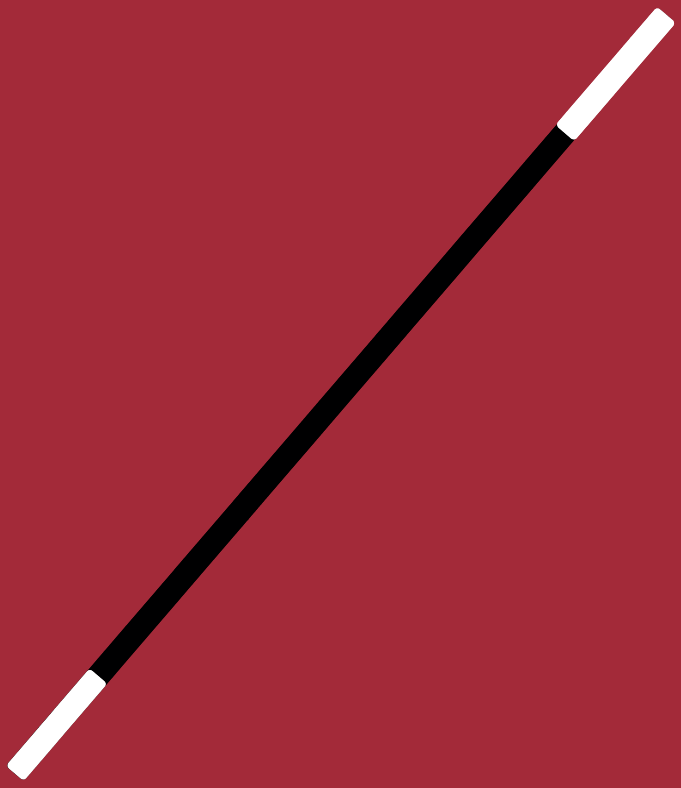
Dale Gatherum-Goss'

"Trust Magic"

February 2011 (6th Edition)



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Trust Magic

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Introduction

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Foreword

Over the last 25 years, in particular, it has become more and more obvious that there is both a great need for more information about Trusts and how they work; and, a complete lack of simple information available for people to find so that they can help themselves.

Early in my career as a CPA, I was fortunate enough to work with some of the richest people in the country who used Trusts to hold and control their wealth. In looking after these people, I was privileged to work with some of the best legal and accounting people in Australia.

And so, with much prompting from many people, I have decided to try to put together a book that explains in plain English what a Trust is, and how to go about using one effectively.

This is the 6th edition of the book which shows just how much change happens from a tax perspective… and goes to prove why it is also important for you to seek your own independent legal and tax advice before acting on anything written in this book.

Laws change. Practices change and a very large part of our tax law is open to interpretation… so much so, that rarely do our judges always agree with each other!!

I believe that the information is correct as at February 2011 however, the very nature of tax law means that by the time you read this book some things may have changed.

Furthermore, I have also provided an insight into the magic of Trusts, now that your accountant or solicitor has helped you give birth to your Trust.

I have tried to include descriptions of the things that you will do within the life of the Trust, as well as sample documents that might be useful.

Feel free to change the samples to suit yourself as there is no "best" or "perfect" way to do most things.

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In reading this book, you will have more than likely already established your own Trust and so I have not dealt with who should fulfil the various roles within the Trust other than in passing.

Instead, I have described what those roles mean and provided a little more information about them so that you can understand your Trust that little bit better.

If you have not yet established your Trust, I apologise if this means I have left out something that might be important to you.

I hope that this book helps to make sense of your Trust and that you never regret the decision to take control of your business and wealth.

Finally, please feel free to contact me if you would like me to clarify something from within this book, or, if you would like a little extra information about . . . *the Magic of Trusts*.

And, if you enjoyed and or benefited from this book please email me and let me know. We love hearing nice feedback! We also enjoy adding your comments to all those already on our website.

Best wishes
Have fun!

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February 2011

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Acknowledgements

Writing a book like this one is never a solo act and the finished product can only ever be as good as it is as a direct result of the help of others. So,.....

It would be remiss of me not to acknowledge the support, encouragement and wonderful desktop publishing skills provided by my beautiful wife, Sue. Sue's efforts are much appreciated and make a large difference.

I also need to acknowledge the expert technical advice, and support, provided by my son, James. James has made a solid contribution to this book since it was first written, but, now his expertise and guidance are essential to the accuracy of this book. Thanks mate!

James can be found at:

www.houseofwealth.com.au

I also acknowledge the experts at Macquarie Group Services from where I have learnt a great deal, and, to whom I personally turn for expert advice when I need it myself. Thanks guys!

They are found at:

prc.macquariegs.com.au

And, obviously, any errors in this book (if there are any!) are mine and not the fault of anyone else.

