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Asset and Estate Planning

Asset Planning is the process of using legal and financial structures to provide people with flexible and effective means of saving and minimising tax and protecting and preserving assets from possible claims and risks. Effective asset planning ensures that both estate planning and asset protection goals are dealt with in a comprehensive and tax efficient manner. Whether you are a home owner, investor, business owner, retired person or starting a family, asset and estate planning affects you.

There are a number of asset planning methods and structures that can be utilised as discussed below.

FAMILY TRUSTS

A trust is a formal obligation on nominated persons, called Trustees, to hold and administer assets in accordance with the purposes of a Trust Deed, for the ultimate benefit of the nominated beneficiaries. In the case of a family trust, the assets are usually held by the trustees for the benefit of you and your immediate or extended family. Beneficiaries may also include charities and people who are not family members, if so wished.

Trusts have their own ownership and tax status. Assets must be transferred to a trust at market value, which is determined by valuation. Often this transfer will result in a debt back to the Settlor/s who transferred the assets, which can then be gifted off through an annual forgiveness of debt gifting programme.

Potential benefits of Trusts

1. Creditor Protection

Business owners run a considerable risk that their family assets could be vulnerable to attack from creditors and as a result of non-compliance issues that may arise such as under health and safety laws. There can be benefit in protecting such assets from the reach of potential creditors through the trust structure.

2. Relationship Property Claims

People entering into a de facto relationship, marriage or civil union who have significant personal assets should consider whether a trust would be best to protect their assets should the partners separate or one of them die.

For those entering into a second or subsequent relationship with children from existing or previous partnerships, a trust may be a suitable structure in order to preserve these children's interests.

3. Benefits for Children and Grandchildren

A trust can have a life span of up to 80 years, and therefore can provide asset protection benefits not only for the individuals, but also for their children and grandchildren.

A trust can help to ensure assets are safeguarded for children with disabilities and trustees may be able to make available to beneficiaries income and/or capital of the trust to meet beneficiaries legitimate cash requirements, such as educational needs.

Upon death you may leave your estate to your family trust and therefore ensure to a certain degree that inheritances, that would otherwise be received by your children individually, are preserved within the trust structure. It is also possible that your trust be re-settled into specific trusts for your children, providing even greater flexibility.

4. Rest Home Subsidy Protection

WINZ will only allow individuals to have a very modest level of assets before an individual will qualify for a rest home subsidy. Other assets may need to be sold to realise funds for the rest home fees. By transferring assets to a trust early enough, it may be possible to qualify for rest home subsidy in circumstances where the individual might not otherwise qualify.

4. Minimising tax liability

Establishing a trust solely for the benefit of avoiding tax is unlikely to be effective and tax saving should be seen as an incidental benefit rather than the sole purpose of the trust. However, there can be benefits in the lower tax rate applying to trusts as well as if the trust structure allows for flexibility of making a distinction between trustee's income and beneficiaries' income.

WILLS

Your Will is an active part of effective estate and asset planning. If you have a trust, your Will should include provisions relating to the forgiveness of any debt that still may be owed to you personally by the Trust and may include a provision appointing trustees in your place.

Your Will should also consider the following matters:

- (a) Suitable trustees;
- (b) Specific gifts of personal items and cash legacies;
- (c) Appointment of guardian/s for infant children;
- (d) The beneficiaries of your estate;
- (d) Instructions regarding organ donation, funeral arrangements, cremation or burial.

ENDURING POWERS OF ATTORNEY

Enduring Powers of Attorney allow you to appoint someone to look after your financial affairs and your personal care and welfare if you are unable to do so yourself, through mental incapacity.

An Enduring Power of Attorney for Property can come into effect immediately. Alternatively, it can come into effect only if the donor becomes mentally incapable and in the meantime the donor (ie you) can continue to conduct your own affairs. Property is used in a wide sense to cover all your personal assets including any land and buildings as well as bank accounts, vehicles and any other form of personal property.

If you are a trustee, you should also complete a Deed of Delegation and Power of Attorney in relation to your trusteeship in the trust. This enables the appointee to sign documents on your behalf if you are overseas or incapacitated as the property Enduring Power of Attorney is unable to be used in trustee situations.

An Enduring Power of Attorney as to Personal Care and Welfare comes into effect only if you become mentally incapable. The attorney can ensure your medical, dental and residential needs are taken care of.

Norris Ward McKinnon is experienced in advising clients on asset and estate planning. This article is not a substitute for detailed legal advice and if you have a specific query in respect of asset and estate planning, please contact Norris Ward McKinnon (07) 834-6000 or by email to: lawyers@nwm.co.nz.

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