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LAWYERS

Should you use a Trust to set up your business?

Business owners may be familiar with some of the structures that they can choose to run their business, such as operating as a sole trader, in partnership with others or under a company structure. A trust arrangement is another business structure that you should consider when establishing or restructuring your business.

What is a trust?

A trust is a legal relationship where one person or a company (the trustee) holds or invests assets and property (the trust assets) for the benefit of another person(s) (the beneficiaries). The trustee deals with trust assets in accordance with specific terms set out in a trust deed. The trust deed is the document that establishes and governs the trust arrangement - it sets out the objectives of the trust, who the beneficiaries are, and the powers and restrictions of the trustee to manage the trust and distribute its income and assets.

What are the different types of trusts?

There are a number of different trust structures to choose from. These include a Discretionary Trust, a Unit Trust or a Hybrid Trust.

- **Discretionary Trust (Family Trust)** - This is a type of trust where the trustee is given absolute discretion to distribute income or trust property between beneficiaries as the trustee sees fit and a beneficiary of the trust has no entitlement to demand a specific share of the income or assets of the trust. A discretionary family trust is a common arrangement in the case of family businesses, where the trust is designed to benefit family members by sharing their tax burdens and protecting family assets.
- **Unit Trust** - This is an arrangement in which distributions from the trust are made to the beneficiaries (unitholders) in fixed proportions. This arrangement is suitable when a number of unrelated families and/or individuals are to receive income produced by a business or investment.
- **Hybrid Trust** - This type of trust has elements of both a discretionary trust and a unit trust.

What are the advantages of using a trust?

- **Ease of creation** - A trust arrangement is established through a trust deed and so is relatively simple to set up and any legally competent person or a company can act as a trustee.
- **Confidentiality** - Trust business operations remain confidential. The trustee is not required to lodge financial reports to ASIC like a company but the trustee is required to lodge tax returns with the ATO.
- **Protection** - There is a degree of separation between the trust assets, the entity carrying on the business and the individuals who will ultimately benefit from the entity which protects the assets. As beneficiaries do not actually own the trust assets, those assets are not at risk due to debts incurred by, or legal action against, a beneficiary.

- **Flexibility** - In the case of discretionary trusts especially, they offer flexibility for tax planning purposes as it enables income to be split between the beneficiaries in different proportions which can be varied each financial year.

What are the disadvantages of using a trust?

- Cost - Trust structures may be more costly to maintain than a sole trader or company structure.
- Tax - If income is not distributed each financial year, any undistributed residual income will be taxed at the highest marginal rate. In addition, losses cannot be offset against beneficiaries' other income.
- Decision making - Beneficiaries have little or no authority to direct a trustee on the management of the trust.
- Trustee liability - A trustee acting in a personal capacity may be liable for trust debts which exceed the value of the trust's assets.

If you want to know more about establishing a trust for your business or personal activities or would like assistance with any business matter, please call John Bateman or Michael Battersby on 02 4731 5899 or email commercial@batemanbattersby.com.au.