational establishment

# Children's Exemptions



- However ...

Age restrictions not applicable to

Child who regardless of age, is permanently incapacitated by reason on physical or mental infirmity from maintaining himself or herself.

## Post FA 2014



- s82(2) CATCA03 - **Gifts** for the support, maintenance, education of 'qualifying child'
  - if part of normal expenditure of parent; and
  - if reasonable having regard to the financial circumstances of the parent
- s82(4) CATCA03 - **Inheritances** for the support, maintenance, education of 'qualifying child'
  - where both parents have died
  - if would have been part of normal expenditure of parent if alive; and
  - if reasonable having regard to the financial circumstances of the parent prior to death

## LPT exemption

- Permanent and total - incapable of earning a living
- Condition so severe as to dictate the type of property the individual can live in
- Not simply because of age
- Property bought/adapted for needs



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## Special Needs Awards for Injury

- Owned by the injured party
- Question capacity to settle – or necessity
- Wardship if legal incapacity to manage funds
- S189 TCA 1997 relief – for individuals
- Permanent and total incapacity to earn a living
- Exempt income tax & CGT – restrictions



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## Special Needs Public Fund Trusts



- Funds raised from public / crowd funding
- S189A TCA 1997 Trust
- Requires total and permanent incapacity (to earning a living)
- Public subscription – no upper limit but if >€381K then no one donor >30%
- Wind up on death – to spouse/civil partner or to child, otherwise to charity
- Trustees not connected

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## S189A Trust



- S82(3) CATCA03 – exempt benefit for CAT
- Income and gains exempt for trust and for appointments to beneficiary
- Also for income and gains from investments (reinvestments)
- Rules re borrowing apportionment that apply to s189 TCA 1997 apply here

## S189A Trust



- 50% rule of separate income/gains that apply to s189 apply here
- Revenue guidance on s189 applies to s189A also
- E.g. re medical cert etc.

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## Issues Covered

- Persons with special needs
- The 'improvident' beneficiary
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# Trust for Improvident



- What is an 'improvident'?
  - Addict but not medically incapacitated
  - Spendthrift but not just a high spender
  - Vulnerable to influence yet not legally/mentally incapacitated
  - Not necessarily in receipt of disability allowances
- Must be incapable of managing their affairs
- Functional test

# Trust for Improvident



- Discretionary trust - similar to special needs trust
  - Protects inheritance from being 'blown'
  - Allows 'drip feed' of funds
  - Protects from creditors or 'predators'
- Exclusive for improvident (and/or charities)
- DTT – exempt levies if discretionary trust exclusive for person incapable of managing affairs
  - eBrief 92/17 October 2017 (updated Revenue's CAT Manual – Part 5 Discretionary Trust Tax)
- CAT, Income tax, CGT applies
- CAT – not exempt for benefits (unless medical needs under s84 CATCA 03)

# Trust for Improvident

## eBrief 92/17



- Not legal or medical incapacity
- Current or in remission (but potential to trigger on inheritance)
- Letter of wishes
  - Declaration of purpose of trust for Revenue
- Evidence of improvidence
  - Affidavits (testator or family)
  - Spendthrift
    - Demonstrate reckless spending
    - Evidence of defaults in day to day expenses
    - Medical indications
    - Control taken by family over finances already
- Query GDPR and confidentiality!

