WHAT IS A SPECIAL DISABILITY TRUST?

In 2006 the Australian Government introduced amendments to the Social Security Act 1991 (Cth) (the Act) to allow families to create a trust to provide their own funding for the care and accommodation needs of family members with severe disabilities. These trusts are referred to as Special Disability Trusts (SDT). A SDT may be established via a person’s Will or by trust deed.

WHAT ARE THE BENEFITS OF ESTABLISHING AN SDT?

There are several benefits of an SDT including:

1. Parents, legal guardians, grandparents and siblings of a principal beneficiary may gift up to the sum of $500,000.00 to the SDT and the gift is not taken into account in assessment of the pension gifting rules;
2. An assets test assessment exemption of currently up to $609,500.00 (indexed each year) is available to the principal beneficiary;
3. The principal home of the person with a disability is not counted towards the assets test;
4. All income produced by the SDT is ignored for the purpose of calculating the person’s disability pension entitlements;
5. A Special Disability Trust’s unexpected income is taxed at the beneficiary’s personal income tax rate(s), rather than at the highest marginal tax rate.

WHAT ARE THE REQUIREMENTS IN ORDER TO CREATE AN SDT?

In order to qualify as an SDT, the trust must comply with the requirements set out in the Act. In order to meet the requirements, the SDT:
1. Must have only one principal beneficiary (the person for whom the trust is established), who must meet the eligibility criteria;
2. Provide for the accommodation and care needs of the principal beneficiary;
3. Have a trust deed that contains the clauses as set out in the model trust deed;
4. Have an independent trustee (i.e. a trustee company), or alternatively have more than one trustee;
5. Comply with the investment restrictions;
6. Provide annual financial statements; and
7. Conduct independent audits when required.

WHO MAY BE A PRINCIPAL BENEFICIARY OF THE SDT?

To be eligible to be a “principal beneficiary”, the person with a disability must meet the definition of severe disability as set out in the Act. The person with the disability must meet the following criteria:

For a person who has reached the age of 16 years:

- Whose level of impairment would qualify the person for Disability Support Pension or who is already receiving a Department of Veterans’ Affairs (DVA) Invalidity Service Pension or DVA Invalidity Income Support Supplement;
- Who has a disability that would, if the person had a sole carer, qualify the carer for Carer Payment or Carer Allowance or is living in an institution, hostel or group home where care is provided for people with disabilities and funding is provided by the government; and
- Who has a disability and is unable to work more than seven hours a week in the open labour market.

For a person who has NOT reached the age of 16 years:

- The person must have a severe disability or a severe medical condition as defined in the Act.

WHAT PURPOSES CAN THE TRUST FUNDS BE USED FOR?

The trustee is able to:

1. Pay for the beneficiary’s dental and medical expenses, including membership costs for private health funds;
2. Pay the maintenance expenses of the trust-property assets; and
3. Spend up to $10,250.00 in a financial year on discretionary items not related to the care and accommodation needs of the beneficiary. (The expenditure should remain compliant with the legislative requirements of a Special Disability Trust).

WHAT ARE THE POTENTIAL DISADVANTAGES OF ESTABLISHING A SDT?

An SDT may not be appropriate for all people with disabilities. The rules relating to the establishment of a SDT are restricted to providing care and accommodation for the beneficiary and do not allow the person to use the trust funds for purposes other than set out in the Act. There are restrictions on what assets can be gifted to the SDT. The person may lose the benefit of the trust if the rules are not complied with. This may result in the disabled person losing their pension benefits and the loss of the SDT taxation benefits.
MORE INFORMATION

If you would like more information about whether a SDT is appropriate for your family circumstances, please contact us to make an appointment with Jarrad Mobbs.

AUTHORS

JARRAD MOBBS
CONSULTANT

+61 7 3231 6176
jarrad.mobbs@bnlaw.com.au

bnlaw.com.au

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