TRUSTS – are they still a preferred structure for businesses and individuals?

Despite the latest budget funded Tax Office crackdown on trusts and the ATO's sustained scrutiny, business owners and high wealth individuals are creating family trusts in increasing numbers. Trusts are a common yet complex part of tax planning for most businesses and wealthy individuals.

The majority of trusts are simple family-based structures.

Trusts are often perceived primarily as tax minimisation vehicles, however there are other important functions which include:

- **asset protection** – beneficiaries do not have an definitive entitlement to the assets of the trust, other than in exceptional circumstances
- **succession flexibility** – assets can be passed to family members without an associated tax burden
- **"limited liability"** protection – where the trustee of a trust is a company, there is an ability to utilise Corporations Law to keep unsecured creditors at bay if the business becomes insolvent (but attention must be given to ASIC provisions for insolvent trading)
- **flexibility** – as regards the treatment of income and capital gains and capacity to determine where income and capital of the trust are to be distributed
- **access to capital gains tax (CGT) concessions** – Division 115 (CGT discount) and Division 152 (small business CGT concessions)

Trusts are also effective for clients in occupations with a **high risk of litigation** or bankruptcy because in these cases, they are not the legal owner of the assets held in trust for them. Therefore the assets have a **greater degree of protection**.

Tax minimisation is another potential benefit of trusts as trusts have the ability to stream certain types of income, for example dividends and interest to a corporate beneficiary (so as to cap the tax rate at 30%), other income to beneficiaries on a low marginal tax rate and capital gains to individuals who can gain access the capital gains tax general 50% exemption (assuming the asset has been held for greater than 12 months).

The ability to split the trust's income allows the trustee of the trust to choose from year to year which beneficiaries will receive the trust income so that income is biased towards family members who are on the lowest marginal tax rate.

Key components of trusts, **every trust must have**

- **Trustee/s** – is the legal owner of the property. Trustee carries out the transactions of the trust and acts in the best interests of the beneficiaries (often in trading entities the trustee is a $2 company so as to limit any risk). Ultimately the trustee decides how income and capital is to be distributed to eligible beneficiaries
- **Settlor** – unrelated party that creates the trust and provides the initial asset (often $10)
- **Principal/s** – this is the most important/powerful person as this person has the power to remove and appoint trustees
- **Beneficiaries** – are the people (including entities) for whose benefit the trustee holds the trust assets. Beneficiaries of a trust do not hold an interest in the assets of the trust but rather they merely have a right to be considered or a mere expectancy until such time as the trustee exercises its discretion to make a distribution of income or capital

If you are not currently structured using the functionality of trusts as part of your **overall wealth management strategy**, then **you are not necessarily ensuring your family's financial security and wealth maximising.**

Should you wish to discuss the above issues in further detail, please do not hesitate to contact HW One on 07 3360 9600 or email connect@hwone.com.au

© HW One July 2013