



## 21<sup>st</sup> CENTURY US ACCOUNTING Q&A

### TRUST

#### Q. WHAT IS A TRUST?

**A.** A trust is a business structure that requires a trustee, a trust and beneficiaries. The trustee holds property and earns and distributes income on behalf of the beneficiaries. A trust is a cornerstone to Tax Minimisation. The trustee (usually a Pty Ltd Company) owns the property and distributes income to the beneficiaries of the trust, who are usually family members. In this way a person who would otherwise earn a large taxable income can split his or her income between beneficiaries who have low marginal tax rates. Income is earned by the trust company. The trustee is empowered to distribute the trust income to the beneficiaries and in what proportions he or she chooses. In the case of a family trust the trustee could for example distribute income to the children of the family, thereby reducing the taxable income of the parents.

A trust in its simple form has a settlor, a trustee, and beneficiaries. The settlor sets up the trust. The trustee manages the trust property (investments, assets, etc.) and pays out any net income for the benefit of the beneficiaries.

We recommend several types of trusts, a Discretionary trust, a Unit trust and the Hybrid trust. While the characteristics of each trust are similar, their applications as part of your wealth creation program are different.

#### Q. IF I HAVEN'T BOUGHT ANY INVESTMENT PROPERTIES YET, FOR MY FIRST ONE, DO I REALLY NEED TO SETUP A TRUST STRUCTURE?

**A.** There are varying opinions regarding this. Our opinion is, it's best to purchase your first investment property in your own name for tax purposes. Thereafter it is wise to consider setting up a trust structure for future properties.

#### Q. SHOULD I SET UP A SEPARATE TRUST STRUCTURE FOR EACH PROPERTY?

**A.** Opinions vary regarding this also. It's up to the individual. It's wise however, not to put too many properties into one trust, and it's quite common for sophisticated investors, to set up a separate trust structure to have only one or two properties per trust to increase the level of asset protection in case one trust is breached it's quarantined from all other properties and assets.

### COMPANY

#### Q. WHAT IS A COMPANY?

**A.** A company is a separate legal entity from the owners. It can sue and be sued in its own name separate from the person who owns it. It has limited liability for its debts. A company can either be a public company or a private company (Pty Ltd).

A company is run by directors. A company is owned by shareholders.

#### Q. WHEN SHOULD I SET UP A COMPANY?

**A.** There are many benefits associated with establishing a Pty Ltd Company. Because a company is a separate legal entity from the owners, company shareholders can benefit from income splitting, profits can be retained in the Pty Ltd Company and be taxed at the 30% corporate rate and excellent asset protection is available if the Pty Ltd Company shares are owned by a discretionary trust. In our view, you should set up a company in the following circumstances:

1. When the company is to act as a corporate trustee for a trust.



2. When the company is to operate as a bucket company to accumulate income as a beneficiary of a trust. Companies can accumulate profits and pay tax at no more than 30%.

3. When the company is to contract out personal services of an individual for income. In this instance careful planning is required to ensure that the rules associated with deriving personal services income are adhered to.

4. When a governing body of a professional service will not permit members to operate through a trust structure. In this instance, you may be required to set up a company due to the nature of the industry you work in.

#### **Q. HOW LONG DOES IT TAKE TO SET UP MY PTY LTD COMPANY?**

**A.** Generally allow 7-10 working days from when we receive your order.

#### **Q. SHOULD I SET UP MY COMPANY BEFORE TRADING OR BUYING PROPERTY?**

**A.** Yes. Once you start trading or buying property, transactions become harder to change for in most instances this will require a change in the legal owner of the asset. While there are rules about changing the legal owner, this action can occur, however it may be expensive and risky.

#### **Q. DO I JUST NEED ONE COMPANY IF I WISH TO RUN A BUSINESS, RENT SHARES AND PURCHASE PROPERTY?**

**A.** If you intend to run an active business it is often a good idea to have this business operating as a separate Pty Ltd Company.

It is not recommended that the one company be used to run a business, rent shares and own property. Why? If something goes wrong inside the business then any property owned by the business will be at risk. If you wish to accumulate other assets such as property, contact our qualified practitioners who will establish purpose built company/trust structures designed to achieve the ultimate in assets protection.

#### **Q. HOW MANY DIRECTORS / SHAREHOLDERS DO I NEED WHEN SETTING UP A COMPANY?**

**A.** Directors - Every proprietary company must have at least 1 director that must ordinarily reside in Australia. A director must be at least 18 years of age. There is no upward age limit. An undischarged bankrupt or a person subject to disqualification under certain sections of the Companies Law cannot act as a director or be involved in the management or promotion of a limited liability company in Australia. A Director may, or may not be, a Shareholder of the company.

Shareholders – While a Pty Ltd Company must have at least 1 shareholder (individual or company) but are limited to a maximum of 50. There is no requirement for any shareholder to be a resident of Australia.

