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STANDARD UNIT TRUSTS

Introduction

Trusts have their origin in medieval England when a landowner would, for estate planning purposes, convey land to another person to hold it for the benefit of a third person. From those simple beginnings, many forms of trust have evolved. These include family (or discretionary) trusts, fixed trusts, unit trusts (a form of fixed trust), hybrid trusts, testamentary trusts and superannuation funds.

Many businesspeople struggle to understand the nature of a trust. The key concept to understand is that a trust is a **relationship** between the trustee, the trust property and the trust beneficiaries. The terms of the relationship are defined by the trust deed and the law. The trustee is obliged to administer the trust property for the benefit of the trust beneficiaries in accordance with those terms.

The Standard Unit Trust

The Standard Unit Trust is a trust where the entitlement of the beneficiaries (unitholders) is divided into units. A unit is really just a means of describing the share in the trust fund to which the unitholder is entitled.

The amount of the beneficiary's entitlement is determined by the number of units held.

Most standard unit trust deeds will provide that the unitholders are entitled to receive that proportion of assessable income/ capital of the trust equal to their proportion of units and 1 vote per unit. However, all trust deeds are different – ultimately it is the words of the deed that determine these things.

This type of trust is typically used by **multiple family groups** to acquire and hold businesses or property; however, this type of trust can be used for many kinds of investments.

Asset Protection

The asset protection benefits of unit trusts exist because, in the absence of security or guarantee arrangements and the application of bankruptcy clawback rules, the trust property is generally **quarantined** from legal claims made against unitholders (and vice versa). This is because, although the assets of the trust may be *controlled* by the unitholders, they are not *owned* by them. However it is important to note that claims against the unitholders may result in creditors seizing the units and thus gaining their benefit.

Other Considerations

The standard unit trust has many of the flexibility benefits of family trusts (see our *Family Trusts Flyer*). This includes comparatively **low levels of regulation** and the ability to carry on business, borrow, lend, own property and grant security. In addition they allow for easier transmission of control through the sale and/or purchase of existing units or the issue of new units to existing or new unitholders.

Of course, a standard unit trust is not appropriate in every single circumstance. For example, consider the case where revenue losses are involved. Strict trust loss rules may apply in this circumstance and would need to be followed in order to take advantage of past losses. Also, unit trusts are not appropriate where large amounts of franked dividends are to be received as this would require a family trust election (to access the franking credits), which is not appropriate where more than one family group is involved in the trust.

Finally, if you require a unit trust that is a 'fixed trust' as defined under the Tax Act (e.g. for trust loss reasons), please let us know. In that case, you will need very particular language to be included in the deed.

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