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Setting the Scene

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Room for you to scribble:

Setting the Scene

I believe that it is important that before we talk about how to use your Trust, that we explain just what the Trust is and who the important players are within the Trust.

This way, I should not confuse you when I talk about certain roles within the Trust in later chapters, and if I do, you can come back here and instantly refresh your memory about that role.

Most serious investors own their assets through a Family Trust, or even, in multiple Family Trusts. This is because they look ahead at the future and consider what their investments might be worth; and the income that those same investments might generate 10, 20, 30 or even 40 years ahead.

That is, the successful investors and business people make decisions now, based on their expectations of the future and not based on where they are and nor what they own today.

A Trust allows for the wealthy to control their assets without actually owning the asset. It allows for assets to be placed beyond reach of most lawsuits and for the income to be taxed at the best possible rates at all times, whilst also providing the needed flexibility and estate planning opportunities to always benefit from the structure.

A Trust allows you flexibility, estate planning, and asset protection in a way like no other structure will.

Let me explain more . . .

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Most of the wealthy people in Australia use Family Trusts to own their wealth. I have personally seen this in action ranging from Politicians to some of the people listed as amongst the richest 200 people in the country.

If the rich are doing something in a common way, then, it seems important that we understand just how and why they are doing it. After all, we want to be wealthy like them and so we need to do the things that they do to achieve our desired result.

But, what if the law changes?

Firstly, it will change! That is the reality whether we like it, or not. But as you'll see in a moment, Trusts have been around for about 1,000 years with very little change to the way they work. So, I'm not too concerned and still invest through my own Trusts, myself.

Tax law will change, but, given that our Politicians use Trusts to hold their own assets, do you really expect those changes to hurt too much?

I certainly don't!

Let me introduce you to the idea of investing in assets such as investment properties, shares, bullion or business through a Trust that you control. I'm sure you will see just why so many of the wealthy people use them . . . .

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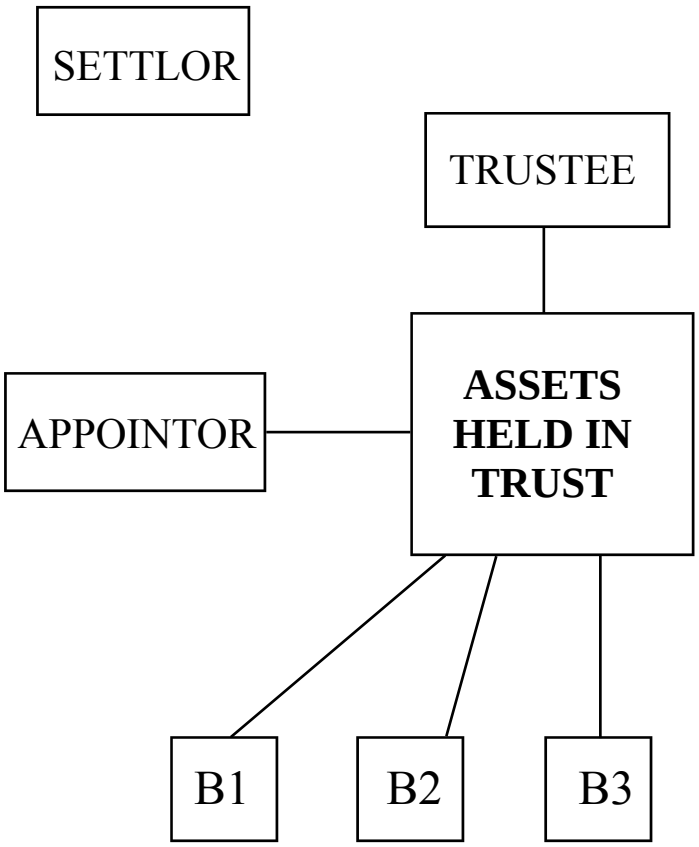
The Main Players

As in any business and sporting team, there are a certain number of important roles to be filled. A Trust is no different.

Lets have a look.

Below, I have attached a picture of what a typical Family Trust will look like:



Now, I'll explain who each of these people are. . . .

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I have described the beneficiaries of a Trust earlier and so I will not do so again here. But, let me explain who the other key players within a Trust are:

The SETTLOR

The Settlor's role within a Trust is simply to be the person who gives an asset (typically $10) to be held in Trust for the primary beneficiary.

Once this is done, the Settlor disappears from the scene and is specifically forbidden to benefit from the Trust. The Settlor is often a friend of the family although it can be a solicitor or accountant if required.

We would not normally ask a family member to act as the Settlor, simply because the Settlor is excluded from benefiting from a Trust so, by using a family member this reduces our flexibility and the options available at a later date. To me, that would not be wise.

