Why Set Up A Trust?

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A trust is a relationship where a trustee (an individual or a company) carries on business for the benefit of other people (the beneficiaries). For instance, a trustee may carry on a business for the benefit of a particular family and distribute the yearly profit to them.

The 3 most common types of trusts are:

- Discretionary Family Trusts
- Unit trusts
- Hybrid Trusts

Discretionary family trusts

- A family trust (also known as a discretionary trust) is the most common trust used by small to medium size business owners, investors and medical professionals in Australia. They are generally set up to hold a family's assets and/or business for the benefit of providing asset protection and tax planning for family members.
- From a tax perspective the main advantage is that any income generated by the trust from business activities and investments, including capital gains can be distributed to beneficiaries in low tax brackets to significantly reduce taxes. And the distribution is discretionary, which means, no beneficiary is entitled to receive income or capital, so in the example where one beneficiary was sued, the trustee can decide not to distribute income of capital to that beneficiary. Assets can also be transferred from generation to generation tax and duty free.
- In most cases, from an asset protection perspective, assets held in a family trust cannot be attacked by creditors or lawsuits.
- Other types of discretionary trusts are testamentary trusts, child maintenance trusts, property trusts, special disability trusts and charitable trusts.

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Unit trusts

A unit trust is like a company where the trusts property (business or investments) are divided into a number of shares called units. The number of units you hold will determine your entitlement to your share of income, capital gains and voting power. Units in a unit trust can also be categorised. For example you can have income units and capital units. Also unit holders can be individuals, companies or discretionary trusts.

The taxation benefits are generally not as flexible as a discretionary trust in that any income distributions must be distributed to unit holders as per their share of units. However if a discretionary trust was a unit holder you can achieve the same flow through tax benefits.

From an asset protection point of view, unit trusts don't provide the same kind of asset protection as a discretionary trust. If a unit holder is made bankrupt, then that persons units will be treated like any other assets and sold to raise funds to pay creditors.

Hybrid trusts

A hybrid trust takes the best features of a discretionary trust and the best features of a unit trust and puts them into one. This means that the trustee has the discretion to distribute benefits to the beneficiaries of the trust – to beneficiaries who are on low tax rates, as well as have unit holders who are absolutely entitles to a portion of the benefits.

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