

Estate Planning: Important points to consider



Estate Planning is a critical part of the financial planning process and, as such, we strongly recommend to all of our clients that they revisit their Wills, to ensure that it meets their current wishes.

As a general rule of thumb we recommend that clients Wills be reviewed at least annually; so that adjustments to your personal circumstances can be included. WHK Prescott are happy to provide a specific Estate Planning service to clients covering issues such as the appointment of Executors, Trustees, and the implications of Testamentary Trusts.

Based on individual circumstances, clients need to consider such issues as:-

- Who will be your Executors?
- What happens to your investments? What are the tax implications?
- What happens to your Superannuation Benefits? What are the tax implications?
- What happens to jointly held assets?

It is important for clients to have up-to-date Wills, as it will ensure that assets are utilised and distributed in the best possible way.

Clients therefore need to have a clear understanding of the following parties and their duties; -

What is an Executor?

The role of the executor is to call in the assets, pay off debts and distribute the estate assets to the beneficiaries. An Executor must be reliable, honest and capable of dealing with professional advisers. Executors must be aged 18 years or older. You may nominate more than one executor who could also be a beneficiary.

What is a Trustee?

If a Trust is established under a Will, there must be a Trustee. It is usual to appoint the same person as the Executor. The important difference in this role is that a Trustee must administer the trust assets on an ongoing basis. The Trustee would need to manage assets or investments and pay the proceeds of income to beneficiaries. It could therefore extend over a long period, so the Trustee should be carefully considered.

What is a Beneficiary?

A beneficiary is the person or persons whom you would like to receive all or part of your estate when you die. If one of your beneficiaries pre-deceases you, other beneficiaries may also receive their entitlement.

What can be included in a Will?

Most people are under the impression that all of their assets are dealt with or included in the Will, but they may not be. For example, assets owned under joint tenancy are not included in your Will, as ownership will pass automatically to the other joint tenant.

A further asset, which may not be included, is Superannuation or Pension Fund accounts. The Trustees of the Fund, in trust, hold these accounts for the member. As such, they need not form part of your estate.

Superannuation and Pension Funds

As mentioned above, assets held in Superannuation and Pension Funds do not automatically form part of your estate. Clients need to ensure that they nominate an appropriate beneficiary to any Superannuation or Pension accounts they have.

A death benefit payable to a dependent person will attract no tax if the benefit is below the deceased's Pension Reasonable Benefit Limit (RBL) – up until July 1st 2007.

Post July 2007, death benefits are proposed to be:-

- Tax free to dependants;
- Income tax free if pensioner or reversionary pensioner is over age 60;
- Pre-1983 payments to non-dependants will be tax free (further detail is expected soon when Parliament sits in August).

A dependent is defined as:

- A spouse or former spouse of the deceased;
- A child under the age of 18; and
- Any person financially dependent on the deceased at the time of death.

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Currently, payments to non-dependents will be subject to lump sum tax regardless of the age of the recipient and the tax-free threshold for 2006/2007 of \$135,590 will not apply.

Testamentary Trust

A Testamentary Trust is a trust created under a person's Will – which is activated upon the death of that person. Instead of assets passing directly from one person to another, the assets are passed to the estate, and then become assets of the Testamentary Trust.

The benefits of a Testamentary Trust for clients may be as follows:-

- It would provide a structure in which to hold assets, and from which to distribute income to any minor beneficiaries (ie: children, grandchildren, nieces or nephews).
- Assets held in the trust may be protected from creditors and predators, as the trust, legally, owns the assets and distributes income to the beneficiaries as directed.

Power of Attorney

A Power of Attorney is a legal document in which you appoint another person to take care of your financial, legal and/or medical decisions, on your behalf.

There are three types of Powers of Attorney:

1. General

This is usually used for a specific purpose or a fixed period of time – for example if you were going overseas for some time.

It is only valid while you are competent.

2. Enduring

This allows a person to manage all of your financial affairs. It does not cease if you become incapable or incompetent. It will cease when you die and may be revoked at any time.

3. Enduring (Medical)

As the name suggests, this has the same features as (2) above, but relates to managing a person's medical affairs. We recommend you consider establishing a Power of Attorney (Medical) to ensure that should you become incapacitated or unable to manage your affairs for some reason, your personal medical affairs can still be managed to your benefit by someone you trust.

Summary:

Estate Planning needs are specific to individual circumstances. It is not unusual for many of our clients to have made Wills long ago and to have neglected to review and amend this important aspect of their overall financial planning strategy.

WHK Prescott have been assisting clients and their families in developing and implementing tailored solutions over many years, and have found that clients have appreciated and valued the process and the outcomes.

Enhancements to the Small Business CGT Concessions & STS

On Budget night 9th May 2006 the Treasurer announced big improvements and significant benefits in the operation of the Simplified Tax System (STS) and the Small Business Capital Gains Tax (CGT) concessions.

These amendments will apply from 1st July 2006.

To be eligible for the STS the average turnover of the business must now be under \$2 million (previously \$1 million). Importantly, another test that had to be satisfied, a \$3 million depreciating asset test, is being scrapped.

New measures ensure that taxpayers that elect in to the STS will automatically qualify for the CGT small business concessions without having to satisfy the maximum net asset value test.

Those businesses that are not in STS will be able to access the CGT small business concessions provided their net asset value does not exceed \$6 million.

Previously the limit was \$5 million.

The current 50% controlling individual test will be replaced with 20% significant individual test.

This allows up to 5 individuals in a company or a trust structure to be eligible for the concessions.

To find out how these changes can benefit you please contact your business advisor today.



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