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When to put your trust in LDT

IN recent years, there has been a strong resurgence in rural and agribusiness participants utilising comprehensive estate planning strategies.

This resurgence is primarily due to fundamental changes in the Australian family law, bankruptcy and taxation regimes.

At the forefront of these strategies has been the testamentary trust structure, due to the significant levels of asset protection provided and the flexibilities it offers from a tax planning perspective.

A testamentary trust is a trust established via a person's will. The structure comes into existence only on death. The trustees of the trust have ultimate control of the structure, and therefore have the ability to choose which beneficiaries take what share of the trust income for any particular year.

They also have discretion as to the distribution of capital from the trust, which can be limited to set amounts and for a limited range of beneficiaries, as determined by the will-maker.

Testamentary trusts can be structured so as to ensure that only your descendants are able to receive benefits from the trust, thereby helping to protect assets for the beneficiaries in the event of marriage (or de facto relationship) breakdowns. These types of trusts are often referred to as a 'lineal descendant trust', or 'LDT'.

In contrast, if an estate is left to an individual absolutely (that is, not via a LDT) then it is their personal property and can be jeopardised by their financial position at the time of the will-maker's death, or at any time in the future. Should a person suffer matrimonial or

COMMENT

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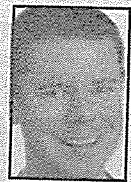

financial misfortune, the LDT provides a facility whereby the inheritance can be protected.

Traditionally, those involved in rural or agribusiness enterprises who were aware of the LDT structure ensured that all core family assets, particularly farming properties, passed to a LDT.

Given the increasing rate of relationship breakdowns and business litigation, many people on the land, as well as their city counterparts, are now looking at ways to ensure that all wealth, including share portfolios and superannuation savings, are distributed to an appropriately structured LDT.

In Australia, death is not viewed as a tax planning strategy. It is, therefore, possible to draft a LDT so as to ensure that any income allocated to minor children is not subject to the same tax rates as if it were a trust established during a person's lifetime.

Under a family trust created during a person's life, the first \$1200 (approximately) distributed to a child is tax-free, but then any further income is taxed at the highest rate, which in some circumstances can be as much as 66 percent. In comparison, income derived by infant children via a LDT is assessed at the normal, individual rates (the first \$6000 tax-free and the balance taxed at normal adult rates), which for most families will mean significant tax planning opportunities.

Appropriately structured LDT's can also achieve numerous other objectives including:

- Protecting assets from creditors, which can be a particularly important advantage where potential beneficiaries are actively involved in primary production or take on company directorships.
- Facilitating 'generation skipping' by ensuring that some of the family wealth passes to a will maker's grandchildren, as opposed to their children;
- Providing a structure within which it is possible to disproportionately provide for particular beneficiaries, for example, the trustees could have discretion to increase entitlements for those beneficiaries with special needs and decrease distributions to spendthrift or at-risk beneficiaries.
- The ability to structure multiple LDT's under a single will, with each trust tailored to achieve particular objectives in relation to the main beneficiaries of that trust.

Arguably, the greatest disadvantage to the LDT structure is the fact that it is generally unavailable unless specifically provided for in a person's will. Furthermore, the inclusion of a LDT in a person's will in isolation is unlikely to, of itself, be of any significant benefit. It is, therefore, vital that if a person is considering implementing testamentary trusts generally, and in particular a LDT, they do so as part of a comprehensive estate planning review.

● **Matthew Burgess and Rodney Bell are partners in McCullough Robertson Lawyers Agribusiness Group.**

Last chance for Doha

By **MICHAEL THOMSON**

HOPES are slim that today's meeting of the Cairns Group of free-trading nations can find a way to revive the stalled World Trade Organisation negotiations.

Farm leaders from the 18-member nations, of which Australia is the chair, are desperate for the group to find a way to revive talks, in a way that will provide ambitious cuts in agricultural tariffs and subsidies.

Chair of the Cairns Group Farm Leaders and National Farmers Federation president David Crombie said the window to conclude the WTO negotiations was still slightly ajar, but the Cairns meeting today was the last chance to kickstart the talks.

"Cairns Group Ministers this week have an obligation to the farmers they represent to focus their discussions on concrete ways to re-energise the Doha negotiations," Mr Crombie said.

But the chances of finding a middle ground offer to bring the European Union and the United States back to the table have been dashed by the refusal of EU Trade Secretary Peter Mandelson to attend the meeting as a guest.

This is despite US Trade Representative Susan Schwab and WTO director general Pascal Lamy both giving the meeting a broader importance by accepting their invitations.

And Mr Mandelson has also pre-emptively rejected one suggested solution to the negotiating impasse that was to be discussed by the Cairns Group: that of putting a middle ground offer of a five percent increase in EU tariff cuts in return for a \$5 billion increase in US ...

exports from Cairns Gr... nations would increase by \$U... billion in 2016 if market barri... were removed by a W... agreement.

ABARE also estimated t... such an agreement would deli... global benefits of an ex... \$US47b in agricultural trade.

"The big winners would be t... developing countries in t... group, whose rural poor would... last have a chance to get ahea... Mr Vaile said.

Mr Vaile said the EU and ... had to realise that the rest of t... world would not sign up to... WTO deal that did not free u... agriculture.

Prime Minister John Howar... who addressed the meetin... yesterday, said that while ... breakthrough may not happe... this week, persistence woul... eventually pay off. But Labor'... trade spokesman, Kevin Rudd... has panned the Coalition and M... Vaile's performance for failing t... live up to the ambitious legacy o... former Labor Trade Minister... John Dawkins, who convened the... first meeting of the Cairns Group... in 1986.

"The Doha Round has reached... its current impasse because... Australia has not produced an... effective formal policy position of... its own in order to break the... impasse," Mr Rudd said last... week.

"Mr Howard and Mr Vaile... should secure at least a... minimalist agreement from the... Cairns meeting for a further... formal meeting of an expanded... G6 meeting in December,... immediately following the... conclusion of the US... Congressional mid-term... elections."

The members of the Cairns...