

Estate Planning – Special disability trusts

A Special Disability Trust (SDT) can help plan for the future care and accommodation needs of a family member with a severe disability. The individual with the severe disability will be the principal beneficiary of the SDT. This means that the assets and income of the trust are held for the benefit of that individual.

Benefits

Tax and Department of Human Services/Department of Veterans' Affairs (DVA) concessions are provided to SDTs. To receive this treatment, the SDT and the disabled person must meet the eligibility criteria. Concessions may also be extended to those individuals gifting money or assets into the SDT.

- Income and distributions from the SDT to the principal beneficiary are not income for social security purposes. Therefore, these amounts will not be taken into consideration when determining that person's Government income support payment.

How it works

Department of Human Services

SDTs qualify for certain concessions under the social security income and assets tests as well as the gifting provisions.

Principal beneficiary

A SDT must have only one principal beneficiary. This person must be considered severely disabled and meet the definition under the legislation.

The trust will cease to be a SDT when the principal beneficiary dies.

Means testing of Special Disability Trust

SDT trusts are subject to favourable social security assessment for the principal beneficiary.

Assets held in an SDT up to the concessional asset value limit are exempt from the assets test for the principal beneficiary. This means assets up to that limit will not be taken into account when determining that person's Government income support payment. Only assets above this limit are included to determine any entitlement as there is no limit on the amount that can be held in a SDT.

An additional concession applies if the principal beneficiary's home is held in the trust. The home will also be an exempt asset in addition to the concessional limit permitted in relation to other assets.

Gifting money to a special disability trust

Anyone, including an organisation, can contribute to an SDT. However the following exceptions apply:

- Settlor – this is the person who establishes the trust and is generally an independent person and not a key person wishing to gift to the trust.
- The principal beneficiary/partner except in limited circumstances (see below)
- Gift of compensation money received by or on behalf of the principal beneficiary.

The principal beneficiary and/or their partner can gift money to their own SDT only if the amount is a bequest or superannuation death benefit. The amount must be gifted to the SDT within three years of

receipt of the bequest or superannuation death benefit. However compensation amounts paid to or on behalf of the principal beneficiary cannot be directed into a SDT.

From a social security perspective, a concession is provided for gifts made to SDTs within the limit of \$500,000. Gifts up to this limit are not assessed as a gift or a deprived asset of the person providing the cash or other assets, under the general gifting rules.

The gifting concession applies only to immediate family member who receive:

- A social security pension and have reached age pension age,
- A service pension and have reached the veterans' pension age, or
- A DVA income support supplement and have reached qualifying age for the payment.

Where a family member makes more than one gift or more than one family member makes gifts, the gifting threshold is utilised in order of the gift being made.

Trust requirements

Due to the concessional treatment applied to SDTs, there are a range of requirements that must be met for the concessions to apply. The main purpose of the trust must be to provide for a principal beneficiary with a severe disability. Other requirements include:

- Investment rules including need for an investment strategy
- Trust deed
- Property requirements
- Reporting and audit.

Taxation

Income of the SDT is taxed at the principal beneficiary's marginal tax rate regardless of whether the trust has distributed this amount out to the beneficiary. If the trust fails to meet the definition at the end of a financial year, ordinary trust taxation will apply.

The capital gains tax main residence exemption may also be applied where a dwelling is disposed of by the trust which has been used by the principal beneficiary as their main residence.

For family members gifting to a SDT, a capital gain or loss made on the gifting of an asset to a SDT is disregarded. This gift must be made for no consideration.

Risks and Consequences

- Given the specific requirements for an SDT, it is important to get legal and tax advice to ensure the requirements are met at commencement and on an ongoing basis.
- It is important to ensure that the SDT complies with all requirements initially and on an ongoing basis to retain the concessional treatment.
- Gifts made to SDTs must be unconditional.

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