The TRUSTEE

The Trustee is the person, or company, responsible for making the day-to-day decisions on behalf of the Trust. The Trustee can be either one individual; joint individuals; or more commonly for asset protection purposes, a company. If it is a company, then you control the company by being the shareholder and/or director. (See my notes on pages 24 on using a "Risk" Person or "Safe" Person structure to further improve asset protection and avoid possible problems arising from the "Richstar" court case.)

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The APPOINTOR

This is the most powerful person within a Trust structure. The Appointor's role is to appoint and "sack" the Trustee of the Trust. Therefore, it is important that you control the Trust by being involved as the Appointor.

For example, let's say that you have a Trust that owns $10 million worth of property. If your accountant is the Appointor, he or she can sack you as the Trustee and take control of the assets of the Trust by appointing their own company as the new Trustee.

This could lead to you losing all of your wealth through a very carelessly created Trust.

Be careful and do not allow anyone else to have the final control of your assets, unless they are to act in a joint capacity with you.

Even then, it is quite common for the smart people to have a signed (but not dated) resignation as Appointor, (director or Trustee or any other role they fill) from their friend, solicitor or accountant in their possession allowing them to keep full control.

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The CONTROLLER

A role that is not included in the diagram on page 17, nor in most older Trust Deeds, is the Controller position.

Some of the newer and better Trust Deeds, of late, allow for a Controller to be named. The Controller's role is often filled by an independent person such as a friend, solicitor, or accountant and their job is to approve or authorise major changes to the Trust Deed or beneficiaries.

Macquarie Group Services also suggest that this role could be used as an important security feature in estate planning to safeguard a spouse or children.

If your Trust Deed does not include this role, don't worry, it is not a problem. However, if you think this role might be helpful to your situation I recommend you seek legal advice to see if your Trust Deed can be amended to include the Controller role.

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The History of Trusts

Trusts go back to the days of the Holy Crusades in the 11th and 12th centuries. Yes, a thousand years ago!

In those days, the King would approach his most trusted knights and explain that He wanted to go on a crusade to the Middle East. If the knight refused, he would be imprisoned or executed for treason and so, quite often, reluctantly; off he would go and leave his family, home and assets behind.

Now, if the knight died on the long journey there, in battle once he arrived, or on the long journey back, his assets and estate would be given to the King. Obviously, the knight's wife and children were not too happy about this and so they sought ideas from the most educated people of the time, the monks.

The monks came up with the idea that the knight's assets should be held in Trust for the benefit of the knight and his family, whilst not actually being owned by the knight himself.

So, once this was organized, the knight could safely ride off to do battle knowing that his estate and wealth was protected from attack and therefore out of reach of the Crown.

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If the knight died and the King came to collect the knight's assets, the family of the knight could prove that the knight owned nothing save his sword and armour and the King was welcome to keep those if He had remembered to bring them home.

A thousand odd years later, nothing much has changed!!

Trusts are still used to protect assets from the Crown (amongst others) and this has always been their primary purpose.

Over the next couple of pages, I will explain how Trusts work; who the main players of a Trust are; and give you just a sample of some of the tax benefits or advantages of using a Trust.

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Protecting Your Wealth

The main reason why Trusts are used is, as we saw from the above tale, to protect assets. This is possible because it is the Trustee of the Trust that is sued should someone decide to attack the assets within a Trust.

At this stage, the Appointor, or Guardian, of the Trust simply sacks the Trustee and appoints a new Trustee in its place.

So, if the lawsuit continues, it is against a company, the old Trustee, who owns nothing more than a few dollars in cash and no assets worth attacking. The person suing your Trust gets nothing at all, unless you have acted in a negligent or fraudulent way thus exposing your assets to risks … and deservedly so.

In the meantime, a new Trustee has taken control of your assets and they are safely tucked away and out of reach.

You might find it interesting to note that a few years ago, Rob Balanda, a prominent solicitor, suggested that he knew that quite a few solicitors would not even bother with pursuing a law suit if they discovered that assets were held in a Trust.

Please note that a couple of years ago now, an important court case (Richstar Enterprises) has thrown some doubt and confusion into the effectiveness of Trusts as an asset protection tool.

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However, it is my belief (based on reading expert opinions and analysis of this court case) that this case is not a major change in the law but instead a timely warning to:

- Stay within the boundaries of the law; and
- Structure your Trust and assets carefully.

Hopefully, the information in this book will help you to structure your affairs in a way that protects your assets from attack.

A well designed and planned Trust structure will usually have both:

- A risk person; and
- A safe person.

The risk person (who may also be at risk because of his or her profession, eg. a doctor, engineer or business owner) is usually the director of the Trustee company and should own no assets at all (or at least a minimum of assets) if possible.

The safe person will usually be the Appointor, perhaps shareholder in the Trustee company and will own private assets outside of the Trust, such as the family home.

