

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 \$2,000 including corporate trustee)

- Create by a settlor with a Trust deed. (Discretionary).
- Establish a trustee.
- Register ABN.
- Register for GST (if applicable).
- Register for PAYG (if applicable).
- Pay Stamp Duty (\$500 in New South Wales, Nil in QLD)
- Register a Trading Name with ASIC using ASIC Connect (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 potential 27.5% Company Rate
- Losses cannot be distributed to beneficiaries, they must accumulate in the trust to be offset against future profits
- Loses the land tax threshold if it owns property (New South Wales)

Compliance Requirements

- ABN registration.
- Tax File Number registration.
- GST registration (if applicable).
- BAS – monthly, quarterly or annually
- Tax Return – annually
- Financial records – Financial accounts balance sheet and profit and loss statement.
- Minutes of meeting of trustees to record annual distribution decision

Discretionary Trust

Estimate per annum costs – refer price lists.

General Comments

The aim of using a Discretionary Trust is to achieve asset protection and the flexibility of distributing to various different entities to minimise their income and capital gains tax.

A trust has a semi-permanent existence and can also be created by the will of a person who has died. 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 need to be customised to each individual client's circumstances.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

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