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TESTAMENTARY TRUSTS AND TAX

Matthew Wallis, Senior Associate, Litigation and Wills and Estate Planning, and Philip Simmonite, Solicitor, Commercial Law and Wills & Estate Planning

A Testamentary Trust is a trust contained in a Will.

Major advantages of Testamentary Trusts include taxation benefits:

- **Capital Gains Tax (CGT)**

  Death is not a CGT event. Therefore the transfer of an asset – such as an investment Property – from a deceased person to a beneficiary by Will does not attract CGT. The beneficiary may pay CGT when they sell the Property later.

  If the deceased's Will contains a Testamentary Trust, the beneficiary may only *control* the Property on behalf of themselves and the other beneficiaries of the Trust. There may be hundreds of other beneficiaries.

  Therefore the main beneficiary can allocate any capital gains in the most tax-effective way. This is usually based on advice from their accountant.

- **Income Tax**

  Income earned on the assets of a Testamentary Trust (such as rent from that Property) can be distributed to any beneficiaries named in the Will. Children under 18 are treated as adults for tax purposes under a Testamentary Trust. Therefore a beneficiary might distribute rent from a Property to their children (tax-free up to $6,000 for each child). Your accountant will inform you of the most tax-effective way to distribute the income of the trust each year.

There are many other benefits to Testamentary Trusts, such as asset protection. A lawyer can tell you whether your family can benefit from a Testamentary Trust.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to this matter or other legal matters please contact our office at reception@hhg.com.au.

www.hhg.com.au
reception@hhg.com.au

ALBANY 49 Peels Place, Albany WA 6330 PO Box 5084, Albany WA 6332 DX 60806 T (08) 9841 2322 F (08) 9841 2489
PERTH Ground Floor, 72 Kings Park Road, West Perth WA 6005 PO Box 1363, West Perth WA 6872 DX 60706 T (08) 9322 1966 F (08) 9322 2727
DENMARK (All mail to Albany office) 37 Strickland Street, Denmark WA 6333 T (08) 9848 2848 F (08) 9841 2489
MT BARKER (All mail to Albany office) Suite 2/12 Langton Road, Mt Barker WA 6324 T (08) 9851 1113 F (08) 9841 2489