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In this way, your assets can remain protected using a good Trust structure and clever advice from your accountant and solicitor; one or both of whom may also fill the role of joint Appointor, or joint director of your Trustee company, if required, and as a way of ensuring that the "Richstar" problem does not apply to you.

With all this in mind, it is definitely worth consulting with both your solicitor and accountant if you do have any specific concerns about asset protection, let alone how to minimize your exposure through the careful use of your Trust.

And, it is better to talk to them before you have problems than after those problems appear!!

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Tax Benefits of Using a Trust

I'll talk about tax in a LOT more detail further in the book, but for now, here is a brief overview.

There are two main tax benefits of owning assets in a Trust. The first is that the Trust does not pay tax on a profit or positive income. Instead, it distributes the net income to the beneficiaries of a Trust who pay tax on that income at their marginal rates of tax.

The beneficiaries of a Trust are split into three main categories:

1. The Primary beneficiaries (B1 on page 17)
2. The General beneficiaries (B2 on page 17)
3. The Tertiary beneficiaries (B3 on page 17)

So, who are these people?

The *Primary Beneficiaries* are the people for whom the Trust was specifically created. For example, in one of my Trusts, it is my wife, my two older children and me. In another of my Trusts, it is my wife and my two daughters, not me nor my son.

The *General Class of Beneficiary* is basically anyone related to any of the primary beneficiaries. Again, in my Trust, this includes the parents of both me and my wife, our children (such as our third child who was not born when the first Trust was created) and the children of my two older children (my grandchildren); the siblings of each of us; the aunts and uncles, nieces and nephews and just about anyone else related by blood or marriage.

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Room for you to scribble:	The *Tertiary Class of Beneficiary* includes any company or other Trust in which a primary beneficiary of this Trust owns an interest. That is, in my case, any other Trust that has me, my wife, or either of my oldest two children as a primary beneficiary; or company owned in full, or in part, by my wife, our children or me.

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So, How Does This Affect Me?

As I mentioned before, at the end of each year the Trustee of the Trust decides who will benefit from the net income of the Trust. For practical purposes, this is usually done in such a way as to distribute the net income to those beneficiaries who will pay the least amount of tax.

So, as an example, if we have a fairly typical family with mum, dad and three young children where the kids have no income of their own; dad earns $80,000 pa and mum earns $18,000 pa we could do the following:

- Distribute $3,333 each to the three children and pay no tax at all on this net income.
- Then, distribute the next $19,000 to mum and pay 16.5 cents in the dollar tax on this part of the net income.
- Then, distribute up to another $43,000 to mum and pay 31.5 cents in the dollar tax on this part of the net income.
- Then, we may as well distribute the balance of the net income between mum and dad equally at that stage because they are on the same tax rate.

So, just by doing this alone, we would save a minimum of $10,320 in tax each year compared to dad receiving all of the income.

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Now imagine if we do nothing more than that for 15 years... we'd save legally almost $154,800 in taxes!! Enough to buy at least one more property, and probably more. Magic!

However, instead of distributing profit to mum and dad and paying tax at a minimum of 38.5 cents in the dollar tax, we might also be able to distribute some of the profit to:

- Another company that we own and thus pay 30 cents in the dollar tax; or
- A retired parent or grand parent and pay no tax at all (be careful of the negative Centrelink consequences though); or
- Any other relative whose income is lower than $37,000 firstly, and thereafter, below $80,000 to pay less tax.

Obviously, we just saved even more money in tax, and in doing so, created even more wealth for ourselves.

Now a word of warning about distributing the net income of the Trust to a company beneficiary. It can be done and it is legal to do so. But, whereas it does not matter if the Trust does not pay an individual beneficiary other than via an accounting journal, it DOES matter for a company. So, your Trustee should expect to write a cheque if you use a company as a beneficiary.

This may change you thinking and decision, but as always it should be an option considered and discussed with your tax advisor.

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The Trust allows us the flexibility to legally pay tax at the lowest possible marginal rates of tax that we can find.

And, as you know, paying lower taxes means that you have more money available to reinvest into more assets, such as in shares or investment properties, or, to simply improve your lifestyle.

The same principles apply if you choose to sell the shares, business, property or other assets of the Trust as we again decide who will pay the lowest rate of Capital Gains Tax and then distribute the net capital gain accordingly, in much the same way as we did with the ordinary income of the Trust.

And, the distributions that I have mentioned can be done as an accounting journal without money actually having to go to the beneficiaries in the short term.

Eventually, it will though, so please keep this in mind with your decision making, and remember to discuss the consequences of the decision with your accountant before finalizing each year's tax returns.

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I have attached a sample copy of the annual minute or resolution showing the decision on how to distribute the profit in the Appendix.

This document is normally prepared by your accountant so you do not need to be too concerned about it other than to be aware that it is needed each year, and what the thinking might be in deciding who will receive a distribution of net income each year.

You literally can have your cake and eat it too!!

