



Rayners Lawyers

My name is Kirsty Rayner, owner and principal solicitor of Rayners Lawyers. I am really excited to be back on the stunning Mid North Coast after spending just over 10 years away in Sydney. I grew up in beautiful Bonny Hills, and attended North Haven Primary and Camden Haven High School. After high school, I left the local area to pursue a double degree in law and commerce from Macquarie University. I decided to study law because I am genuinely passionate about helping people achieve their goals. During my time in Sydney, I was lucky enough to work under, and be mentored by, some of Sydney's top accredited specialist lawyers, including Madeleine Reid (Wills & Estates), Judith Sutton (Tax) and Peter Chapman (Commercial Business). I quickly learned that Wills and Estates law was my passion and am close to completing my Masters in this area of the law. I have a special interest in preparing sophisticated estate plans for singles, couples, blended families and high net wealth individuals. I absolutely love helping my clients protect their assets, while saving significant amounts of tax along the way.

Rayners Lawyers know **YOU** deserve more

- Wills and Estate Planning
- Small Business Legal Advisory Service
- General Legal Services



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Testamentary discretionary trusts

EXPLAINED

WHY YOU SHOULD UPGRADE YOUR WILL TO INCORPORATE A TESTAMENTARY DISCRETIONARY TRUST ...

Testamentary discretionary trusts (TDT) are not just for the wealthy. Even if all you own is your home and superannuation, a TDT can offer enormous tax savings and asset protection.

KEY BENEFITS OF A TDT

- Controlling and protecting family wealth across the generations;
- Income tax and capital gains tax benefits;
- Providing a workable, flexible framework for a beneficiary who is vulnerable to exploitation or incapable of managing their own affairs (for example, due to being spendthrift, disabled or addicted to drugs);
- Creating a structure that allows a spouse or partner to benefit during their lifetime, whilst ensuring that children (including those from a previous marriage) are financially provided for in the long term;
- The ability to create separate TDTs for each child or limb of the family, which can then be independently managed and administered;
- Postponing the entitlement of a young child or adult until they are older or have settled down in life, whilst allowing money to be spent for their benefit in the meantime;
- To alleviate concerns that a surviving spouse may take on a new partner and spend all the assets to the detriment of children and grandchildren; and
- Providing an additional layer of protection for family assets from potential risks of bankruptcy and family breakdown.

THE TAX BENEFITS OF A TDT

The tax benefits of a TDT are best showcased when comparing the tax rates applicable to a family trust, particularly when looking at the associated tax rates that are applicable to minors when distributing trust income.

As detailed in the following table, minors who receive income from a TDT are instead taxed at more favourable adult marginal rates.

This benefit is one reason why lots of will-makers who have minor children or grandchildren wish to establish a TDT in their Wills.

Income	Testamentary Trust tax rates	Family Trust tax rates
\$0 - \$416	Nil	Nil
\$417 - \$1,307	Nil	66% of each \$1 over \$416
\$1,308 - \$18,200	Nil	45%
\$18,201-\$37,000	19% of each \$1 over \$18,200	45%
\$37,001 - \$90,000	\$3,572 plus 32.5% of each \$1 over \$37,000	45%
\$90,001 - \$180,000	\$20,797 plus 37% of each \$1 over \$90,000	45%
\$180,001 and over	\$54,097 plus 45c of each \$1 over \$180,000	45%

* based on FY19 resident tax rates. Excludes Medicare Levy.



CASE STUDY

The tax advantages of TDTs are illustrated in the following case study.

Jim is a successful retired businessman with three adult children, Helen, Robert and Nick, who each have great jobs and are on the top marginal tax bracket. Currently, Jim has three minor grandchildren, Jack, Lenny and Molly, but Jim is sure that more will come in later years.

Sadly, Jim passes away, and the TDT which Jim luckily set up while he was alive, becomes operational. Jim's home, superannuation and life insurance are directed into the trust and, in its first financial year, the trust generates \$100,000 in income from the trust assets. The TDT allows for tax effective income splitting as shown in the below table:

TESTAMENTARY TRUST		
	Trust income dist.	Tax
Jack	\$18,200	\$0
Lenny	\$18,200	\$0
Molly	\$18,200	\$0
Helen	\$15,000	\$7,050
Robert	\$15,000	\$7,050
Nick	\$15,400	\$7,238
TOTAL	\$100,000	\$21,338
INTER VIVOS TRUST		
	Trust income dist.	Tax
Jack	\$416	\$0
Lenny	\$416	\$0
Molly	\$416	\$0
Helen	\$32,900	\$15,463
Robert	\$32,900	\$15,463
Nick	\$32,900	\$15,487
TOTAL	\$100,000	\$46,413

The use of the TDT has reduced the tax on the \$100,000 income by more than half!

The \$18,200 tax free threshold can then be used to tax effectively pay for the grandchildren's education, sporting and living costs.

This amazing tax environment is only available if you set up a TDT in your Will.

PLEASE NOTE: This article should not be relied on as a substitute for obtaining legal, financial or other professional advice. This case study is intended to provide a general example in relation to income tax only and is not comprehensive. Other taxes also need to be considered - e.g. GST, stamp duty, land tax, Medicare Levy etc. You must seek your own tailored professional advice.