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## Issues Covered

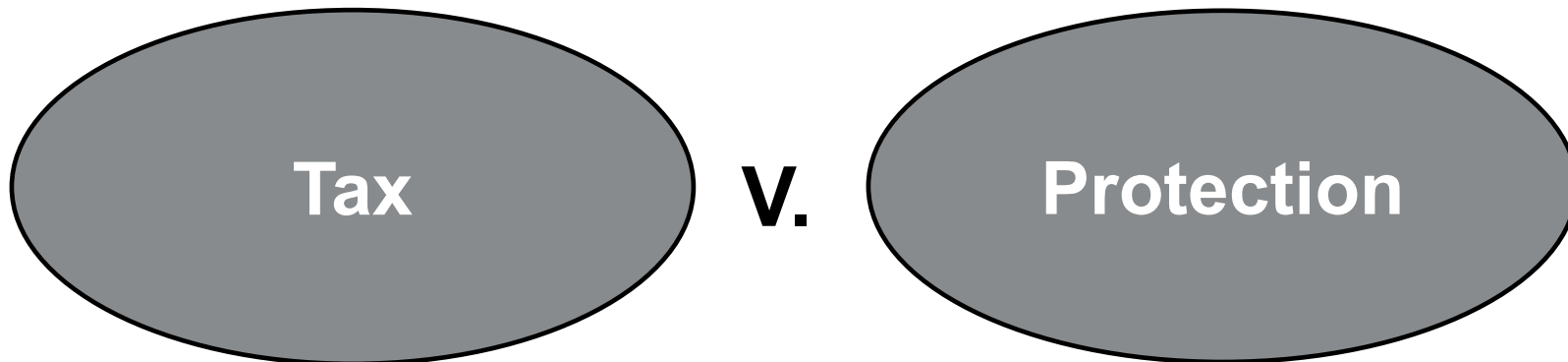
- Persons with special needs
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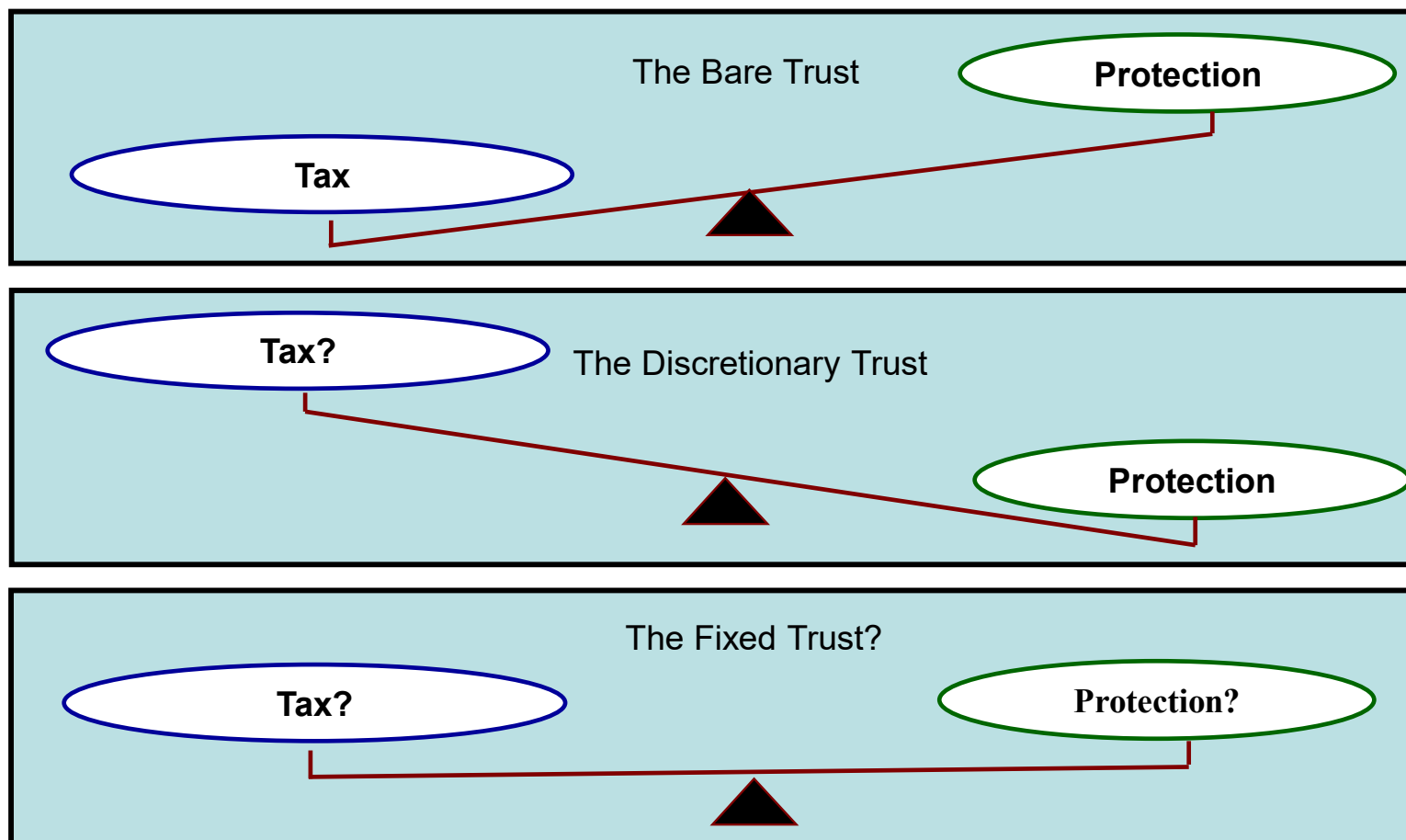


# Wills For Young Families



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# Perceptions.....