The other way that Trusts are used to reduce income tax is by paying expenses of the family before the net income is distributed.

In this way, the Trust pays for items such that appears on the attached list and claim them as a tax deduction before the net income is calculated.

Refer to Appendix 2
for a list of
Unusual Potential Tax Deductions.

Again, by paying expenses before tax is calculated, we pay less tax and thus have more money available to use to buy more investment properties.

We are now playing the same level of games played by the wealthy in managing our finances and this will allow you to make more wealth possible.

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Let's have a look at how this works. . . .

Do you go to the movies, or buy DVD's or music CD's? At the moment, you have to earn $60, pay up to $28 in tax before you have enough to buy that $30 CD.

It HURTS, doesn't it? *Nothing* is left! Well... $2 and you can't do much with that, can you?

But, if your Trust pays for these expenses as a tax deduction then you only need that $30 which means that you still have $30 left over to use elsewhere.

Again, $30 doesn't do much, but, if we do this and other things like it all year, every year, the savings obtained by paying less tax will be enormous!

Watch out, too, for the GST refund that will make this magic trick even better for businesses run through a Trust. I will explain this later on in the book.

In an attempt to be fair, I have also listed the main advantages and disadvantages of using a Trust to invest. I hope that this is helpful to you.

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Advantages

1. The ability to protect your assets from attack.

2. The flexibility to distribute net income of the Trust to family members, and therefore pay less tax.

3. The flexibility to pay certain otherwise "private" expenses from the Trust and claim them as a tax deduction.

4. A Trust allows you to "own nothing and control everything" as you will have read, or heard, from the Gurus in investing.

5. You can have more than one Trust, which may allow you to minimize land tax in some instances.

6. And to get around the problems of the banks thinking that you are too rent reliant a new Trust is a new venture and the bank, or banks, does not need to know about the other Trust or Trusts that you control at all… if you do not want them to know. It's your choice and you are in control.

7. Estate Planning opportunities in looking after future generations in the most appropriate manner.

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Disadvantages

1. The initial cost of establishing a Trust. Say $2,000 to $3,000, depending upon in which State or Territory you live and your advisors costs.
2. The ongoing costs are a little higher than not using a Trust when you consider the cost of Government registration fees for the Trustee company and the ongoing accounting fees.
3. The fact that you will not benefit from any losses incurred by a Trust other then them being carried forward to a future year to offset against future profits. However, there is a magic way around this 'problem' as well—see the Chapter on Hybrid Trusts later in the book.
4. That common bank staff are a little more wary of you investing through a Trust simply because they do not understand Trusts properly, but, they know that you can use them to swing the odds in your favor a little more than normal. You will more than likely need to talk to a 'business banker' to get understanding, or, use the services of a good mortgage broker.
5. Higher rates of Land Tax are payable on properties in Victoria, NSW and the ACT (at least) than would apply if you simply owned the property in your own names. (New Trust Structures are now available to minimize this problem though)

Believe me, the benefits of using a Family Trust far outweigh the negatives.

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In Summary

In summary, the first magic trick to learn is to avoid investing in your own name because of the long-term problems that are created in doing so.

By using a Trust, or multiple Trusts, to own your assets, you:

1. "Own nothing and control everything."
2. Protect your assets from possible attack under a lawsuit.
3. Pay less tax when the assets bring positive income or, when you sell those assets for a capital gain.
4. May avoid the "rent reliance" complaint from the banks and thus retain your ability to continue investing.
5. Provide for the future with estate planning opportunities.
6. May allow you to minimize land taxes.

I hope that this Chapter has allowed you to see why investing in your own name is a trap that you can avoid and why the wealthy people use Trusts instead.

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As always, you should consider talking to your own solicitor and accountant before establishing a Trust, and I encourage you to do so.

Please feel free to email me to clarify anything that I have written here and I will do my best to explain the issues even further.

But, better still, discuss specific questions and issues with your own legal and accounting team.

After all, it's their job to protect you, and guide you, and they should know your particular needs and circumstances as well as your goals and objectives.

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Getting Started

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Room for you to scribble:

Getting Started

OK, your accountant or solicitor has established the Trust for you and handed over a large pile of impressive and important looking papers that look quite scary. What's next?

You will need to:

1. Have the Trust Deeds stamped by the Office of State Revenue in your State
2. Apply to the Tax Office for an ABN and TFN
3. Open a Bank Account
4. Register a Business Name if you plan on using the Trust to own a business

We'll deal with each process one step at a time to keep things simple for you.

However, before we do, I recommend that you sit down and actually read the Trust Deed so that you can understand a little more about what the Trust can and cannot actually do. And, if you do not understand something ask your solicitor or accountant to explain it to you in simple terms. If they cannot explain it properly....get a new advisor!

I know it sounds like heavy going, but, if you take it slowly and break down each part into small bits then it is not that hard.