#### **Q. WHAT ARE OTHER ADVANTAGES OF TRADING THROUGH A PTY LTD COMPANY?**

**A.** A limited liability company is liable only for assessment of taxation on its own profits and any taxation assessed is payable by the company itself and not personally by the directors or shareholders. The profits of a limited liability company are assessed at a flat rate, which under the New Tax System is 30%. This is substantially less than the current highest marginal tax rate of 48.5 per cent, as per the personal income tax scale. Directors of course pay income tax on any personal income tax and on profits derived from the company.

#### **Q. CAN I GET A MARGIN LOAN FOR SHARE RENTING WITH A COMPANY AS EASY AS IF IT WAS IN MY PERSONAL NAME?**

**A.** Generally. Ask our recommended Share brokers who can arrange this for you.



**Q. I ALREADY HAVE A COMPANY THAT I USE FOR MY BUSINESS. CAN I JUST USE THAT FOR TRADING AND PROPERTY ACQUISITION?**

**A.** We recommend no. If someone sues you in your business, all assets in the company are at risk. We recommend that your trading be in a separate structure such as a trust, otherwise all your trading capital is at risk if you get sued in your business.

**SELF MANAGED SUPERANNUATIONS FUND (SMSF)**

**Q. WHAT IS A SELF MANAGED SUPERANNUATION FUND (SMSF)?**

**A.** A SMSF is a superannuation fund which you manage yourself. As a trustee of Your SMSF, you decide where to invest your superannuation monies. You take control of your retirement.

You are no longer dependant upon the investing of fund managers and upon excessive fees.

**Q. WHY WOULD I ESTABLISH A SMSF?**

**A.** By establishing your own Self Managed Superannuation Fund, you take control of your retirement planning, you become responsible for your own investment decisions and you become entitled to tax savings that you would otherwise not be entitled to.

SMSFs can also be used to protect your assets to a limited degree. In many instances, assets held in Your SMSF cannot be touched by creditors in a bankruptcy petition.

**Q. CAN I USE A SMSF TO TRADE OPTIONS OR DO BUY WRITES? WHAT ABOUT FUTURES OR CFDs?**

**A.** Yes you can trade options. However there are difficulties with futures or CFDs. However, there are restrictions. You need to have a proper investment strategy and your fund rules need to allow you to do it. Not only that, but there are other duties and requirements as to prudent investing which the law places on you. It is important that you seek professional advice before doing any trading from Your SMSF.

**Q. HOW MUCH SHOULD I HAVE IN SUPERANNUATION BEFORE SETTING UP A SMSF?**

**A.** You need to seek professional advice to ensure that SMSF is feasible option for you. We can provide an estimate of costs you will incur if you get us to administer your fund. Once you do a cost benefit analysis you can determine if it is worth your while to set up a SMSF. It depends entirely on the level of returns you can reasonably expect to generate per annum. Some people if they believe they can generate sufficient returns its worthwhile setting up SMSF for as little as \$20,000 to \$30,000.

**Q. CAN I USE MY AUSTRALIAN SUPER FUND TO PURCHASE A PROPERTY IN USA?**

**A.** Yes, you can if you have a self-managed super fund established or we can arrange this for you via 21<sup>st</sup> Century Accounting partners, it takes approx. 4 to 6 weeks to access funds to invest from your super if setting up a self-managed super fund.

**Q. HOW MANY PEOPLE CAN YOU HAVE IN AN SMSF?**

**A.** You can have a maximum of 4 members (related or unrelated). Each member must be a trustee of the SMSF (or a director of the trustee company).



### **Q. WHAT ARE THE TAX RATES?**

**A.** Your superannuation pays 15% tax on the contributions you make if the contributions are within the thresholds. Concessional contributions (employer contribution "including salary sacrificed contribution") are capped at \$25,000 PA. Non-concessional contributions (your personal contributions from post-tax salary) are capped at \$150,000 PA. You can bring forward your non-concessional cap for three years.

If you contribute in excess of the thresholds you are liable to pay an additional 31.5% tax (above 15% tax) on the excess contributions.

The rates are subject to regulatory changes please consult a tax advisor or ATO website for most current rates. However, you should seek professional advice before claiming any of the above, or spending any money from your SMSF.

## **LLC**

### **Q. WHAT IS THE LLC?**

**A.** The LLC or Limited Liability Company is similar to a PTY LTD company in Australia. It is established for a number of different reasons.

Firstly in order to separate your other assets legally from any obligations that occur in respect to your US property, such as litigation, the LLC is used. The LLC will help confine any exposure to whatever assets the LLC has at the time (such as the investment property). Some advisors encourage investors to use a separate holding company or LLC for each individual property they purchase.

The LLC can also be beneficial in terms of the tax treatment of your US income depending on the type of entity from Australia that purchases the property.

We can setup the LLC for you as a part of our service.

### **Q. SHOULD I ELECT TO HAVE MY LLC TAXED AS A CORPORATION?**

**A.** An LLC may elect to be taxed as a corporation, instead of a partnership or sole proprietorship. Since many tax advisers extol the advantages of the LLC form of business, why would an LLC want to be taxed as a corporation? This article discussed the pros and cons and the election process. First, some information about LLC taxation, then an answer to the question.

