Special Disability Trust

What is a Special Disability Trust?

A Special Disability Trust is a trust established by parents and immediate family members for the future care and accommodation needs of a person with a severe disability (principal beneficiary).

Before a Special Disability Trust can be established, the beneficiary must first contact Centrelink to make sure they are eligible.

Centrelink recommends consulting with a financial adviser and/or a solicitor for advice before establishing a Special Disability Trust. This allows the person to carefully consider the effect it may have on their financial security and Centrelink/Veterans' Affairs payments.

What are the benefits of a Special Disability Trust?

A Special Disability Trust allows money to be set aside to meet the specific care needs of a severely disabled person. It also provides Centrelink/Veterans' Affairs (DVA) advantages through:

- A gifting concession of up to $500 000 (combined limit) is available for eligible family members of the principal beneficiary
- An assets test assessment exemption of up to $694,000(for 2017/2020/2021and indexed each 1 July) is available for the principal beneficiary. An income test exemption also applies.

What are the Characteristics of a Special Disability Trust?

A Special Disability Trust must:

- Have only one principal beneficiary who meets the eligibility criteria
- Provide for the accommodation and special disability care needs of the principal beneficiary
- Have a trust deed that contains the clauses as set out in the model trust deed
- Have an independent trustee, or alternatively have more than one trustee
- Comply with the investment restrictions
- Provide annual financial statements, and
- Conduct independent audits when required

Who can be the Principal Beneficiary?

To be eligible to be a principal beneficiary, the person with disability must meet the definition of severe disability. The definition of severe disability is:

a) Person who has reached 16 years of age:
   - Whose level of impairment would qualify the person for Disability Support Pension or who is already receiving a DVA Invalidity Service Pension or DVA Invalidity Income Support Supplement, and
   - Who has a disability that would, if the person had a sole carer, qualify the carer for Carer Payment or Carer Allowance, and
   - Who has a disability and is able to work no more than seven hours a week in the open labour market.

b) Person who has reached 16 years of age:
   - Whose level of impairment would qualify the person for Disability Support Pension or who is already receiving a DVA Invalidity Service Pension or DVA Invalidity Income Support Supplement, and

- Who is living in an institution, hostel or group home where care is provided for people with disability and funding is provided under an agreement between the Commonwealth, states and territories, and
- Who has a disability and is able to work no more than seven hours a week in the open labour market

c) Child under 16 years of age:
  - Who is a person with a severe disability or a severe medical condition, and
  - Who has a carer that has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for that person, and
  - Who has had a treating health professional certify in writing that, because of that disability or condition:
    - The person will need personal care for 6 months or more, and
    - The personal care is required to be provided by a specified number of persons.

Who can benefit from the Gifting Concessions for a Special Disability Trust?

Immediate family members of the principal beneficiary who are at, or over, age or service pension age and are receiving a pension (for example Age Pension, Carer Payment).

Where there is more than one contributor to the trust, the combined concession first applies to those eligible family members who are receiving a pension after age or service pension age.

Who is an Immediate Family Member?

An immediate family member includes:

- Natural parents
- Legal guardians (as defined)
- Adoptive parents
- Step parents
- Grandparents, and
- Siblings

Note: The term legal guardian used in the definition of parent or immediate family member includes a person who is, or was, the legal guardian of the person with a severe disability while that person was under 18 years of age. The term sibling refers to a brother, sister, half-brother, half-sister, adoptive brother, adoptive sister, step-brother or step-sister.

What Amount of Money can a Person Contribute to the Trust?

Contributions or gifts of assets to any value can be made to this type of trust at any time by almost anyone. However, a gifting exemption will only apply on the first $500,000 contributed to the trust by eligible family members.

Contributors who receive Centrelink/Veterans' Affairs benefits must tell that department about any gifts or transfers within 14 days.

Any gift or number of gifts whose total value is greater than the allowable concessional amount will be assessed under normal gifting rules.

What can the Trust Funds be used for?

The funds are intended to meet the reasonable care and accommodation needs of the principal beneficiary.

The trustee is also able to pay:

- The beneficiary's dental and medical expenses, including membership costs for private health funds,
- The maintenance expenses of the trust property assets, and
- Up to $12,500 (for 2020/2021) in a financial year on discretionary items not related to the care and accommodation needs of the beneficiary. This expenditure should remain compliant within the legislative requirements of a Special Disability Trust

What Tax Concessions are Available for Special Disability Trusts?

The net income of the trust is taxed at the beneficiary's marginal tax rate plus Medicare.

This tax may be payable by the trustee. If the beneficiary is required to lodge a tax return, this income should be included as assessable income in that return, with a credit for the tax paid by the trustee.