

Trusts - Discretionary

What is a Trust?

A trust is a fiduciary relationship in which a person or company is the holder of an interest in property but is subject to an equitable obligation to use or keep the property for the benefit of another person or for some commitment object or purpose.

In a discretionary trust, the trustee is able to exercise discretion as to who is or are the beneficiaries to be beneficial and what proportions of the trust fund or trust income they are to receive.

Set up Procedure (estimated set up cost from \$900 plus \$1,300 if corporate trustee required)

- Create by a settlor with a Trust deed. (Discretionary).
- Establish a trustee.
- Register ABN (Australian Business Number).
- Register for TFN (Tax File Number).
- Register for GST (if applicable).
- Register for PAYG (if applicable).

Advantages

- With a corporate trustee - limited liability.
- Asset protection - Assets sheltered within the trust.
- Flexible tax planning with ability to distribute income and profits to family and other entities.
- Distributions from trust do not attract workers compensation and SCG.
- Capital gains tax discounting flow through to beneficiaries.
- Can distribute to a Company utilising the Company tax rate but cumbersome

Disadvantages

- Cost of maintenance.
- Changing legislation.
- Tax is paid at the beneficiary's level hence losing the 30% Company Rate
- Loses the land tax threshold if it owns property.

Compliance Requirements

- ABN registration.
- Tax File Number registration.
- GST registration (if applicable).
- BAS - monthly or quarterly.
- Tax Return - Yearly
- Financial records - Financial accounts balance sheet and profit and loss statement.

General Comments

Most businesses which use a Discretionary Trust is either after asset protection and require the flexibility of distributing to various different entities to minimise their income and capital gains tax. Typically when the threshold of all beneficiaries are utilised fully the larger businesses typically run through a Company structure to take advantage of the Company's flat rate of tax.

We usually accumulate assets in a Discretionary Trust and we keep the assets separate from the Trading Company that deals with the clients or customers.

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