



Monthly Information Newsletter – Tax & Super

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Distributions from a discretionary trust

Distributions from trusts and the taxation of those distributions is complex. This is an attempt to simplify the topic.

The purpose of a trust is to separate the legal and beneficial ownership of assets. The legal ownership of the asset rests with the trustee. The beneficiaries benefit from the income that flows from the assets.

A trust is not a legal entity. It is best described as a legal “relationship” that is controlled by the trustee of the trust under the terms of the trust deed.

Trustee

The trustee is the controlling mind of the trust. A trustee can be an individual or a number of individuals. A trustee can also be an entity, such as a company. The trustee has a fiduciary duty to administer the trust for the benefit of the beneficiaries. A fiduciary relationship is one of the utmost good faith. The trustee must only act in accordance with the trust deed and relevant trust legislation. The trustee is the legal owner of the assets of the trust, but not the beneficial owner.

A trust is a discretionary trust when the trustee has the absolute discretion as to how the income and capital of the trust is distributed to beneficiaries.

Trust deed

The trust deed is a legal document signed by the creator of the trust, called the settlor. It gives instructions to the trustee as to how the trust is to be administered and what activities it can engage in. It also names and specifies the beneficiaries of the trust. The trust deed is a very important document.

Appointor

The appointor(s) are the individuals that appoint the trustee and can change the trustee. It is important that a trust always has a living appointor.

Distribution resolution

In most cases, by 30 June each year, the trustee must determine the distributable income of the trust. The trustee must then decide how the distributable income of the trust is to be distributed among the beneficiaries. This includes the amount of the distributions and also the type of distributions (e.g. capital gains and franked distributions).

Beneficiaries

The beneficiaries are those that may benefit from the income and capital of the trust. Usually, there are primary beneficiaries defined in the trust deed and most other beneficiaries will be related or connected to the primary beneficiaries. Beneficiaries can be entities and do not have to be human beings.

Taxation

Income distributed to adult beneficiaries and beneficiaries that are entities are taxed to those beneficiaries. The trustee is taxed on income distributed to child beneficiaries. The trustee is also taxed, often at the top marginal tax rate, if there is income of the trust that has not been distributed to a beneficiary.

Note that the taxation of trust income can be a complex matter, and usually requires professional advice.

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