CLASS UNIT (PROPERTY) 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 Class Unit Trust

The Class Unit Trust (also known as the Property Trust) is essentially a hybrid trust incorporating both unit trust and discretionary trust characteristics. As the name suggests this type of trust is typically used by **multiple family groups** to acquire and hold property (especially real property); however, this type of trust can be used for many kinds of passive investments.

Deductions for Interest

A characteristic of the class unit trust is the possibility for unitholders to deduct **interest expenses** where the unitholder has made a borrowing to purchase the units. This occurs through the unit trust features which enable fixed distributions of assessable income so that unitholders may be entitled to income tax deductions on interest expenses from borrowings used to purchase those units.

CGT Concessions

Another characteristic of the property trust as compared to the standard unit trust is their ability to derive and **distribute non-assessable income** (in particular CGT concession amounts). Generally in the standard unit trust, when non-assessable amounts such as the 50% active asset reduction are distributed it results in a reduction of the cost base of units and possibly a capital gain. However, the property trust features a mechanism which enables distribution of these amounts through the classes to overcome this problem.

Asset Protection

The asset protection benefits of property 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 property trust has many of the flexibility benefits of family trusts (see our *Family Trusts Guide*). 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 property 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, class 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.

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