# The Bare Trust



To child absolutely

Legal Effect                      →                      Access @ 18

Tax Effect                         →                      Tax Immediately

Consider - no flexibility in dividing within family

‘Equal division -v- Equitable division’

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# The Discretionary Trust



To trustees to hold for class of children

- |              |   |   |
|--------------|---|---|
| Legal Effect | → | Protection – no access until appointment        |
|              | → | Flexibility – divide between children equitably |
|              | → | Hold back for youngest?                         |
|              |   |   |
| Tax Effect   | → | Inheritance postponed                           |
|              | → | CGT /CAT event on appointment                   |
|              | → | Levies age 21                                   |

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# The Fixed Trust

To child at age 18/21/25

Income discretionary until age 18/21/25

or

Income paid out up to relevant age



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# The Fixed Trust

Accumulate

Discretionary Trust  
Without Protection

Do Not Accumulate

Bare Trust  
With Tax Cost

## Comparison on Investments



- Assume child tax free threshold available in full
- Inheritance of €1m on death when child age 13
- Inheritance invested at 5% pa
- 2% increase of threshold consistently year to year
- Ignores income distributions in disc trust (e.g. paid exempt for CAT or neutral for IT purposes)

Bare Trust

- Tax paid €219k
- Net fund year +12 = €1.39m
- Most efficient
- No protection

Discretionary trust to age 21

- Tax paid €452k
- Net fund year +12 = €1.34m
- Return efficient
- Allows opportunity to protect

Discretionary trust to age 25

- Tax paid €509k
- Net fund year +12 = €1.27m
- Most protective
- Comparable net return to either fixed income trusts

Fixed Trust re Income to age 18

- Tax paid €394k
- Net fund year +12 = €1.26m
- No protection
- Inefficient

Fixed re income to age 25

- Tax paid €482k
- Net fund year +12 = €1.25m
- Protection until 25, not thereafter
- Least efficient



## Comparison on Investments



- Assume child tax free threshold available in full
- Inheritance of €1m on death when child age 13
- **Inheritance invested at 10% pa**
- 2% increase of threshold consistently year to year
- Ignores income distributions in disc trust (e.g. paid exempt for CAT or neutral for IT purposes)

