



FTL Estate Services

Charitable Trusts

There are number of ways individuals can assist their favourite charities as part of their estates. The simplest is to allocate a specific sum in a will for the benefit of a named charity. The executor of the will then has the responsibility to ensure that the named charity receives the nominated sum as part of the final distribution of the estate.

An alternative to a simple bequest is to establish a charitable trust as part of a will. This involves more work but the benefits could be more significant for charities over time.

Compared to a simple bequest, a charitable trust offers the opportunity to make a lasting gift, one that will benefit and support a charitable purpose in perpetuity. Also, compared to a bequest, the funds in a trust are not disbursed immediately. They are invested and nurtured, and income earned is distributed each year.

The capacity to invest funds in a trust allows the funds to grow and become a significant and permanent legacy. And as the capital in trust is allowed to grow, so will the income, and favoured charities can expect to receive more and more support over time.

Once a trust is established under a Will, its primary purpose cannot be changed. This ensures that favoured charities are always supported

Establishing a Charitable Trust in a Will

Establishing a trust under a will is part of careful estate planning. The testator needs to consider the appropriate terms of the trust including such matters as the duties and powers of the trustees, how trustees are appointed and removed, and importantly which particular charities and/or institutions are to be supported. The terms of the trust need to be clear, but also allow some flexibility or discretion for trustees to cater for changing circumstances over time.

As with other testamentary trusts, a charitable trust created in a will may give the power of appointment of trustees to an individual who is called the “appointor”. Alternatively, given the expected long duration of a charitable trust, the appointor or indeed the trustee could be a company or professional trustee company that can be relied on to be available for a number of generations.

Careful consideration also needs to be given to how the beneficiaries of the charitable trust will benefit. The capital of the trust can comprise a specific amount from the estate, or it can be whatever sum is the residue of the estate after all other bequests and legacies have been provided for. Other decisions could include whether the named charities to benefit are to receive equal shares of the income of the trust or whether some should benefit proportionately more than others. There are also decisions as to whether the Trustees can have the power to make occasional gifts of capital from the trust – perhaps to support a major charitable activity.

Establishing a Charitable Trust during your Lifetime

There are potential advantages, including tax advantages, of establishing a trust during an individual’s lifetime. In particular, there is scope to be actively involved in establishing the terms of the trust and in making sure that the process of distributing funds is accordance with an individual’s wishes. One option could be for an individual to be the trustee of their charitable trust during their lifetime and then hand over that responsibility in their Will.

Charitable trusts are eligible for two types of tax concessions. One concession is for income in the trust to be exempt from tax. The other concession is for donations to the trust to attract a tax deduction. All tax concessions need to be approved by the Tax Office and “private” trusts do not normally qualify for tax deductibility of donations unless they are specifically approved or prescribed by the Tax Office.