

Trusts

Q: What is a trust?

A: The term 'trust' is not defined in the ITAA 1936, however, there are many definitions of a trust but the most commonly referred to definition is that of Underhill. Underhill states that a trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called trust property), for the benefit of persons (who are called the beneficiaries) of whom he may himself be one, and any of whom may enforce the obligation.

Q: What are the components of a trust?

A:
Trust property: Trust property is the assets held by the trustee.

The Trustee: A trust is not a separate legal entity. Therefore the trustee is the person (including a company) who operates the trust estate as legal owners of the trust

property. As the trustee is personally liable for all contracts entered into with third parties, it is common to use a limited liability company as trustee. The corporate structure provides continued existence of the trustee and permits the indirect control of trust property by the client through the client being a shareholder and director of the trustee company. With an individual as trustee the trust would temporarily cease if the trustee were to die, become sick or be absent overseas.

The trust deed: the trust deed is the memorandum that governs that operation of the trust.

Q: How is trust income taxed?

A: The taxation of trust income from a resident trust is governed by Div 6 Part 3 of ITAA 1936. Section 95 outlines the basis for calculating the taxable net income derived by the trustee. Div 6 apportions liability to tax between trustee and beneficiary according to whether or not the beneficiary

is presently entitled to a share of the net income of the trust. Generally where a beneficiary is presently entitled to trust income and is not under a legal disability the beneficiary is assessed on their share of net trust income. Where a beneficiary is presently entitled but is under a legal disability, or where there is no beneficiary presently entitled to trust income, the trustee is assessed.

Q: How do I determine the net trust income and distribution?

A: In determining the taxable net income for the trust, s95(1) of ITAA 1936 states that the calculation is to be made on the basis that the trustee is a resident. This means that all income, regardless of its source, is included in the calculation. The net income is calculated as follows: total assessable income less allowable deductions. Having obtained the net income; the trustee will then determine each beneficiary's share of net trust income; the final step is to allocate the s95 net trust income and consider the income tax implications of each allocation.