

## Testamentary Trusts

A Testamentary Trust is a trust established by a Will that comes into effect upon the death of the maker of the Will. The primary purpose of a Testamentary Trust is to manage estate assets to provide asset protection and to maximise after tax income for beneficiaries.

The trust is managed by a trustee who has the discretion to control the distribution of both capital and income to the beneficiaries. The trustee's decision can take into account the beneficiaries' other income sources and taxation legislation.

The benefits of a testamentary trust include:

### 1. Taxation Planning

The distributions can be distributed to the beneficiaries in the most tax efficient way. It provides flexibility by directing different types of income or capital to the beneficiaries.

It is also beneficial when minor children are involved. The income allocated to children under 18 will be taxed at adult marginal taxation rates rather than the normal penalty rates applying to minors.

Under the penalty taxation regime, for children under 18 years, only the first \$416 of income is taxation free (compared with the adult tax free threshold of \$6,000). The income between \$417 and \$1,307 is taxed at 66% and income above \$1,307 is taxed at the highest marginal taxation rate.

In some situations, this can mean that income from the estate could be split between the surviving spouse and children. All would benefit from the tax free threshold of \$6,000 and the low marginal taxation rate of 15%, which applies on income between \$6,000 and \$37,000. This is a considerably better taxation position and the role of a testamentary trust should be discussed with your legal adviser.

### 2. Asset Protection

The assets of a trust are not owned personally by the beneficiaries so they do not form part of the beneficiary's estate. A creditor or person claiming against the beneficiary therefore cannot obtain the assets held in trust.

The major drawback of a testamentary trust is that the trustee has absolute discretion. So, the decision of the trustee is binding and therefore the selection of trustee is crucial.



It is important to consider the benefits of having your Will give beneficiaries the *option* to set up a Testamentary Trust. This option needs to be included in your Will.

**Disclaimer**

This Fact Sheet has been prepared for general information purposes only and not as specific advice to any particular person. We are financial planners and not qualified to give specialised legal advice in this complex area. Detailed legal advice should be sought from a qualified adviser.

We can assist you to prepare an outline of your estate plan for your legal adviser. Should you wish to seek advice in relation to Estate Planning we recommend you consult an Estate Planning Specialist.



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