Trust me, would I lie to you?? It is exactly how I go about it myself, and, how I have trained accountants to read Trust Deeds.

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Stamping your Trust Deeds

This is a very important step that should be taken care of by your solicitor or accountant as part of establishing the Trust on your behalf and before the Trust is used to buy any assets at all.

A quick check of the Trust Deed just inside the cover will confirm that the deeds have, in fact, been stamped by your State Government department, the State Revenue Office.

Why do we do this?

Well, apart from the Government raising revenue from collecting the stamp duty, it allows them to ensure that all Trusts are registered.

A problem arises if you fail to stamp your deeds when the Trust is created and then use the Trust to buy assets in the future.

When the Office of State Revenue catches up with you they will ask you to pay stamp duty on the value of the assets within the Trust at that time.

As you can imagine, this could be quite a large amount of stamp duty payable if you have already bought a property or two, when it could easily be avoided.

If you are at all in doubt about whether the Trust Deeds have been properly stamped, please check with your accountant or solicitor depending upon who helped establish the Trust on your behalf.

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Stamping the deeds will vary depending upon the State or Territory that you are in, but, should cost no more than $200 at most, except for NSW which I believe now charges $500 in stamp duty.

Please note though, that in Queensland the Trust Deeds cannot be stamped when the Trust is created. Instead, the deeds will be presented at the time you buy a property in Queensland, and not before.

It will take between one and four weeks for the stamped deeds to come back to you, but this should not stop you using the Trust whilst you are waiting.

However, I would recommend that you make life a little easier for yourself by having a longer settlement period if you buy a property at the same time the Trust is first created, just in case there is a delay in the deeds coming back.

If you do not have a longer settlement under these circumstances, the banks cannot approve the loan because the stamped Trust Deeds won't be back from the Office of State Revenue. Without a loan approval, you risk losing the property and all along you, your broker and everyone else involved will be stressed.

Believe me, you and your broker and or your banker will thank me for this advice!

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Applying for an ABN and a TFN

Your Trust needs to have an Australian Business Number (ABN) and a Tax File Number (TFN) and under normal circumstances your accountant will already have applied for both on your behalf.

If not, then it is important to apply for one quickly and you can do this yourself via the Tax Office's "Australian Business Register" web page at:

www.abr.gov.au

- Once there, click on "*Apply for a Australian Business Number*" (ABN) on the left hand side, then
- Following the instructions from there.

Just a note though, for the purposes of the ABN application you will be asked for the name and details of an "Associated Individual" This is usually a director to the Trustee company, or the person behind, and driving, the Trust.

Alternatively, hassle your accountant and ask him, or her, to apply for the ABN and TFN on your behalf.

You probably wonder why you need an ABN and the answer is quite simple really as without one, people who should pay you, including property managers for real estate agencies, are obligated to deduct 46.5% of your payment in tax. Ouch!

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Room for you to scribble:

Obviously, you cannot afford to lose almost half of your income in tax and so applying for, and receiving, an ABN will avoid this problem.

But on the flip side, some mortgage brokers suggest that an ABN is incredibly helpful in borrowing money to buy assets (such as property) as the ABN opens up a few alternative options that are not available to people or entities that do not have one. So, it's not all bad news!

In applying for an ABN and Tax File Number for the Trust, you will need to provide your own Tax File Numbers and so it is worthwhile having this information ready.

The Trust will lodge an income tax return every year to show the Tax Office what income was received and what expenses you wish to claim within the Trust. As such, the Trust will need a Tax File Number, which is applied for as part of the ABN application for a new Trust.

As a rule of thumb, I would show the ABN of the Trust on your letterhead for the Trust, and, on any official correspondence just to avoid any hassles that might appear later on.

Furthermore, I would quote the Trust's Tax File Number to the bank when you open any accounts or to the share registry when you buy shares in the Trust's name.

Don't worry, we'll deal with how to open bank accounts and buy shares next.

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Room for you to scribble:

Opening a Bank Account

Now that we have the Trust properly created; the Trust Deeds stamped, and we have applied for an ABN, the next step in getting your Trust ready to use is to open a bank account.

When you go to the bank to open the account you will need to take the following information:

Personal:

You should take enough information for each of the directors of the Trustee company to pass the 100 points identification process that the banks normally use. Most common ID forms that the banks like to accept are:

- Drivers Licence
- Birth Certificate
- A Current Passport
- Medicare Card
- Debit or Credit Cards from Other Banks

Trust & Trustee:

You should expect the bank to take copies of a few pages of the Trust Deed and details of the Trustee company, which they will attempt to verify later.

Some banks may even charge you a fee for this privilege of them proving that you do indeed own the Trustee company!

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You will also need to take with you:

- A copy of the Trust Deed
- A copy of the Trustee company's Constitution or Memorandum & Articles of Association.

