

Trusts - Non Discretionary (Unit Trust)

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 entity or to some commitment object or purpose.

A non-discretionary trust is one where the trustee is not required to exercise any discretion as to which beneficiary should receive trust property and in what proportion or amount for example a declaration of trust for the benefit of X and Y in apportionment to their unit holding or interest in the trust.

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

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

Advantages

- With a corporate trustee - limited liability.
- Asset Protection - Assets sheltered with the trust through careful use of units.
- Flexible tax planning with ability to issue income units and ordinary or capital units to different people dependent on financial situation.
- Ability to issue and redeem units without stamp duty and for tax planning.
- Capital Gains tax only in the hands of beneficiaries.
- Benefits / income can be passed to beneficiaries without change in ownership of the investments.
- Control of investments can effectively be retained by the appointer of the trustee who normally places the asset in the trust.
- Retains a land tax threshold if it holds property

Disadvantages

- Cost of creation and administration of the trust is higher than a sole trader or Partnership.
- Potential changes to legislation.
- Capital gains tax issues when issuing and redeeming units in trust.
- Careful structuring required for negatively geared investments as losses could get quarantined in the Trust.
- When gross up dividends are less than net losses from other sources, the refundable franking credit is lost and the carry forward losses are reduced by the amount of franking credit lost.

Compliance Requirements

- ABN registration
- Tax File Number registration
- GST registration (if applicable).
- BAS - monthly or quarterly (if applicable).
- Tax Return - Yearly
- Financial Records - Financial Accounts - Balance sheet and profit and loss statement.
- Minutes of meeting of trustees to record decisions made by trustees

General Comments

A trust has a semi- permanent existence and can also be created by the will of a person who has died. As the government does not intend to proceed with taxing the trusts as if they were companies, the current taxation laws for trusts will continue to apply. All Trusts should only be established after careful consideration of the client's circumstances. Trusts do not come as a "one size fits all" but needs to be customised to each individual client's circumstances.