

# What are the benefits of a Discretionary Testamentary Trust (DTT)?

## 1. ASSET PROTECTION BENEFITS

- DTTs offer a way for will makers to try and protect the gifts they are making to their beneficiaries from erosion by the beneficiaries themselves (for example by being young, vulnerable or irresponsible) or from attacks from creditors in a bankruptcy situation or spouses or partners in a relationship breakdown.
- A DTT certainly cannot offer absolute asset protection. The level of asset protection which a DTT trust offers will turn on a range of factors which we can discuss with you.

## 2. TAXATION BENEFITS

- The potential tax benefits for beneficiaries are significant and soon justify the higher legal fees for establishing a DTT Will.

### a. Tax planning opportunities

The trustee has flexibility to distribute the income of the trust each year to different beneficiaries in different proportions. The trustee can therefore adjust distributions each year depending on the then income and tax position of different beneficiaries to manage the overall taxation of the family unit.

### b. Distributions to minor children

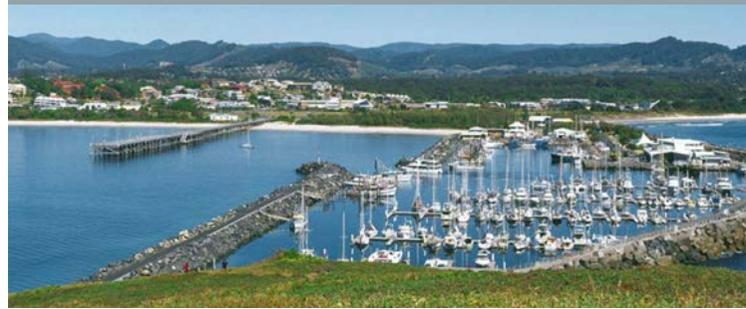
Income distributed to minors (under 18 years) by a DTT is taxed at normal adult marginal rates, including the tax-free threshold.

**Example:** Beneficiary A is to receive an inheritance of \$600,000 from her parents. The inheritance might earn A an annual income of say \$30,000 (5%).

If the Will gives this gift outright to A, the \$30,000 income earned on that inheritance will be added to her other income and taxed at her marginal tax rate.

If beneficiary A receives her inheritance via a DTT, the trust could distribute the income \$15,000 to each of A's two minor children, taking advantage of their tax-free thresholds. No tax would be paid on the income.

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## Helpful Information About