Finally, be aware that the name of the bank account should be something like "Trustee Company Pty Ltd ATF The Person's Family Trust". The ATF stands for "As Trustee For".

In some cases though, it is common for the banks to just use the Trustee's name and so please do not worry at all if this is how they show the account on your cheque books or statements. It is OK.

In theory, the $10 settled sum of the Trust – the money provided by the Settlor for the benefit of the beneficiaries at the time the Trust is created - should always be available and easily identifiable.

However, given the way that banks charge fees these days, it is not possible to place this $10 in a separate bank account and expect it to be there in the future. A simple alternative is for a $10 note to be stapled to the front of the Trust Deed once it has been assessed or stamped by the Office of State Revenue, and kept there forever...but, technically speaking this stapling could be construed as a Federal Offence of defacing currency! It never stopped me though, nor is anyone likely to know unless you tell them.

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Room for you to scribble:

Registering a Business Name

If you plan to use the Trust to own and operate a business, you may need to register a business name and this is done via the Office of Fair Trading, or Consumer Affairs, in your State or Territory.

Typically, registering a business name will cost you only about $83.70 in Victoria, but $156 in NSW, with only slight variances in price for other States.

You can find out more by visiting this web site:

http://www.business.gov.au/BusinessTopics/Registrationandlicences/Registeryourbusinessorcompany/pages/Registeryourbusinessnameinyourstateorterritory.aspx

as this covers all States and Territories with links to on-line application forms for the relevant location of your business.

You do not need a business name though if you intend to use the Trust for investment purposes.

Once again, the actual ownership of the business name is likely to be in the name of the Trustee company and not the Trust's name. In fact, once registered, the full name of your business will be something like:

"Trustee Company Pty Ltd ATF The Family Name Trust
Trading as
Registered Business Name"

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However, most people will only want to see your business name and ABN so you won't have to quote the full name too often. Thank goodness for that!

You should also be aware that most States will require you to pay a 'renewal' fee every three years which is a similar cost to the initial registration.

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In Summary

Your accountant or solicitor will have established the legal framework of the trust and now it is up to you to take a couple of small steps in getting the trust ready for your investments or business, such as:

1. Having the Trust Deeds stamped by the State Revenue Office.
2. Applying for an ABN & Tax File Number from the Tax Office.
3. Opening a Bank Account.
4. Registering a Business Name.

In some cases, your accountant will have taken care of the first two items and you will have to deal with the other two, where applicable.

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Investing Through a Trust

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Room for you to scribble:

Investing Through a Trust

The reason most people establish a Trust is for the Trust to own, or hold, their investments. So, it makes good sense that we have a close look at what we do, and why we do it, before we go too much further.

In looking at investments through a Trust structure, the rules will be pretty similar for all types of investments and so we'll focus on the most common types being:

- Cash Investments
- Investment in Shares
- Bullion (gold and silver, for example) Investments
- Forex or Currency Investments
- Property Investments
- Home Sweet Home

Firstly though, it is worth noting that all well written Trust Deeds will specifically give permission for the Trustee to make investments of various types and therefore, doing so means that you are merely complying with the terms and wishes of the Trust Deed.

For example, here is an excerpt from my Trust Deed:

> ". . . The Trustee shall have the following powers . . .
> to make or purchase any investment . . ."

That is, it is expected of you!

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Cash Investments

If a Trust has surplus money sitting in a cheque account, it should seriously consider making those funds work for the Trust and earn more money.

After all, if you do not do this, you are wasting the opportunity.

With this in mind, it is common for Trustees to take some of those funds and place them on deposit or in a cash management account or term deposit.

This is simple enough to do although you should be aware that the banks might establish the account in the full name of the Trust being:

"Trustee Company Pty Ltd ATF The Family's Name Trust"

I would always recommend that you shop around to get the best terms and conditions on your cash investments so that your money is working for you whilst you wait for an opportunity to make further investments.

Things you might take into consideration are:

- Interest Rate
- How frequently the interest is paid to you
- Access to the funds – are they at call, or, locked away for a set period of time?
- Fees charged

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If you are interested in reviewing your bank options, I can recommend a great web site run by Choice which is at:

betterbanking.choice.com.au/ditch-and-switch

where a comparison of banking products is easy and quick. Good luck!

At the end of the day though, whilst cash investments are safe and low risk, they are not the most efficient way to grow wealth over time and so I would consider one of the other types mentioned herein.

However, before you make any decisions, please, consider getting specific advice from a licensed financial advisor.

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Room for you to scribble:

Share Investments

In talking about shares, I will use this word as a generic term to include not just shares, but options, warrants, c/d's and other share based derivatives for the sake of simplicity. For the purposes of this book, they should work the same anyway.

