



## TRUST ME....

The use of discretionary or "family" trusts is widespread and is the most common business structure used by the small business and investment communities. However, despite their widespread use, they can be difficult to understand due to their complexity and unique tax concepts.

Generally, a discretionary trust, commonly called a family trust is established for the benefit of a family group. These benefits include flexibility of taxation, legal protection and estate planning.

### The parties to a Family Trust

**Settlor:** The settlor puts in the initial amount to create the trust (say \$10). This person cannot be a beneficiary so is usually a family friend or an accountant/legal advisor. This is the only role this person ever has in the trust.

**Trustee:** The trustee controls the operation of the trust. The trustee is usually the same person who runs the business or the assets of the trust. For additional legal protection, this trustee can be a company, in which case the directors of the company would be the person(s) who runs the business or assets of the trust.

**Appointer/Guardian:** This person has the power to appoint, remove or change the trustee. However, this person can also be the same person as the trustee.

**Beneficiaries:** These are the family members who can benefit from receiving distributions of income from the trust. Family is widely defined and typically revolves around the trustee and includes spouses, children, parents, siblings, uncles and aunts, spouses of those people, and any company or other entity that those people have a majority interest in. A trust is not like a deceased estate and as such, no family member can make a claim against the assets of the trust, simply because they are a family member.

### Benefits of a Family Trust:

**Legal Protection:** A family trust will offer a small business some protection from bankruptcy or insolvency on either the failure of a business or against legal action. Generally, creditors of a trust can only make claims against the assets of the trust so unless personal guarantee's have been signed, the personal assets of the trustee's or beneficiaries will not be at risk.

**Taxation Benefits:** A family trust has the ability to choose who it distributes it's taxable income to each year. As such, it can distribute income to the family members who have received the least other income in that year to minimise the overall tax burden for the family group.

## SUMMER 2009 NEWSLETTER

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### Who Should Use a Family Trust?

**Small Business:** A small business where only one family group is involved is ideal for a family trust. A person running a business where the only income of the trust is generated by the personal effort of that person (such as a professional) may not be eligible for the taxation flexibility of a trust.

**Investors:** Investors holding either capital growth or income generating assets such as shares or real property will benefit from the use of a family trust. It should be noted however that a family trust generally will not be able to benefit from negative gearing.

## FAMILY TRUST'S CONTINUED

### Some Disadvantages of a Family Trust:

**Set up Costs:** To establish a trust costs around \$500-600 with an additional \$800-1000 to establish a company as trustee.

**Running Costs:** Annual tax returns of trusts can be more complex than other entities thereby incurring extra accounting fees.

**Longevity:** A Discretionary Trust can only exist for up to 80 years.

**Trust Loss Rules:** There are some very complex tax laws relating to a trust recouping tax losses.

**Estate Planning:** The trustee does not own a discretionary trust, they merely control it. So upon death, the assets of the trust do not form part of any estate. As such, estate planning becomes very important and the wills of the trustee and appointer need to clearly define who is to take control of the trust on their death.

## LAST DAYS FOR SMALL BUSINESS TAX BREAK

A reminder that the small business tax break allowing an additional 50% tax deduction for the purchase of business assets costing above \$1,000 ends on 31 December, 2009. Assets must be purchased or contracted for by this date to be eligible for the concession.

## DO YOU NEED ADDITIONAL TIME TO PREPARE OR PAY YOUR BAS?



If your tax agent lodges your quarterly Business Activity Statement for you electronically, you have an additional month for lodgement and payment of any amount owing on the BAS.

This means, for example, that your September BAS can be lodged and paid on 28 November rather than 28 October. This concession does not apply to the December BAS which will be payable by 28 February regardless of the method of lodgement.

## SOFTWARE SPOT

Microsoft has recently released Windows 7. Will your software work with the new Microsoft environment?

**MYOB:** If you are using MYOB Accounting 18, 18.5 or Premier 12.5, you may need to download and install an update. Business Basics 1.1 does not need an update. Earlier versions of the software have not been tested for use with Windows 7.

**Quicken:** QuickBooks 2009/10, Retail Point of Sale 2009/10 and Quicken 2010 have been tested on Windows 7 and do not require any updates. Earlier versions of the software have not been tested.

## DUE DATES FOR SUMMER

<b>DECEMBER 21</b> November BAS Due (if lodging monthly BAS)	<b>JANUARY 21</b> December BAS Due (if lodging monthly BAS)	<b>JANUARY 28</b> Oct-Dec Super. Payments Due	<b>FEBRUARY 21</b> January BAS Due (if lodging monthly BAS)	<b>FEBRUARY 28</b> December BAS Due (if lodging quarterly BAS)
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