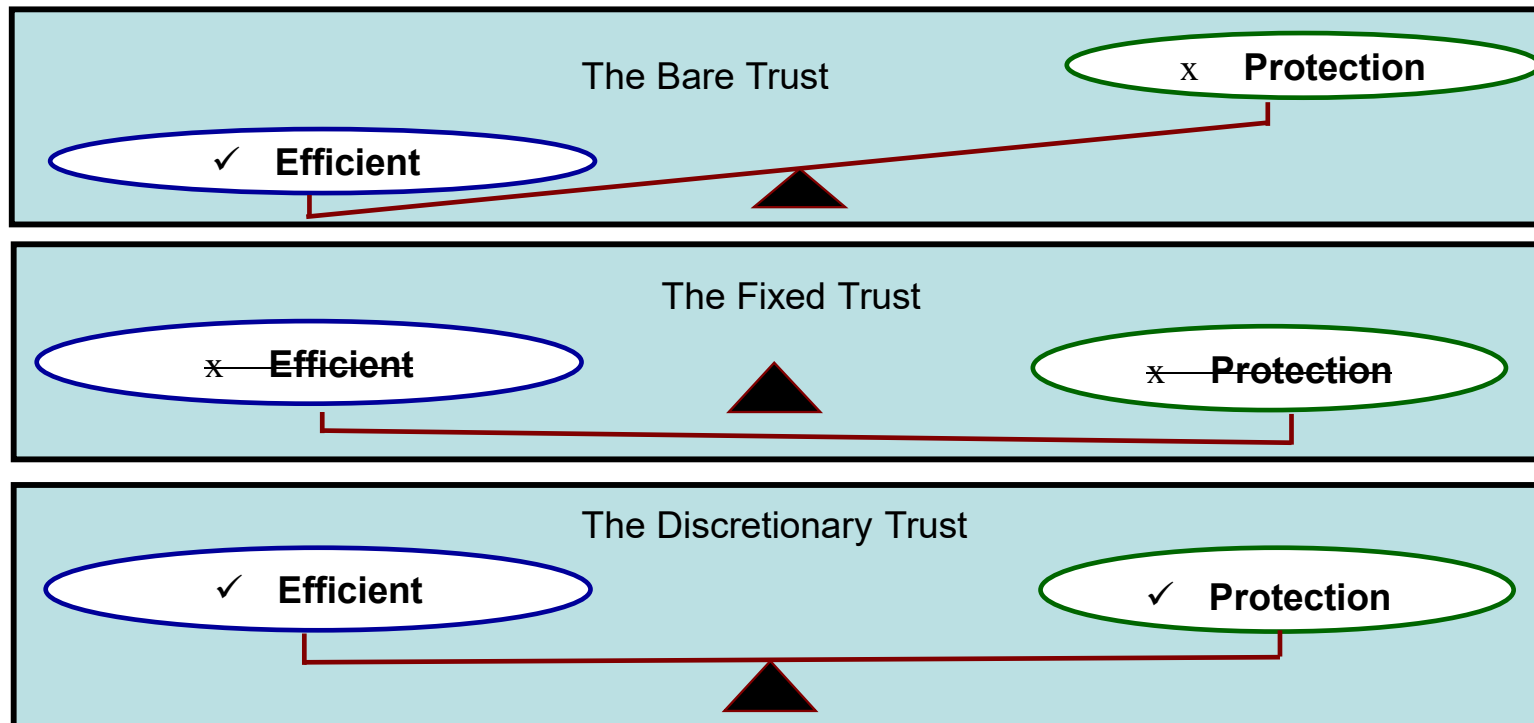
<ul style="list-style-type: none"> <li>• Tax paid €219k</li> <li>• Net fund year +12 = €1.83m</li> <li>• Most efficient but least returns</li> <li>• No protection</li> </ul>	Discretionary trust to age 21	<ul style="list-style-type: none"> <li>• Tax paid €895k</li> <li>• Net fund year +12 = €2.24m</li> <li>• Return efficient</li> <li>• Allows some opportunity to protect</li> </ul>	Discretionary trust to age 25	<ul style="list-style-type: none"> <li>• Tax paid €974k</li> <li>• Net fund year +12 = €2.12m</li> <li>• Most protective</li> <li>• Comparable net return to either fixed income trusts</li> </ul>	Fixed Trust re Income to age 18	<ul style="list-style-type: none"> <li>• Tax paid €504k</li> <li>• Net fund year +12 = €2.20m</li> <li>• No protection</li> <li>• Efficient</li> </ul>	Fixed re income to age 25	<ul style="list-style-type: none"> <li>• Tax paid €849k</li> <li>• Net fund year +12 = €2,001m</li> <li>• Protection until 25, not thereafter</li> <li>• Least efficient</li> </ul>
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## Conclusion for Young Families?



...So what works?

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## Conclusion



- Fully discretionary trust
  - keep liquid and high return assets here
  - assess before youngest is age 21
  - levies MAY then be minimised
- Bare trust for assets
  - protect with other structures (e.g. family partnerships)
  - use tax free threshold
  - appoint out assets with known poor returns

# Practical Considerations for all Trusts



- Trustees – who to select?
- Liability of trustees
- Set up and running costs
- Tax administration – filings
- GDPR reporting

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# Final Thoughts



- Numbers of vulnerable in society increasing
- Legal structures can protect vulnerable
- UN Convention on the Rights of Persons with Disabilities
  - Ireland first to sign (Mar 2007) but last EU country to ratify (April 2018)
- The perception of trusts
  - Revenue
  - EU AML
- Lobby for the marginalised
- Listen to your clients – to assess their needs!

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## Q&A

