



# Setting up a family trust in Australia

## An eight-step guide

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**F**amily trusts are a powerful legal tool to help protect assets, preserve private family wealth across generations, and provide tax advantages.

For those looking to pass on their wealth and legacy to future generations, setting up a family trust may be the answer. However, this requires careful planning and consideration of all relevant elements, and the legal requirements can make the process seem overwhelming.

To help demystify the process, this paper discusses why setting up a family trust is important to maintain financial security within a family, and shares a few simple steps to get started. In addition to explaining the benefits of establishing a family trust, it looks at the drawbacks of such a structure.

### Key takeaways

#### What is a family trust?

A family trust is a legal arrangement often used by family business owners to protect their assets. It is an important part of estate planning and wealth management, as it allows control over how assets are distributed among family members according to one's wishes.

It can take the form of a discretionary trust, where the trustee has full discretion over how much money to give each family member, or it can also be a fixed trust, where family members receive predetermined payments set out specifically in the trust agreement.

A family trust serves multiple purposes such as preserving private family assets across generations and providing tax advantages for family members.

Ultimately, it is intended to ensure a family's longevity and smoothen the transition from the control of one generation to another.

### Elements of a family trust

Family trusts typically include the following elements and associated roles.

#### Trust documents

This legal documentation outlines how the trust will be managed and how it should operate. It typically includes instructions for asset distribution, trustee remuneration, and other key matters.

#### Settlor

The settlor [also known as the 'grantor'] is the person or entity that creates and sets up the trust, [and is responsible for transferring as-

sets into it for administration by the trustee]. They can be a single individual, multiple individuals, or even an organisation such as a company or charity. The settlor must have clear intentions and objectives for the trust before setting it up.

#### **Trustee**

A trustee is a person or group responsible for managing and administering the trust and making decisions on behalf of its beneficiaries or settlors. A family trust trustee has complete discretion regarding how the trust income and capital are distributed to beneficiaries.

#### **Beneficiary**

A beneficiary is a person or group who will benefit from the trust assets. The trust cannot be named as a beneficiary as it is not a legal entity.

#### **Assets**

These are the funds that are placed into the family trust, which can include cash, stocks, bonds, real estate, and other investments.

#### **Investment strategy**

The trust will have a specific investment strategy based on the goals of its beneficiaries or settlors. This strategy will determine how the funds are allocated and may include criteria such as risk tolerance and expected returns.

#### **Tax management**

The trust must adhere to applicable tax laws, so trustees must be aware of any relevant regulations that apply to their situation. This can include understanding rules related to income, estate, or capital gains tax (CGT).

### **What are the different types of family trusts?**

There are several different types of family trusts, all with different purposes and processes. These types of trusts are summarised in the following discussion.

#### **Revocable living trusts**

This type of trust is established during the lifetime of the settlor and can be amended or revoked at any time.

#### **Irrevocable trusts**

A type of trust that is irrevocable and cannot be changed or terminated without the permission of all beneficiaries.

#### **Charitable remainder trusts**

A type of trust designed to benefit a charity, and which provides individuals with income for life or a designated period of time.

#### **Special needs trusts**

A trust designed for the benefit of an individual with

special needs, protecting them from losing government benefits and providing an additional source of income.

#### **Life insurance trusts**

A trust created to hold life insurance policies, allowing the death benefit to be paid out tax-free to beneficiaries upon the insured's death.

#### **Generation-skipping trust**

A type of trust that allows assets to be passed on to grandchildren or more distant relatives without them being subject to estate taxes.

#### **Spendthrift trust**

This type of trust limits how trust funds can be used and prevents them from being squandered by beneficiaries.

#### **Testamentary trust**

This type of trust is created in a Will and does not become active until the settlor's death. The terms of the trust are set out in the deceased individual's Will.

### **What are the benefits of forming a family trust?**

Establishing a family trust offers many potential benefits to families, outlined as follows.

#### **Asset protection benefits and estate planning**

If there are significant investment assets as part of a business, a family trust can protect them from creditors and asset taxes. Additionally, it can allow for a smooth transition of assets to the next generation.

#### **Tax efficiency**

Family trusts can provide tax advantages for beneficiaries, such as deferring or eliminating estate taxes. Advice from tax professionals will help ensure that all available tax advantages are taken care of.

#### **Wealth preservation**

Family trusts can help to preserve family wealth and ensure that assets are distributed according to the wishes of the settlor.

#### **Avoidance of probate**

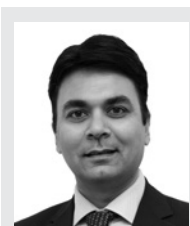
By avoiding probate [that is, proving a Will's validity], families can save time and money when it comes to settling an estate.

#### **Professional management**

Professional trustees can provide expertise and guidance when it comes to investing, managing, and distributing the assets of a family trust.

