

## Estate Planning Fact Sheet

# FAQ-s – Testamentary Trusts

**The answers to these questions depend largely on the specifics of the terms of your will. It will be important for personal and specific advice to be obtained at the time of making the decision about the trusts to take into account the personal circumstances of the beneficiaries, and any tax and other laws in operation at the relevant time.**

1. When does the trust come into existence?

Not until after the death of the willmaker.

2. When does the executor and beneficiary decide about using the trust?

After the date of death of the willmaker, and before any assets are transferred out of the estate.

3. How much does it cost to operate the trust?

A flexible testamentary trust operates much like a family trust so there will be similar accounting costs involved. These costs are deferred until the trust operates after death.

4. How do I quantify the potential tax savings?

For a broad calculator to estimate the possible income tax concessions, please contact us. For the savings on stamp duty or capital gains tax, you will need specific advice.

5. What factors will be relevant to determining whether a trust should be used?

Trusts can provide particular benefits for:

- people in at risk professions;
- beneficiaries who are vulnerable;
- people who want to set aside assets for their children or other descendants;
- guarding against risks of remarriage by surviving spouse;
- non-resident beneficiaries; and
- people who want to set aside part of their inheritance for charitable purposes.

6. What changes can be made to the terms of the trust?

The terms of the will needs to be checked. A Moores will has quite broad discretion about the terms of the trust that can be changed, but you cannot expand the class of beneficiaries.

7. Are there other tax and duty considerations?

Yes. They can include:

- loss of main residence exemptions for capital gains tax and land tax – specific types of trusts are required for these to continue;
- tax on super death benefits paid into the wrong type of trust;
- assets acquired after the date of death within the trust may not qualify for the capital gains tax or duty concessions; and
- if the trust has to make a family trust election, this could have other tax implications and may be significant in the case of a second marriage.

○ Under the current position of the Tax Office, there is capital gains tax rollover from the deceased to the executor to a testamentary trust and to a beneficiary of a testamentary trust.

Each State has different stamp duty laws. Most States have an exemption for assets passing under the terms of a will. The Victorian State Revenue office has confirmed in recent times that they accept the duty concession exists for transfers to testamentary trustees. In respect of later transfers out of the trust, then the position differs from State to State. There is an exemption from trustee to beneficiary in Victoria (subject to certain conditions).

8. Do all the assets have to go into the trust?

Not under a Moores will.

9. Can I put other assets apart from the inheritance into a testamentary trust?

Yes, but it is usually not a good idea. The risk is that the assets that qualify for the income tax concession (ie – those from the estate) will intermingle with the other assets and this might make it harder to claim the income tax concession.

10. Where do I get more advice?

The decision about the use and terms of a testamentary trust involves a consideration of your financial needs and legal advice. You should consider seeking advice from a licenced financial advisor, accountant and lawyer who are appropriately qualified to consider these aspects of your particular circumstances.