

Update: 24 September 2012 Testamentary Trusts – even more tax effective



Fleming Muntz
Solicitors



Summary

Creating a testamentary trust in a will has many benefits, one of which is the taxation treatment of minor beneficiaries.

Recent changes to the tax free income threshold make the use of a testamentary trust in a will even more attractive.

What has changed?

Section 102AG of the Income Tax Assessment Act 1936 provides that where minor children receive income from a testamentary trust, they are taxed on that income as adults, and enjoy an adult's tax free threshold.

From 1 July 2012, the tax free threshold increased from \$6,000.00 to \$18,200.00, so the potential taxation savings where income is received by a minor from a testamentary trust are now even more significant.

By way of illustration

Assume a husband dies leaving a dependant wife (who does not earn income from any other source) and three infant children. His estate is valued at \$1,000,000.00. If this were invested at (say) 8%, it would generate income of \$80,000.00 per annum.

If the husband leaves the whole of his estate to his wife, the taxation that she would pay on the income of \$80,000.00 would be \$17,547.00.

If the husband's will created a testamentary trust controlled by the wife, and providing for the wife and three children to be beneficiaries, the family's taxation position would be very different:

Beneficiary	Income	Tax
Wife	\$20,000.00	\$ Nil
Child 1	\$20,000.00	\$ Nil
Child 2	\$20,000.00	\$ Nil
Child 3	\$20,000.00	\$ Nil
Total		\$ Nil

(Note: these tax calculations are based on rates effective as at 1 July 2012. The Medicare Levy has not been considered for these purposes, and although the income amounts in the example exceed the tax free threshold, no tax would apply as a result of the low income tax offset.)

How can Fleming Muntz help?

Fleming Muntz has experienced estate planning lawyers who are skilled in the provision of advice regarding testamentary trusts, and would be pleased to assist you or your clients in making a will that includes a testamentary trust.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au.

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