Chat Legal Pty Ltd
ABN 64 621 391 553
letschat@chatlegal.com.au
GPO Box 989, Brisbane, QLD 4001
Level 16, 97 Creek Street, Brisbane, QLD 4000
https://chatlegal.com.au

Let’s chat

Testamentary trusts: Restructuring to utilise such structures – April 2022

With:
Darius Hii – Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal

Information provided is general in nature; precise application depends on specific circumstances

Chat Legal Pty Ltd

Let's have a chat

Why use a testamentary trust?

- Provides you with flexibility and certainty of who looks after a recipient's 'inheritance'
- Tax planning opportunities recipients with minor children
- Provides protection against bankruptcy (if structured properly)
- Provides protection against family Court proceedings (if structured properly)

What goes into the testamentary trust?

- Personal assets?
- Assets held jointly?
  - As joint tenants?
  - As tenants in common?
- Assets held in superannuation?
- Life insurance?
- Assets held in other structures?
  - Trusts?
  - Companies?

Options to maximise assets forming part of estate

Chat Legal Pty Ltd

Let's have a chat

- Joint tenants to tenants in common
- Superannuation nominations in favour of legal personal representative
- Amending life insurance proceeds to legal personal representative
- Reviewing loan accounts
- Other options incurring adverse tax/stamp duty implications:
  - Transferring assets into personal name

Joint tenants to tenants in common

Chat Legal Pty Ltd

Let's have a chat

- Must be held as tenants in common 50/50 for stamp duty and capital gains tax exemption
- Example:
  - Investment property held as joint tenants by husband and wife
  - Husband is a Doctor and would prefer not to have wife's share of IP pass to him
  - IP generating $40,000 income ($20,000 for 50% interest) and he would pay an additional $18,000 tax on such income ($9,000 tax for 50% interest)
  - Husband has two minor children
  - Preferred for IP to pass into testamentary trust for 50% income to flow to two minor children ($10,000 each, and net $20,000 as no tax payable on income received by minor children)
  - Benefits in severing ownership from joint tenants to tenants in common

Superannuation nominations

- Nominations in favour of legal personal representative allows superannuation to be paid into estate (perhaps for distribution into testamentary trust)
- Note tax consequences should superannuation benefits be paid to non-tax dependents (i.e. children over 18)
- Note delayed payout if paying superannuation benefits through estate as opposed to directly to spouse/minor child
- Consider if worth having superannuation paid into estate to pay any debt over main residence/investment property (to maximise value of estate)

Chat Legal Pty Ltd

Let's have a chat

Life insurance nominations

- Often forgotten assets that increases the value of a person's estate
- If no significant assets or debt but holds a life insurance policy in excess of $500,000 – benefits may still flow into a testamentary trust
- Again, by directing into estate, there will be delay in the payout to intended beneficiaries (as estate administration process required)
- Steps may be required to update nominations

Loan accounts

- Although assets in trusts and companies do not form part of an estate asset, amounts owed to the deceased may be considered an asset of the estate
- Common for persons to loan money into a trust or company structure which although reduces cash in hand for the individual, creates a debt that must be repaid by the trust or company
- Where such loans are in existence, they can be called upon (which may require the trust or company to liquidate assets) to be repaid to the estate increasing the amount held by the estate
- Note complications that arise where different persons control the estate compared to the trust or company

Transferring assets*

- Only recommended if tax and stamp duty implications are manageable
  - Note special stamp duty and capital gains tax exemptions may apply if transferring property:
    - 100% Person A to:
    - 50% Person A and 50% Person A spouse (if used as home)
  - Otherwise, note shares in company and units in a unit trust, if held by an individual, forms part of an estate

Contact details

Darius Hii

Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal Pty Ltd

darius@chatlegal.com.au

0403923374