

TESTAMENTARY TRUSTS

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A Testamentary Trust established under a Will creates Trusts which can minimise tax and protect assets.

Testamentary Trusts can be:-

- Optional;
- Discretionary;
- Fixed; or
- A combination of all types.

Income tax benefits are available to Testamentary Trusts such as:-

- Income splitting to take advantage of tax free thresholds and lower marginal rates;
- Tax benefits to children (under 18) beneficiaries;
- No “disposal” of land for capital gains tax purposes when an asset passes via a Will to the trustee of a Testamentary Trust. No capital gains tax when assets are transferred from the trustee of a Testamentary Trust to a beneficiary;
- Tax deferral by delaying the sale of a capital asset until the most opportune time;
- If disposal of a capital asset triggers capital gains tax then the trustee can chose to distribute the capital gain to a beneficiary with the lowest income to thereby reduce the capital gains tax;

Testamentary Trusts also offer:-

- Asset protection to beneficiaries in the event of legal action or bankruptcy;
- Protection of assets from Family Law claims (although the trust assets may be taken into account in Family Court proceedings);
- Preservation of pension entitlements;

Some disadvantages:-

- Account keeping and associated costs;
- The need to appoint a trustee (or trustees) who will act honestly, ethically and in the best interests of all beneficiaries;
- The financial affairs of beneficiaries are linked during the term of the trust and may give rise to family disputes;

Testamentary Trusts are not for everyone but they are worth considering when reviewing your Will.