

# NEWSLETTER



ASHBY ROMA & CO  
CHARTERED ACCOUNTANTS • MANAGEMENT CONSULTANTS

## **A STRATEGY TO ENHANCE THE EFFECTIVENESS OF YOUR WILL**

For many people, the two to three page Will is no longer the most effective Will and should be replaced by a modern estate planning Will.

By including a Testamentary Discretionary Trust (Will Trust) in your Will, inheritance assets are not received personally from the Will but pass to the Will Trust for the benefit of immediate and future beneficiaries.

The key thrust of Estate planning is to protect your assets, minimise tax and ensure your assets pass to the right people in the most tax effective way. A Testamentary Trust(s) can help to achieve these objectives.

### ***Why then should you consider including a Testamentary Trust (i.e. a Will Trust) in your Will?***

- Inheritance assets passed under a Will Trust are protected from claims by creditors or bankruptcy against a beneficiary because they are held by the Testamentary Trust on the death of the Will maker and do not pass directly to the Will beneficiary. Yet the beneficiary can still control the Will Trust as Trustee and Appointer.
- The income from the inheritance can be distributed widely to the spouse and dependents of the main beneficiary via the Will Trust with substantial tax savings compared to distributing to the beneficiary directly who may already be on a high rate of tax.
- Intergenerational Will Trusts can last for up to 80 years or more so provide wealth protection and tax savings for beneficiaries for many years. Asset protection is particularly relevant where the beneficiary or their offspring are in occupations, subject to negligence actions such as doctors, lawyers, accountants and business administrators.
- Will Trusts can be flexible and provide the Will beneficiaries with choice as to whether the inheritance is taken by the original beneficiary in whole or part, immediately or later and potentially offering the same flexibility to later beneficiaries.
- Infant beneficiaries of Will Trusts also receive favoured tax treatment because they are taxed at normal rates instead of being subject to punitive rates of tax (45%) when they receive income greater than \$1667. These rates apply until they are 18 years old unless the income is from personal exertion (wages). This benefit can pass to successive generations of infants over the life of the Will Trust.

- Will Trusts can also provide a way to clearly delineate inheritance assets in the event of any future matrimonial disputes involving Will beneficiaries e.g. surviving spouse remarries, Will beneficiary divorces. These inherited assets are likely to be treated differently from personal assets under Family Law.
- Will Trusts enable effective streaming of different classes of income between different beneficiaries, which may have advantages in some circumstances, e.g. should a beneficiary have unused capital losses.
- A contemporary Will can also assist in dealing with distributions from superannuation on death, potentially minimising the 16.5% or 31.5% tax payable on some distributions of superannuation benefits.

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**15<sup>th</sup> September 2008**