

Testamentary Trusts

A testamentary trust is a tax effective structure that also enables the protection of assets held within the Trust. A testamentary Trust is created in your Will and does not commence or become effective until after your death.

"Trust" means when a person (Trustee) has property or rights, which such person holds or is bound to exercise for or on behalf of another or others, for the accomplishment of a particular purpose.

"Discretionary" Trust actions are at the discretion of the Trustee i.e. what happens and how it happens as long as it is legal and pursuant to the conditions outlined in the Trust.

"Testamentary" Trust created in the Will.

Advantages

- A testamentary trust gives the Trustee flexibility in distributing income and capital to a wide class of beneficiaries.
- Testamentary Trusts offer primary beneficiaries the advantage of flexibility to utilise the tax status of general beneficiaries who have a low margin income tax rate and capital losses, (ie. income can be allocated to children but having the benefit of adult tax free thresholds and marginal rates).
- Minors are able to receive \$6,000 of income from the Trust per year, tax free. Unlike family Trusts which attracts a tax payable on the income at the highest marginal rate.
- It is flexible in distributing income and assets to beneficiaries, taking into account taxation.
- Assets are not available to creditors and allows the assets of a bankrupt beneficiary to be protected, or beneficiaries in high risk occupations.
- It may also be effective for family law purposes. The Family Court does take into account the terms of the trust and how it has been operating.
- Provides protection of assets for the beneficiaries, of the trust, who are spendthrift or have disabilities.

The Trustee, the person you have appointed as the "controller" of the Trust, controls the assets of the testamentary Trust. This allows the Trustee to distribute as much or as little as they determine to any or all of the beneficiaries. It is for this reason that we recommend you prepare a "Letter of Wishes" addressed to your Trustee detailing how you wish your assets to be distributed. Therefore, it is important that you choose carefully when deciding who will be the Trustee of the Trust.

When a person dies, Application for a Grant of Probate is made to the Supreme Court (ie. the Will is proved to be valid and legal). Upon Probate being granted, the Will must be presented to the Australian Taxation Office to request a Trust Tax File Number. There will be one Tax File Number for each testamentary Trust. A tax return must be completed annually.