IMAGINE ACCOUNTING

FACT SHEET: DISCRETIONARY TRUSTS

Setting up and operating a discretionary trust is less confusing when you're clear on the terminology and the benefits. Use this fact sheet as an easy point of reference.

WHAT IS A DISCRETIONARY TRUST?

When you establish a discretionary trust, the trustee will legally own an asset(s) for the benefit of one or more other people.

A discretionary trust can also be called a family trust, if the members/ beneficiaries are part of your family.

WHAT IS A TRUSTEE?

The trustee is the person or entity who administers the Trust and is also the legal owner of the assets of the trust. The trustee decides on the income and capital which will be distributed to the beneficiaries of the trust.

A trustee can be an individual or a company.

The trustee distributes assets at their discretion, hence the name discretionary trust.

WHAT IS A BENEFICIARY?

A beneficiary is a person who benefits from the trust, e.g. the family of the trustee.

Your trust may name one or more beneficiaries. They do not all have to be members of your family.

WHY SET UP A DISCRETIONARY TRUST?

You may decide to establish a discretionary trust as a way to distribute income because:

- It makes sense for tax purposes
- It is a strategy to manage family wealth
- It is a way to protect your assets
- You can use your trust for estate planning
- You want to allocate resources and income to family members
- It makes sense as an investment strategy

You don't have to generate multiple millions of dollars in personal or business wealth to be able to benefit from establishing a discretionary trust.

Using a discretionary trust can be a tax-effective way to structure your business or investment/ wealth-building activities.

THE DRAWBACKS OF A DISCRETIONARY TRUST

There are costs involved with establishing and operating a trust. It makes sense to manage it with the help of a professional and this is likely to incur fees. However, you may find you can immediately offset this cost from the tax benefits achieved.

When beneficiaries have assets in a trust, if the trust experiences a loss in capital or revenue, it can't be offset against their regular assessable income.

GLOSSARY OF TERMS

Take a look at some of the most commonly used terms when it comes to discretionary trusts:

Appointor

The appointor (the guardian) has the power to appoint and remove the trustee. They have the power to remove the trustee at any time. Not all trusts have an appointor.

Assets

The money, property or other things of value that make up the trust.

As a group, the beneficiaries hold underlying ownership of the assets of the trust. No single person owns them or owns part of them. It is usually not possible for a beneficiary to take an action that places the trust's assets at risk.

Corporate Trustee

This is a registered company that is established to act as the trustee of the trust. This trustee owns the trust property but does not benefit from the trust property.

A corporate trustee is registered as a company but does not generally operate in a business sense. The advantage of this method is that a corporate trustee is not an individual who may change circumstances and lose their ability to oversee the trust due to a change in circumstances.

Deed

A trust deed is a legal document that sets out the rules for establishing and operating the trust.

The trust deed must be:

- Prepared by someone who is competent to do so, as it's a legal document
- Signed and dated by all trustees
- Properly executed according to state or territory laws
- Regularly reviewed and updated as necessary.

General Beneficiary

A general beneficiary isn't always directly named in the trust deed. They may be a future child or another family member of a primary beneficiary.

Individual Trustee

An individual trustee is an individual who oversees a trust. It can be more cost-effective to operate a trust this way, when compared to establishing a corporate trustee.

Owner

The trustee is the legal owner of the assets in the trust. This means their name should appear on all ownership documents, such as shares in private companies, units in private trusts, or title deeds for land ownership.

Primary Beneficiary

A primary beneficiary is any individual or entity that is named in the trust deed when it is created. These are the individuals and entities specifically nominated to receive trust funds from the trustee.

Generally, a primary beneficiary is first in line to benefit the most from the proceeds of the trust. They are usually named in person in the trust deed.

Settlement Sum

The trust deed must be signed by the settlor, who must give the initial settlement sum (usually around $10) to the trustee.

Settlor

A settlor is an unrelated person like an accountant or financial advisor who does not gain any benefit directly from the trust. They take care of the formalities of establishing the trust and naming the beneficiaries, the trustee and the appointor.

Many people nominate their accountant as the settlor of their trust.

Vesting date

The vesting date is the date defined in the trust deed when the trust ends. The standard vesting date is 80 years from the commencement of the trust.

SUMMARY OF HOW TO ESTABLISH A TRUST

These are the general steps required to establish a trust:

1. Speak to your accountant or financial planner about why a trust makes sense for you or your business.

2. Determine which of your assets will be allocated to the trust and who will be the trustee/appointor/settlor/beneficiaries.

3. Work with the relevant parties (including a legal professional) to establish the trust deed and have it signed by the appropriate parties. All signatures need to be witnessed. The trust is officially formed on the date that the Deed is signed.

4. Stamp duty may be payable on the trust deed

5. Apply for a Tax File Number (TFN) and an Australian Business Number (ABN) if necessary.

6. Open a bank account in the name of the trustee (but clarifying that this person is the 'trustee of the trust')

7. Deposit the initial amount of funds (settlement sum) into the trust bank account

8. Meet with a professional regularly to ensure the trust is being operated effectively and that it is compliant with current regulations

Want to know more about establishing a Discretionary Trust?
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