# DISCRETIONARY TESTAMENTARY TRUST WILLS



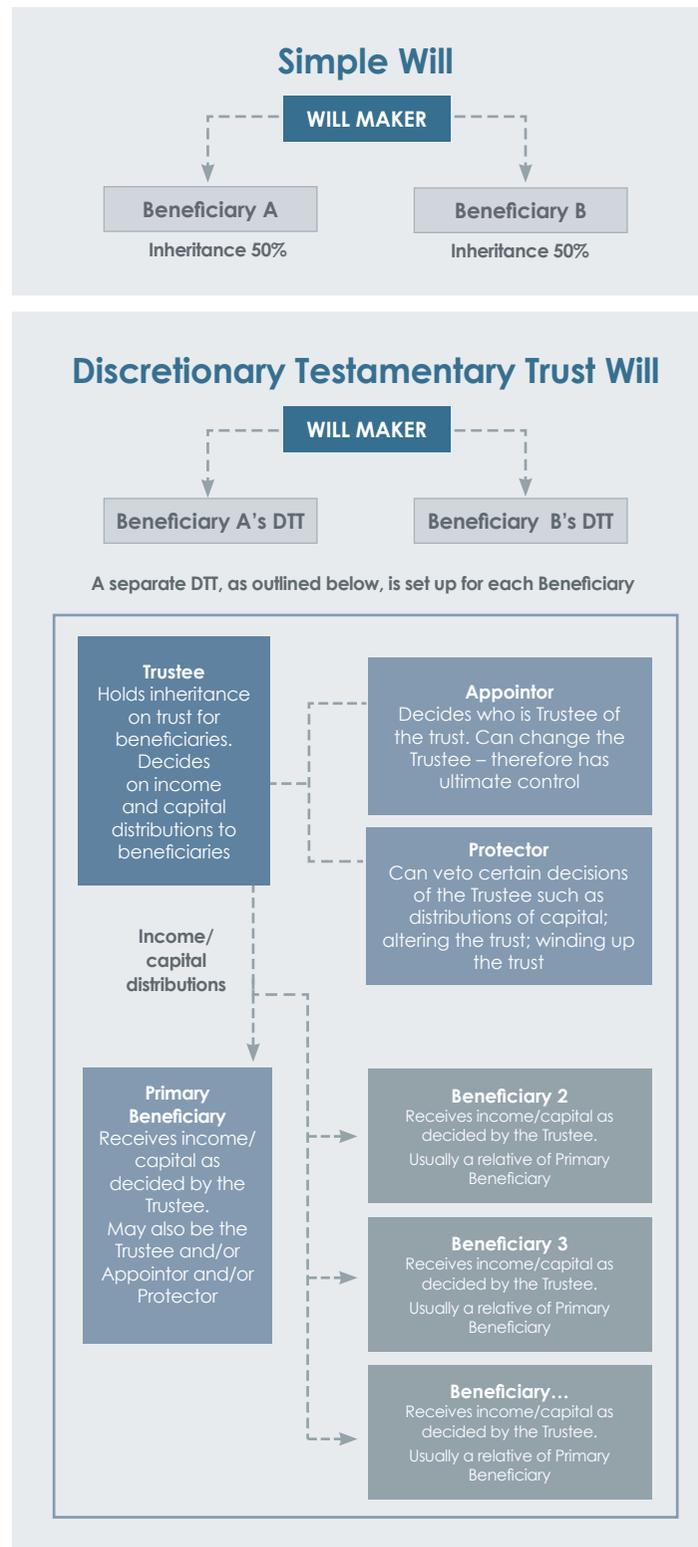
**Thank you for choosing Lee Sames Egan to assist with your Will and estate planning.**

This brochure is designed to help you identify when you should talk to us about whether to make a "simple" Will or a more sophisticated Will incorporating discretionary testamentary trusts.

## FEATURES OF A DISCRETIONARY TESTAMENTARY TRUST (DTT)

- It is a discretionary trust created by a person's Will.
- The trust does not come into effect until after the will maker dies.
- The property gifted into the trust by the will maker is held on trust by a trustee for the benefit of the beneficiaries of the trust.
- The trust is usually based around a main beneficiary, the Primary Beneficiary.
- The other beneficiaries are usually family members of the Primary Beneficiary.
- The trustee has flexibility to distribute the income/capital of the trust each year to different beneficiaries in different proportions.

**Example:** The will maker could make a 'simple' Will which gives his/her estate equally to each of his/her two children absolutely. The children will receive their inheritance in their own names outright. Alternatively, the will maker could make a DTT Will which divides his/her estate equally and puts it into two DTTs, one for each child.



## WHAT ARE THE KEY ROLES IN A DTT?

- **Trustee** – holds the assets of the trust in their name on trust for the beneficiaries; and controls the trust.
- **Primary beneficiary** – the person to whom the trust property would have passed had the estate property been given absolutely by the will maker rather than via a DTT.
- **Appointor** – decides who the trustee of the trust is. The appointor has the power to change the trustee and therefore has ultimate control.
- **Protector** – has the power to veto certain decisions of the trustee such as the distribution of capital; changing the terms of the trust and winding up the trust.

*“We all spend a great deal of time and effort accumulating wealth, but without a proper succession plan it can disappear very quickly...The reality is that not many people correctly implement a succession plan. The consequences of not getting it right can be disastrous – elder abuse, children missing out on inheritances and significant taxation liabilities can result” – Bernie O’Sullivan, CTA*

## WHAT ARE THE COSTS OF HAVING A DTT?

### Costs for the Will maker:

Additional legal fees for Will preparation

### Costs for the Beneficiary/DTT:

Initial trust set up costs and annual administration /accounting costs of running the trust, including a tax return for the trust. Accordingly, it is usually not worth setting up DTT's unless each trust is going to hold assets of at least \$300,000.