#### **How LLCs are Taxed**

By default, if you do not elect otherwise, your LLC is taxed in one of two ways, depending on how many members are in the LLC :

- A single-member LLC is considered a disregarded entity and is taxed as a sole proprietorship, filing Schedule C for the individual's personal tax return.
- A multiple-member LLC is taxed as a partnership. The partnership files an information return on Form 1065, with Schedule K-1's for each member/partner.

These tax situations are what the IRS calls the "default" for income tax for an LLC. You can also elect for your LLC to be considered a corporation for income tax purposes.

#### **Advantage of the Election**

Usually businesses select the tax form that will yield the lowest taxes. The personal tax rate (for sole proprietorships and partnerships) at the high end of the tax tables is higher than the highest corporate rate, so if your income, including your LLC net income, is very high, you might want to remove your business from being included in your personal taxes.



### **Disadvantage of the Election**

One big advantage of an LLC is that owners avoid double taxation - paying taxes on the income of the corporation and also on income received as dividends. Going to the corporate form means you will be subject to double taxation, so the decreased tax had better be significant. Before you make any decisions regarding your LLC, including this election, spend some time working out "what if" scenarios with your CPA and/or tax adviser. Be sure you are making your decision based on reasonable knowledge of the future (as much as any of us can know it).

## **EIN**

### **Q. WHAT IS AN EIN NUMBER AND HOW DO I GET ONE?**

**A.** An employer identification number is used to process most business activities (similar to ABN). This is done by us for you when the LLC is set up.

## **ITIN**

### **Q. WHAT IS AN ITIN NUMBER AND WHY DO I NEED ONE?**

**A.** Individual tax identification number which is used for federal tax reporting purposes (Similar to the Australian and NZ tax file number).

## **TAX RETURN**

### **Q. IS MONEY I HAVE INHERITED TAXABLE?**

**A.** No, the inheritance is not taxable unless advised by the executor that part is taxable. However, if you invest the income from the estate then any earnings will be taxable.

### **Q. I HAVE SHARES AND RECEIVED FRANKED DIVIDENDS THIS YEAR BUT HAVE NO OTHER INCOME. DO I HAVE TO LODGE A TAX RETURN TO GET THE FRANKING CREDIT REFUNDED TO ME?**

**A.** You do not have to lodge a full tax return. You can complete the Refund of Franking Credits for Individuals form which can be lodged by telephone or mailed to the ATO.

### **Q. I HAVE JUST MOVED PERMANENTLY TO AUSTRALIA. DO I HAVE TO PAY TAX ON THE MONEY THAT I HAVE BROUGHT WITH ME?**

**A.** No, you will only have to pay tax on any earnings that you make from the time that you moved to Australia. If the money that you brought with you earns interest in a bank account you will have to pay tax on the interest.



**Q. I HAVE TO BUY TOOLS/EQUIPMENT FOR MY JOB. WHAT CAN I CLAIM AND HOW MUCH?**

**A.** You are able to claim expenditure incurred in replacing, insuring and repairing tools of trade that you use for earning your income. The amount you can claim will depend on what records you have kept.

**Q. I HAVE HAD TO PAY FOR CHILD CARE DURING THE YEAR. IS THIS CLAIMABLE ON MY TAX RETURN?**

**A.** These expenses are not claimable as a tax deduction. Eligible taxpayers may be able to claim the Child Care Tax Rebate (CCTR) through the Family Assistance Office.

**Q. CAN I CLAIM FEES PAID TO MY TAX AGENT?**

**A.** Fees paid to a registered tax agent for preparation of your return, amendments and generally handling your tax matters are all deductible. You can also claim travel to your registered tax agent. Registered tax agents are the only people legally able to receive payment for the preparation of tax returns.

**Q. DO FOREIGN INVESTORS PAY TAX IN THE US?**

**A.** Yes. Basically any income sourced in the US is taxed in the US.

**Q. DO AUSTRALIANS PAY TAX IN AUSTRALIA FOR THEIR USA PROPERTIES?**

**A.** Australian permanent residents pay tax on worldwide income. They are allowed a foreign tax credit for tax paid on foreign sourced income. So any tax paid in the US will be deducted of any tax due in Australia. Thus you don't pay tax twice.

**Q. WHO CAN DO MY US TAX RETURN?**

**A.** We can organise all that for you. See accounting order form for fees.

See attached 21st Accounting order form to have all your US and Australian structures to be established and tax returns for US and Australia arranged.

**Q. CAN I CLAIM IT AS A TAX DEDUCTION?**

**A.** Yes, if you own a US property your trips to inspect are tax deductible. There are many other advantages and Tax deductible options when owning an investment overseas.

We do not provide financial, tax or legal advice, as we are not licensed to do so, but we can provide you with contact details for professionals who can provide any advice you feel you may need.

**Disclaimer:** *This information is provided to give you a general knowledge of the subject and to allow you to have information to discuss with your attorney, CPA, or tax adviser. We are not CPA, tax attorney, or Enrolled Agent, and we do not give tax or legal advice.*

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