

Would you benefit from having a Will containing Testamentary Trusts?

You've worked hard to build up your wealth over your lifetime. Discussing your affairs with a lawyer who specialises in Wills and Estate Planning can ensure that your wealth is passed on to your family in the most efficient and tax effective way. Having a Will that contains a testamentary trust has many advantages, including tax benefits and asset protection.

What is a testamentary trust?

A testamentary trust is a trust created by your Will. A Will containing testamentary trusts gives your beneficiaries the option to take all or part of their inheritance in the form of a discretionary trust rather than in their personal capacity. In most cases, the Will creates a separate trust for each beneficiary, for example, each of your children will control a separate trust for their portion of inheritance.

If your beneficiary elects to take their inheritance in the form of a discretionary trust, the Will sets out the terms of the trust, and it operates in a similar way to a regular family discretionary trust. The trust is controlled by a trustee and in most cases the major beneficiary (e.g. your spouse or child) will be the trustee and/or be able to appoint and remove the trustee. The trustee has the ability to distribute capital and income earned by the inheritance to a wide range of potential beneficiaries, including members of the major beneficiary's family group.

What are the benefits of a testamentary trust?

1. Tax minimisation

Testamentary trusts have tax advantages because they enable your beneficiaries to split income amongst family members.

If your child received their inheritance as a lump sum, they would then be liable for any income earned on that inheritance at their personal marginal tax rate.

If your child elected to take their inheritance in the form of a testamentary trust, the trustee of the trust can then

split the income generated by the inheritance between the beneficiaries of the trust. The trustee can choose to distribute income to those beneficiaries with lower marginal tax rates to ensure the least tax is paid.

Testamentary trusts are especially advantageous due to the tax benefits of distributing income to minors. If distributions are made to young children from a regular family discretionary trust that income is taxed at penalty tax rates. However, where income is distributed to minors from a testamentary trust, those minor beneficiaries enjoy adult marginal tax rates. This enhances the opportunity to reduce tax on the income of the testamentary trust, especially where your beneficiaries have multiple children or grandchildren or other beneficiaries with lower taxable incomes.

2. Asset Protection

If a beneficiary takes their inheritance in their personal capacity then those assets are available to be attacked by creditors if the beneficiary is unable to pay debts and are available for distribution to a spouse in the event of a marital breakdown.

Assets owned by a testamentary trust are held by the trustee and are not owned by the beneficiary personally. This means there is a level of protection for the beneficiary in the event of bankruptcy or relationship breakdown.

Who should use a testamentary trust?

You should consider making a Will incorporating testamentary trusts if:

- you have substantial assets and your beneficiaries will receive a significant inheritance;
- any of your intended beneficiaries would benefit from the asset protection offered by a testamentary trust (e.g. if they own their own business or have a high risk profession); or
- if your intended beneficiaries would enjoy the tax benefits of testamentary trusts.

Testamentary trusts are flexible and adaptable and we are happy to tailor a trust to suit the needs of you and your family. For example, you may wish to establish a protective

trust for the benefit of a disabled or vulnerable beneficiary or you may wish to create a trust that only allows your beneficiaries to receive income while the capital is preserved.

We will be happy to discuss your estate planning goals with you and whether a Will incorporating testamentary trusts would be appropriate in your circumstances.

For more information, please contact:

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*Coming
soon.....*

**ESTATE PLANNING AND
TAX SEMINAR**

Keith Bradley and Rebecca Tetlow together with Michael Bannon and Ly Mai of Duesburys Nexia will provide an informative discussion on how you can reduce the tax payable by your estate and beneficiaries.

More details to follow however please contact us to express your interest in attending.