FACT SHEET: TESTAMENTARY TRUST WILL

What is a Testamentary Trust Will?

This is a type of Will that creates a trust for the benefit of nominated beneficiaries on the death of the will maker. This creates the opportunity for the beneficiary to hold their inheritance in a trust structure as opposed to their inheritance being transferred to the beneficiary directly. It involves a party (the trustee) holding assets (the trust fund) for the benefit of others (the beneficiaries).

The Will document effectively operates as 'the Trust Deed' which is the governing document that contains the terms/powers/scope of the trusts created by your Will. It operates similarly to a discretionary family trust. A Testamentary Trust Will offers flexibility, protection, and is considered a particularly useful investment vehicle to hold assets due to the possibility of tax-minimisation. By contrast, a simple Will structure does not create the opportunity for these types of advantages. It should be noted that a Testamentary Trust cannot be established after your death, unless you provide for it in your Will.

What are the primary advantages of a Testamentary Trust Will?

1. Asset Protection

The trustee, not the beneficiary, is the legal owner in respect of the assets inherited by the beneficiary. The trustee holds these assets for the benefit of the will maker's intended beneficiaries. The intended beneficiaries still obtain the benefit of the trust assets (its capital and income) and can control it (by acting as the trustee) , however such beneficiaries are not personally the legal owners of such assets. The segregation of the beneficiaries' inheritance in this testamentary trust structure, can provide the following potential advantages:

- **Protection from creditors and bankruptcy:** asset protection for professionals at risk of legal action, for example beneficiaries who are engaged in business or are in a high risk profession or business owners where exposure to creditors is possible or there is a potential threat of bankruptcy. In such circumstances the inheritance/ assets of such beneficiaries are owned by the trust and not as exposed for attack by creditors and third parties;

- **Divorce and new relationships:** asset protection in circumstances of re-marriage or a de-facto relationship or by using the testamentary trust to segregate the inherited assets from the division of the matrimonial assets in a family law dispute (in circumstances of a relationship breakdown where the division of matrimonial property is required); and

- **Vulnerable beneficiaries:** protection to those vulnerable beneficiaries who are not capable of managing their own assets and inheritance, for example beneficiaries with mental disabilities, spendthrifts, or those with addictions to gambling, alcohol or drugs. In such circumstances the will maker can decide who will control the trust for the benefit of such beneficiaries.

2. Tax Advantages

The trustee is able to distribute trust income to the beneficiaries of the testamentary trust (being family members of the primary beneficiary) and in proportions that take the best advantage of those beneficiaries' personal marginal tax rates. The beneficiaries then pay the tax on distributions made to them.

Income that is distributed through a Testamentary Trust to any minor children beneficiaries has the potential for significant tax savings. This is because the income distributed to minors via a testamentary trusts is taxed at adult rates rather than significantly higher penalty rates (up to 66%) which apply to other types of trusts.

The 'tax-free threshold' being up to the sum of $18,200, can also be disbursed to minor children beneficiaries from the trust, tax free, which is also a significant advantage, This is particularly important if there are young children involved and a considerable asset base on death. A testamentary trust Will is therefore a useful vehicle from a tax perspective in regards to the maintenance and support of children/grandchildren, including providing for their education, extracurricular activities or health care whilst also having the added benefit of not adding to their parent's taxable income.