#### **Control over fund use**

Trustees can control how funds are used and ensure that they are used for their intended purpose.



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### The quote

*Establishing the right trust structure can maximise existing assets and create long-term financial security for generations to come.*

#### Flexibility

Families have the flexibility to modify or amend a trust at any time if their circumstances change.

#### Privacy

Family trusts are private and do not require the same disclosure as other investment vehicles, such as a corporation or limited liability company (LLC) [equivalent to a proprietary limited company or private proprietary company in Australia].

### What are the drawbacks of forming a family trust?

The potential drawbacks of setting up a family trust include the following aspects.

#### Cost

Setting up and administering a family trust can be expensive. There are taxes, legal fees, accounting costs, and trustee fees that must be taken into consideration.

#### Complexity

Family trusts can be complicated to set up and manage, and may require the help of a financial or legal professional.

#### Loss of control

Once the settlor creates a trust, they no longer control the assets and must abide by the terms of the trust.

#### Difficult to revoke

Due to their irrevocability, family trusts can be difficult to revoke or amend if circumstances change.

#### Difficulty with the transfer of assets

It can be difficult to transfer certain types of assets into a trust, such as real estate or business interests.

#### Limited lifetime

Some family trusts have a limited life and must be terminated upon the settlor's death. Additionally, trusts are subject to income and CGT.

### Steps for setting up a family trust in Australia

Here are eight steps to setting up a family trust in Australia.

#### Step 1: Determine if a family trust best suits your needs

It is important to ensure that setting up a discretionary [where the trustee has discretion in relation to distributing the trust's income and capital] or family trust will meet your financial and estate planning needs. For this, you will need to seek professional advice from a legal or financial adviser.

#### Step 2: Choose a trustee and beneficiaries

The trustee company will be responsible for managing

the trust's assets while abiding by the terms of the trust. You will also need to determine who the beneficiaries of the trust will be.

The trustee of a family trust can be either an individual or a corporate trustee, such as a bank or trust company. In contrast, the beneficiaries can include the settlor, their family members or charitable organisations.

#### Step 3: Prepare the family trust deed

The family or discretionary trust deed is the document that outlines the rules and regulations of the family trust. This document should include details such as how assets are to be managed, who has access to funds, and how funds are distributed.

#### Step 4: Appoint the trust fund settlor and complete settlement

As mentioned, a settlor is the person responsible for transferring assets into the family trust. The settlor must sign the trust deed to complete the settlement.

#### Step 5: Set up a bank account for the trust fund

You will need to open a trust bank account in the name of the trust. The trustee is responsible for managing and controlling this account and ensuring that funds are used according to the terms of the trust deed.

#### Step 6: Register the trust with the Australian Taxation Office (ATO):

A family trust must be registered with the ATO to ensure it complies with tax laws. You can register a trust by submitting an application form and paying any associated fees.

#### Step 7: Pay stamp duty

Depending on the state or territory in which you are establishing your trust, you may need to pay stamp duty. This tax must be paid when transferring assets into the trust. You can determine your stamp duty by visiting each state or territory's relevant revenue authority.

#### Step 8: Lodge annual returns with the ATO

Completing an annual tax return for your family trust should always take place to maintain compliance with the ATO. There are a few key pieces of information that will be required to lodge an annual trust return such as your tax file number and the income generated from the trust during the financial year.

It is important to remember that once this process is completed, you have access to any tax benefits or concessions that come from having a family trust.

### The income tax implications of setting up a family trust

Setting up a family trust in Australia requires consideration of the income tax implications that come with the arrangement. Establishing the right trust structure can

maximise existing assets and create long-term financial security for generations to come.

Generally, trusts are taxed at special rates, depending on whether you have a discretionary or fixed trust. Further, CGT treatment may also need to be taken into account when transferring assets.

Choosing a reputable and experienced legal and accounting professional can help ensure that your Australian family trust is properly set up, helping to provide peace of mind that all trust tax returns requirements are taken care of.

## Conclusion

The decision to set up a trust should not be taken lightly, given the complexity of trust law and the commitment required to see it through.

A family trust can provide significant advantages for families and individuals alike, both financially and legally. When set up properly, a family trust can act as an incredibly helpful financial tool for future generations.

Ultimately, when it comes to establishing a family trust in Australia, it is important to do proper research and consult with professionals who are qualified in this particular field. **FS**

### About Accuratee Accounting

*Accuratee Accounting is an Australian-based accounting firm providing a comprehensive range of services, including bookkeeping, payroll management, taxation consulting, strategic business planning, cash flow analysis, budgeting, and forecasting. The firm is highly adept at integrating the latest technology and software for data analysis and reporting. Its mission is to ensure clients have access to the best accounting advice and guidance possible so they can make informed decisions about their finances and realise their goals.*



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