



GEOFFREY W. WHITE
BARRISTER & SOLICITOR
ESTATE & CHARITY LAW

Planning *Points*

Testamentary Trusts

"Reduce your beneficiary's marginal tax rate."

Why should I consider this strategy?

Your beneficiaries will be able to invest their inheritance and pay as little as 22% income tax on the earnings no matter what their personal tax rate is (sometimes they can avoid income tax entirely).

How does it work?

Most Wills are designed to transfer an inheritance directly to a beneficiary. When the inheritance is invested by the beneficiary, any earned income is added on top of the beneficiary's taxable income at high tax rates. Instead, your Will can put the inheritance into a trust for the beneficiary. This trust is treated as a separate taxpayer. The income from the inheritance would be the only income on the trust's tax return and therefore would be taxed at the low 22% tax rate on its first \$33,000 of income. This use of two tax returns is often referred to as "splitting income."

What is a trust?

A trust is created when one person (called a settlor) gives property to another person (called a trustee) for them to hold and use for the benefit of another person (called a beneficiary).

What is a testamentary trust?

A "testamentary trust" is a trust that was created by the settlor upon the settlor's death. It is usually created by the settlor's Will. In this case, you

would be the Settlor and the trust would be created by your Will.

Doesn't a trust "tie" up the inheritance?

No. The trust is discretionary. This means that the full amount of the trust can be used for the beneficiary at any time. (Of course, as the settlor, you can add restrictions if you wish.) You may design the trust so that beneficiary can control the trust or you may choose to appoint someone else to manage it.

Who can have a trust?

Anyone. However, most clients use the trust to allow their surviving spouse to split income. After the spouse's death, the Will then creates a trust for each of their children. You can have more than one trust.

How can my beneficiary pay no tax?

A trust can claim its earned income on its own tax return and pay tax at the low rate. It can also distribute the income to a beneficiary. The income is then taxed on the beneficiary's return. If the beneficiary has no other income (i.e. a minor) then the beneficiary's personal tax credit shelters about \$8,000 of earnings per year before they pay any tax. A trust that earned \$16,000 but has two minor beneficiaries could pay no tax.

How much can tax can my beneficiary save?

A simple income-splitting testamentary trust could save a top tax bracket beneficiary up to \$13,000 per year for

the rest of their lives. If the beneficiaries include minors or multiple trusts the savings could be even larger.

Bonus: Asset Protection

The testamentary trust can also be designed to protect the inheritance from claims by creditors. This includes claims by separating spouses. The creditors cannot seize the trust assets because the trust is separate from the beneficiary and not legally owned by them.

Who should use the testamentary trust strategy?

You -- if you will be leaving any person an inheritance of more than \$300,000; or, if you are concerned about protecting the inheritances from creditors.

Why Bother?

A well-planned testamentary trust can save your beneficiaries thousands of dollars of income tax each year for the rest of their lives. It can also protect their inheritance from creditor or family law claims.

We can help

Our depth of experience and unique heritage offices create a comfortable environment for exploring your goals and needs. Together, we will fine-tune a strategy that gives you a valuable return on your investment and, most importantly, peace of mind.

We look forward to meeting you.