



Estate Proceeds Trusts

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An Estate Proceeds Trust is a post death Estate preservation strategy to enable income splitting with minor children where the deceased failed to plan and utilise a Testamentary Trust within their Will.

An Estate Proceeds Trust is often used where one parent dies leaving the Estate directly to the surviving parent who has young children. The Estate then belongs to the surviving parent who will be taxed on the earnings at their marginal tax rate.

The alternative is for the surviving parent to establish an Estate Proceeds Trust post mortem that allows the income generated by the Trust to be distributed to the children, who are then taxed at adult rates of tax rather than children penalty rates of tax.

What follows is an overview of an Estate Proceeds Trust that can be used by a surviving spouse to income split death benefits from an Estate with children.

Features of an Estate Proceeds Trust

The features of an Estate Proceeds Trust are as follows:

Tax benefit limited to children to part of the income

The favourable income tax treatment only applies to income from that part of the deceased's Estate that the children would have received had their parent died intestate - that is, without a Will. Therefore, the whole of the

deceased parent's Estate may not qualify for the favourable tax treatment.

Capital requirement must pass to children

The capital of an Estate-Proceeds Trust must pass to the children when the Trust comes to an end. Therefore the surviving parent does not have the full benefit of the funds during their lifetime. However, this can be an effective strategy to prevent a challenge by a future partner of the survivor in the event of a relationship breakdown or death of the survivor, by isolating minor children's entitlement to both income and capital.

Funding the Trust

The Estate Proceeds Trust must be created, with held Assets within the Estate of the deceased. If the deceased held all Assets jointly with another person, these Assets pass automatically by survivorship to the surviving tenant and effectively bypass the deceased's Estate. Similarly, Assets held in a family discretionary Trust are not part of the Estate of the deceased. In addition, a person with asset protection concerns is not likely to have personally owned Assets of a significant value, if at all. Superannuation or life insurance paid to the Estate of the deceased (rather than directly to the spouse or children) could fund an Estate Proceeds Trust.



Three Year Time Limit

Proceeds of an Estate must be transferred within three years of death into an Estate Proceeds Trust.

If the transfer does not take place within three years of death the opportunity to utilise the adult marginal rate between minors will be lost. Any attempted distribution of income to the minor children after 3 years of death will be taxed to the recipient minor penalty rate of tax.

For information in respect to the next ili workshop covering Family Provision Planning or instructions to Establish an Estate Proceeds Trust visit the ili website www.ili.com.au.

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