Equity Trustees

MEDIA RELEASE

19 September 2024

Why set up an ongoing charitable trust rather than a regular trust before you die?

While Australians are generous with their money while they are alive, they are missing the opportunity to keep on giving when they have passed away, sometimes even leaving their inheritance accompanied with a large tax bill.

Chris Holloway, Senior Manager Taxation Services, highlights the lasting benefits Australians can leave to beneficiaries by setting up a charitable trust.

"For those looking for a way to give back to the community, a charitable trust could be the answer, where the money is invested for you, and you choose where you would like the money to be donated across the community."

"This way a person can donate money that continues to exist and grow well after their death. While the capital can remain stable but more likely grow, much of the income that is earned can be distributed to the charitable cause the client feels deeply committed to."

"For example, consider the Archibald Prize which supports artists in Australia or even the Viertel Charitable Foundation which supports medical research, and other, charitable objectives," Mr Holloway says.

Why choose a charitable trust structure?

"While a charitable trust structure might seem like something for the wealthy, it is more achievable than you might think, and certainly practical and accessible for those on the average wage," he explains.

However, the tax expert points out there are some tax events for those who are creating a trust, that they need to be wary of through the estate planning process.

"While Australia officially removed death duties in 1979, there are a number of hidden taxes that good estate planners need to be weary of, including CGT K3 events. CGT event K3 is a tax on unrealised capital gains on assets that pass from an estate to a tax exempt entity, which includes testamentary charitable trusts."

According to Mr Holloway, the main differences charitable trusts have with other types of trusts are:

1. In most instances, the "rule against perpetuities" does not apply to them, so they may exist forever.
2. They are trusts for charitable purposes only and therefore there are no specifically named beneficiaries.
3. They are heavily controlled by the courts and legislation.
4. There are significant tax concessions.

"CGT event K3 doesn't apply where the tax-exempt beneficiary is a deductible gift recipients (DGR) charity. It is important to note that while the beneficiaries of a testamentary charitable trust may be deductible gift recipients (DGR) charities, for tax purposes, it is the charitable trust itself that is seen as the beneficiary of the estate, hence CGT event K3 may apply." Says Mr Holloway.

Importance of planning when creating a charitable trust

Establishing a charitable trust involves several steps, including defining the trust's purpose, selecting trustees, and registering it with the relevant authorities.

It is advisable to seek legal and financial advice to ensure compliance with all regulatory requirements and to maximise the benefits of the trust.

Mr Holloway notes that all charitable trusts must be registered with the Australian Charities and Not-for-profit Commission (ACNC) to apply for charity tax concessions from the Australian Taxation Office (ATO).

He also explains the importance of planning when it comes to passing on assets in a charitable trust.

“When it comes to setting up a will, it is important to consider what assets the trust is passing on, before choosing which trust structure is right for you,” Mr Holloway explains.

“We had a former client who passed away with around $2,000,000 in shares which she purchased in the 1990s. If she were to put this into a charitable trust it would have triggered a Capital Gains Tax (CGT) K3 event, and it would have been a large tax bill for the estate, and hence reduce the amount inherited by the charitable trust.

“However, we were able to set up a sub fund through the Equity Trustee Charitable Foundation – which is a deductible gift recipient - and her shares were passed on tax free,” he concludes.

Leaving surplus assets to benefit the community is a rewarding and equitable thing to do and with the right advice can create a very positive impact.

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