

## Estate Planning – Looking after the future now ....

By Scott Hutton, Associate Director, Bentleys

Scott Hutton from Bentleys Chartered Accountants offers advice to farming families regarding estate planning.

Concerns regarding sustainability in farming, particularly in light of ongoing drought, and the impact of an uncertain financial climate have weighed on the minds of many farming families and businesses for many years.

It's little wonder therefore that many farmers are now grappling with the "big questions" about the future of their enterprise – and what predicaments it will present for younger generations.

The virtues of estate planning are well accepted within farming communities, however many individuals are not motivated to deal with their own planning until a major event or milestone prompts them. Understanding the importance of this process – and then taking the steps now that will ensure the financial security of your family in the future, is vital.

The main benefits of estate planning are peace of mind, wealth maximisation and tax minimisation. All three benefits are equally important, for very different reasons – and should set the agenda for the focus in your estate planning.

### *Peace of mind:*

Family disputes over estates, fear of financial vulnerability, and bleak financial futures are issues that are crippling, and often devastating, for any family that is coping with the loss of a family member.

Through well developed estate planning, you can reduce the risk of family members being exposed to challenging circumstances at an already difficult time. Developing a plan now will allow for critical financial issues to be addressed ahead of time, and will present a clear picture of your intentions and wishes for your family and business.

### *Wealth maximisation:*

Appropriate insurance cover (both business and personal) is one of the underlying foundations to ensure that the value of your business is protected. Through an estate planning process, you should also review your superannuation strategy and look at the structures within your business to ensure they are consistent with your overall wealth strategy.

### *Tax minimisation:*

Just as you dedicate time and consideration to the structuring of your business affairs to reduce the overall tax burden, you should research your options as to how to circumvent taxation woes for your family at the time of your death.

All taxation options should be considered in regard to your personal circumstances. However, the development of a Testamentary Trust is a well-used and highly effective method that provides many benefits.

## Testamentary Trusts

Set up through an individual's will, a testamentary trust retains the assets from a deceased estate for the benefit of the beneficiaries, as opposed to the assets being distributed. There is no requirement to transfer all assets into a testamentary trust. Personal assets can also be bequeathed directly if no benefit is obtained from transferring to the trust.

A simple form of a testamentary trust is a discretionary trust that operates much the same as a family trust, whereby trustees are able to distribute both income and capital to various classes of beneficiaries.

The key difference for a testamentary trust is that they only operate following the death of the will maker. The terms of the trust are included in the will so the maker can stipulate who will oversee or manage the trust, who the beneficiaries will and will not be, what terms or rules (sometimes unique) are included, and what assets are to be transferred into the trust.

There are many associated tax benefits for testamentary trusts, and they provide clarity on your expectations and aspirations for your estate.

### Benefit 1: Minor Beneficiaries

Minors receiving excepted trust income (under 18) can be taxed at 45% for income which is deemed not earned. Taking into account the low income rebate this means the limits of tax free income for children are \$1,667 in 2007/08 and \$2,667 in 2008/09.

However minors receiving excepted trust income from testamentary trusts are taxed at adult rates. This means taking into account the low income rebate, the limits of tax free income are increased to \$11,000 in 2007/08 and \$14,000 in 2008/09. As any income in excess of these levels will be taxed at the progressive tax rates, savings can be substantial in comparison.

### Benefit 2: Streaming of Distributions

Similar to normal family trusts, income received from testamentary trust retains its' character and as such income can be distributed to various taxpayers in order to reduce the overall tax debt.

### Benefit 3: Protection from Misuse of Assets

Given the control of a testamentary trust rests with the trustee and ultimately the appointer, measures can be taken to prevent assets being wasted. This is particularly advantageous if there are concerns regarding the capability and/or vulnerability of beneficiaries who may struggle with the challenges of financial responsibility.

### Benefit 4: Asset Protection

Creditor claims are more difficult against a beneficiary of a testamentary trust as the beneficiary does not personally own those assets. Similarly the assets can be protected from family court actions in some cases.

Estate planning should be done in consultation with your solicitor and accountant. The process can be confronting as it will address issues that may, until now, have been unspoken. However, opening the discussions in a planning context now will be far less detrimental than adding more burden and hardship to a family dealing with the loss of a loved one.



Your professional advisors will work with you to identify the best option for your situation - testamentary trust or otherwise, and assist you with the process.

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