e x c l u s i v i t y

kimmorley
financial management

Guide To…

Testamentary Trusts

A testamentary trust is simply a trust established through your Will. Unlike a direct gift of assets, a testamentary trust establishes a fund for the beneficiaries of the trust. In effect, the trustee holds the assets on behalf of the beneficiaries to whom distributions of income and capital can be made.

How does it work?

A testamentary trust is established through provisions in your Will. These provisions need to state that upon your death, a trust is to be established for the benefit of certain individuals (beneficiaries), and that the assets that pass into the trust should be managed on behalf of those individuals by a trustee whom you nominate.

A testamentary trust can be fully discretionary. This means that the trustee has the discretion to determine which of the beneficiaries will receive distributions from the trust, at what time they will receive them and in what amount. Alternatively, the trust can be a fixed trust. This means that the beneficiaries' entitlements in the trust will be fixed, but it also means that the flexibility to take advantage of some planning opportunities may be lost.

A trust may be established for a beneficiary after your death even if provision for a trust has not been made in your Will. However, there are legal limitations on who may receive distributions from a trust set up in this manner. In order to have full control over who will receive the benefits of your estate, provisions should be made for a testamentary trust in your Will.

Benefits of a testamentary trust

Some of the benefits of testamentary trusts include:

- Income, which is paid to a beneficiary under the age of 18, is not subject to the penalty tax rates that normally apply to unearned income of minors.
- A beneficiary's' inheritance can be protected from creditors.
- Testamentary trusts can protect the assets to be inherited by minors, especially where the parents are encountering matrimonial problems.
- A testamentary trust can continue for up to 80 years.
- Some beneficiaries may retain valuable social security entitlements if the assets of the trust are not counted under the assets test. This will only occur where the beneficiary has no control or influence over the distribution of either income or assets. The income distributed to the beneficiaries is assessed under the income test.

Taxation

Testamentary trusts can offer significant tax advantages for beneficiaries who are under 18 years of age. Normally under the current tax rules children are only allowed to receive $1,666 tax free per annum (including the low income tax offset) on unearned income. From the first $416 - $1,307 penalty tax rates apply at a rate of up to 66%. However, distributions from a testamentary trust will be treated as ordinary adult income.

If you wish to obtain further information on testamentary trusts you should contact your solicitor. If you do not have one, your financial planner can arrange an introduction to a solicitor who can assist in estate planning.

If you have any queries in relation to the content of this material, please do not hesitate to contact Kate Kimmorley the Principal Financial Adviser at Kimmorley Financial Management on (07) 5591 1725.
