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GBC

Do you have a Discretionary Trust?

Have you considered giving from your trust?

A discretionary trust is an arrangement by which a trustee (individual or company) agrees to hold property (“trust property”) “on trust” for a number of potential beneficiaries (usually family members). This arrangement is often called a family trust.

The trust property could be a business or investment (e.g. shares or real estate).

The intention is that income will be derived from the trust property.

The trustee has discretion as to who among the trust beneficiaries will receive trust income.

If all income is distributed prior to the end of the financial year the income is taxed in the hands of the beneficiary, at the tax rate applicable to that beneficiary. The trustee is just acting as a steward of the trust property for the beneficiaries. It makes sense therefore that tax be paid by the beneficiaries who end up with the income. This is legitimate income splitting.

Tax Exempt beneficiaries

If income is taxed in the hands of the beneficiary, and the beneficiary is tax exempt, no income tax is paid on that income.

The beneficiary does not need to be able to receive tax deductible donations (Deductible Gift Recipient). As long as the beneficiary is tax exempt no tax is paid on the income distributed to it.

Giving in pre-tax dollars

Therefore, to the extent that your trust gives to Gymea Baptist Church (GBC) which is a tax exempt entity, the gift is in pre-tax dollars.

Maximising your giving

Let's say you decide to give $1,000.00 to GBC. If you give this out of income that you personally derive, you would have first paid tax on the income and therefore, would have to earn approximately $1,500.00 to give $1,000.00.

If the gift was given by a discretionary trust, the trust could simply give the $1,500.00. Giving has increased by 50%.

Let's get more specific with an example.

Example:

Allan and Tracey are married, both employed (both on a top marginal tax rate of 30%) and are considering investing. Allan and Tracey give regularly to their local church and are part of a support team for friends of theirs doing mission work.

Instead of investing in their own names, Allan and Tracey could establish a Discretionary Trust to acquire the shares, "The A & T Family Trust."

The A & T Family Trust earns $10,000.00 after expenses in its first year.

Allan and Tracey usually give:

- *$100 / week to their local church*
- *$40 / week to their friends in mission*
  Total = $7280 / year.

To give that $7,280.00, Allan and Tracey would have had to have earned $10,400.00, paying $3,120 in tax before they give.

Now, instead of giving personally, they can give through The A & T Family Trust and can increase their giving by asking themselves, "what would I have to have earned before tax to give this amount after tax?" and give that larger pre-tax amount through the Trust, with the same result, in terms of what their family is left with at year end.

Conservatively, with some allowance for costs of having a tax return prepared and lodged for the trust, Allan and Tracey could increase their giving, by giving through the A & T Family Trust as follows:

- *$130 / week to their local church*
- *$52 / week to their friends in mission*

Total = $9464 / year.

That’s an extra $2,184.00 in giving in the first year alone.

How much can I increase my giving by?

To leave you in the same position:

Increase =	Gross income to achieve current giving	less Current giving	less Costs of trust set up (only relevant in the first year)	less Costs of maintenance of Trust

Is this legal?

Yes.

Why? By giving in this way, the government is saved expense. That is, the government recognises that the burden on them is reduced and therefore tax does not need to be collected to fund this burden.

Another way of looking at it is this – the “common good” is contributed to directly rather than though the conduit of government.

Adding tax exempt beneficiaries to existing discretionary trusts

Most discretionary trust deeds include a mechanism to add beneficiaries. You will need to check your deed for the mechanism in your case.

Often, this can be as simple as a resolution of the trustee. Sometimes the express consent of the Principal / Appointor is required. We suggest that you ask a legal advisor to check your Trust Deed about this.

Stamp Duty implications need to be considered as well, which differ from State to State. We should seek advice on this.

Care also must be taken that a beneficiary is not added as default beneficiary. This would normally have adverse “duty” (stamp duty) and taxation consequences. A default beneficiary is a beneficiary who is entitled to income or capital of the trust in default of the trustee exercising its discretion to distribute the income or capital. In most family discretionary trusts this is the husband and wife.

If I add a tax exempt beneficiary does the trust have to give or is that beneficiary entitled to part of the trust property?

No.

A trustee does not have to give to all beneficiaries. The trustee has the discretion to give or not give and about how much to give.

Costs of establishment and maintenance of a Discretionary Trust

Establishing a trust is comparatively inexpensive compared with the net benefits usually derived. But all Trust Deeds are not the same. It is more expensive to amend the Deed later than get it right from the outset. Therefore, a cheap Trust Deed may not end up being cheap.

Before you buy a trust ask about:

- Whether there are provisions which assist giving to tax exempt entities;
- What asset protection mechanisms are built into the Deed?

Consider what the costs of ongoing maintenance and reporting for this new "child" will be. Speak with your accountant.

Cautions

All income would need to be distributed to beneficiaries prior to 30 June each financial year or be taxed at penal rates.

A discretionary trust cannot be used to divert income, which is personal exertion income or income essentially and ultimately for your benefit.

For example, you can't give money to your church, to be used to pay for an overseas trip for you. This is not really a gift, but a diversion of income, that is ultimately for your benefit.

Broadly speaking … payments or transfers constitute a 'gift' where they are made without legal obligation, by way of benefaction and without any advantage of a material character being received in return.

(Taxation Laws Amendment Act (No. 3) 1998 Explanatory Memorandum)

Please Note: This is not legal advice but it may help you understand the law.