Estate Proceeds Trust

WHAT IS AN ESTATE PROCEEDS TRUST?

An estate proceeds trust (**EPT**) is a trust established by a deed after the death of a person for the purposes of receiving property from that person's estate.

Under the current tax legislation, a person receiving property via a will from a deceased individual has three years from the death of the deceased to transfer the property to the EPT.

An EPT can be distinguished from a testamentary trust (**TT**).

KEY DIFFERENCES BETWEEN AN EPT AND TT

Generally, an EPT is more restrictive than a TT established pursuant to the terms of a will. The table below summarises some of the key differences between an EPT and a TT:

EPT	TT
Established by the beneficiary who has received the property directly via the will from the deceased person's estate within three years of their death	Established by the deceased person's will
No capital gains tax (CGT) exemption on transfer of assets from the beneficiary to the EPT	CGT exemption on transfer of assets from the estate to the TT
No stamp duty exemption on transfer of assets from the beneficiary to the EPT	Stamp duty exemption on transfer of assets from the estate to the TT
Concessional rates of tax don't apply to grandchildren	Concessional rates of tax do apply to grandchildren
Only income generated by the portion of the capital which the deceased's children would have received on intestacy will be entitled to the concessional rates of taxation	All income entitled to the concessional rates of taxation

HOW DOES IT WORK

A trust is established to hold property gifted by a beneficiary who has received it from a deceased estate. The capital beneficiaries of the EPT must be limited to those persons who would have received a share of the deceased's estate under intestacy laws. On the ending of the EPT those beneficiaries must then receive the proportion they would have otherwise been entitled to on intestacy.

Income distributed to minor beneficiaries will be taxed at adult marginal rates (as excepted trust income), instead of the penalty rates that normally apply to minors' unearned income.

WHEN TO CONSIDER AN EPT

An EPT can be of benefit:

- for families with minor children
- if asset protection is an important objective
- where extra income would be needed to support the surviving family members should a parent die, and
- where minimising and having flexibility in relation to tax planning is important.

SUMMARY

While the best approach is to always plan ahead and ensure a person's estate planning documentation achieves their objectives (for example, by including a TT), a properly drafted EPT can offer a viable solution where a deceased's will does not include a TT.

The above summary is based on the law as at 1 January 2015.
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