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Benefits of a Trust

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trust in our trusts

Have you ever wondered what a Discretionary Trust is and whether it is relevant to have one?

Are trusts utilised by the wealthy to minimise their tax position and to protect assets?

Can I set up a Discretionary Trust, and is it difficult to do so?

How much does it cost to set up and administer a Trust?

These are all important questions, and the short answer is it depends. Your personal and family circumstances will determine whether having a Trust set up for you and your family will prove beneficial.

Trusts Explained

Discretionary Trusts are a common type of trust used to hold assets or run a family business. A family member establishes a trust, i.e., discretionary trust, to manage certain assets or investments and support beneficiaries, such as family members.

In most cases, Trusts are used as a vehicle to create asset protection for assets held in a trust. Assets held in a trust may be protected from creditors or lawsuits, so they are ideal for protecting assets from business or personal disputes. They can also facilitate the transfer of assets from generation to generation .

A trust is a structure that allows a person or company to hold an asset for the benefit of others. The person or company controlling the asset(s) is the trustee, and those who benefit are the beneficiaries. The assets held in a trust can vary; assets can be made up of property, shares, businesses, and business premises, all commonly held in trust structures. The creator of the trust, known as the settler, sets out the specific rules on how assets should be managed in a trust deed document.

By placing assets in a trust, you don't own the assets in your name. Instead, the trustee legally controls the assets. However, you can determine how those assets are managed now and in the future. For example, the trustee has the authority to set out who receives the income generated from the assets and when they receive it, and who receives the underlying capital represented by the assets.

Discretionary Trusts (sometimes known as Family Trusts) are the most common type of trust business owners use in Australia. They are generally created to hold a family's assets and/or business to protect those assets and facilitate tax planning for family members.

What does a Discretionary Trust Look Like

Governed by
Trust Deed

Can appoint and remove the trustee
Appointor

Trustee

Discretionary Trust

Beneficiaries
Receives income and/or capital as trustee decides

The trustee can be an individual, individuals or a company and they are the legal entity who owns the assets and makes decisions on the trust's behalf.

The beneficiaries are the people entitled to the income and assets of the trust.

The beneficiaries of the trust are usually members of a family (family group), as well as companies and trusts that are controlled by that family.

Advantages of a trust

Tax Distributions

The main advantage is that any income generated by the trust from business activities and investments, including capital gains, can be distributed to beneficiaries in lower tax brackets (often spouses or adult children). In addition, because the trustees of the trust have the discretion to distribute income and capital as they see fit and no beneficiary has a fixed entitlement to receive anything, the trustees can stream income in a tax-effective way on a year to year basis.

The downside is if you don't distribute the income of the trust, the trustees are liable for tax on the undistributed income at a rate of tax usually higher than the beneficiaries themselves would have to pay. It should also be noted that there are limited circumstances when the trustee has to pay tax on behalf of certain beneficiaries, the most common ones being where beneficiaries are children under the age of 18 or people with certain disabilities.

Asset Protection

In most cases, assets held in a trust cannot be attacked by creditors or lawsuits of/ or against, individuals or other companies, so they are ideal for protecting assets from business or personal disputes. They can also facilitate the transfer of assets from generation to generation.

Retirement Savings

Planning for retirement savings – the flexible structure of trusts presents an opportunity to accumulate wealth to supplement superannuation savings.

Flexibility to invest in property – unlike super, holding assets within a trust doesn't have the same strict rules.

Capital Gains Tax (CGT)

Capital Gains Tax (CGT) – Discretionary Trusts may have CGT advantages compared to companies. This is because the Capital Gain may be distributed to individuals where a 50% discount factor on capital gains received for assets retained for at least a year applies to trusts but doesn't apply to companies. Subject to Tax legislation.

How much does it cost to set up and administer a trust?

Set up costs are typically about $1,250 to $1,750. Tax and administrations costs can be substantially less than a company structure.

These ongoing costs are necessary because there are significant rules and regulations around family trusts, including meeting the requirements for asset protection and the Australian Taxation Office registrations on ABN and Tax File Numbers.

Are trusts utilised by the wealthy?

Trusts are used a vehicle to create asset protection and provide options for managing their asset portfolios and minimising their tax. As a result, the ATO has created a tax force specifically looking at non-compliance of trust structures.

Is a Trust right for me?

If you are someone who is building wealth and/or business assets and have never considered setting up a trust to protect your assets for the benefit of you and your family, now is the time to talk to your tax adviser about the advantages and disadvantages of a trust. Your situation is unique that requires a personalised approach. Getting the best outcome for your circumstances will require careful consideration. A tax specialist can step you through all the details and provide the tools and information to make an informed decision if a trust is right for you.

When set up correctly, there are clear trust tax benefits for individuals and businesses.

Trusts do not normally pay tax; beneficiaries are taxed based on the amount of income distributed to them (as well as any other income they may have from other sources).

A Discretionary trust allows you to distribute profit amongst family members to utilise their income tax "tax-free thresholds".

If the business' profits grow too large to distribute effectively, a trust can also distribute to a separate company.

A numberwise tax specialist can set up a trust for you and your family. We are here to help and want to achieve the best outcomes for our clients. It is a big decision, and there is a lot to consider when establishing a trust that requires careful planning. Contact a numberwise specialist for more information on family trusts.

The information provided in this article is general in nature and does not constitute personal financial advice. The information has been prepared without taking into account your personal objectives, financial situation or needs. Before acting on any information you should consider the appropriateness of the information with regard to your objectives, financial situation and needs.

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