To invest in shares using a Trust you will need to open an account with a stockbroker who will provide you with all the necessary forms required. Stockbrokers will create an account that should look something like:

Trustee Company Pty Ltd
<Family Name Account>

This is because the Trust is not recognised as the owner of the shares, the Trustee is.

The same rules apply for online brokerage houses, like Bell-Direct, as they do for full service brokerage houses.

A couple of years ago now, laws were passed that place more onus on the stock broker to ensure that the name of the account properly reflects the owner of the shares.

This law, the "Anti Money Laundering Act", will mean that your broker will likely need the same paperwork that you provided to the bank to be able to establish an account.

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This will of course, include your own proof of identity as well as a copy of the Trust Deed and certificate of incorporation for the Trust and Trustee, respectively.

To actually buy shares once the account is opened you would merely ring or email your full service stockbroker with a request to buy a certain number of shares in a specific company at a certain price. They do the rest.

> For example, you could tell the broker to buy 100 NAB shares @ $24.60 or lower and the broker will look to buy you those 100 shares when the price is at, or below, the price of $24.60 each per share. The stockbroker would then contact you and let you know that the shares have been bought and arrange for payment within three days. Naturally, a broker will charge you a fee for acting on your behalf.

If you are using an online brokerage house then buying and selling shares is just as easy and quick as using a full service stockbroker. You will merely click on the button to buy shares, fill in the box for the quantity of shares that you want to buy (100 for example) and the limit you want to pay for each share ($24.60 in the above example). It's that simple and a fraction of the cost in fees that a full service broker will charge for the same thing.

Although I have talked about buying shares, the same types of instructions are involved when you buy options or any other derivative. However, it is probably outside the scope of this book to go into detail of how these work.

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Your stockbroker can explain the concepts and risks involved in buying derivatives much better than I can and so if this type of investment appeals to you, I suggest that you make an appointment with your stockbroker after doing as much research as possible.

For what it is worth, I like to see people investing in shares that pay a dividend, which is then re-invested, back into the company to buy more shares. Whilst this may not be possible for all investors, or indeed for all companies on the stock exchange, it is a simple way to allow the magic of compounding to work in your favour over time.

Again, before you do anything like this, please seek proper advice from your stockbroker or financial advisors. My personal preference may not be appropriate for your own circumstances.

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Bullion Investments

Many people like to own precious metals such as Gold or Silver and often referred to as Bullion. This is especially the case in uncertain financial times when the stock market is volatile and unpredictable.

As we have seen with shares, your Trust can invest in bullion just as easily as you can, although, as you will see elsewhere, there may be a little extra paperwork involved in establishing an initial account.

For example, to set up an account for your trust with the Perth Mint you will need to provide certified copies of:

1. The Trust Deed (first page and last few pages with the names and signatures of the trustees); *plus*
2. If the trustee is a company, then, the ASIC Certificate of Incorporation and the ASIC Company Statement, *plus*
3. The individuals proof of identity such as passport and drivers licence.

Once again, when your account is established, it should look something like this:

Trustee Company P/L
<Family Name Account>

Much the same as it does for a share trading account.

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Once the account is established it is easy to buy bullion by simply clicking on the relevant buttons on the website where you have an account or by contacting your broker.

Whilst there are numerous ways for you to invest in bullion, if you are just starting out then I would recommend you do some serious research first. I can recommend the Perth Mint:

www.perthmint.com.au

Bullion is, but does not have to be, commonly thought of as a longer term investment than a trading commodity. Others may think differently, and, as with all decisions about what investments to buy, you should consider seeking independent financial advice before taking any action.

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Room for you to scribble:

Forex or Currency Trading

Over the last few years, the changes to the minimum investment in currency trades (often known as FX or Forex Trades) has meant that this type of investing has become more accessible to everyone.

Accordingly, more and more people are investigating this form of investing with a view to making money from the swings in the perceived value of a currency when compared to another country.

For example, you might have seen or heard that the Australian Dollar (AUD) is trading at 98c to the US Dollar (USD). This means that $100 Australian dollars will only buy you $98 US dollars, because the US Dollar is perceived at that moment in time as being worth more than the Australian Dollar.

The value or price of a currency though changes by micro seconds. That is, the price can shift VERY quickly!

Traders make their money or lose their money buying a currency, eg. AUD/USD and selling it when the value changes. If the change is in their favour the trader wins and makes money. An unfavourable change will mean the trader loses money.

As with shares, property and bullion etc., your trust can invest in this activity just as easily as you can as an individual.

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I consider that this is a trading activity (buy and sell) rather than a long term buy and hold activity.

As this from of investing is considered a "high risk" investment activity, you will probably have to provide a lot more information and sign off on the fact that you understand that this is a high risk activity and that you accept that you could lose money.

The brokerage houses offering this type of investment will need you to open a "Corporate" account for the trust.

In doing so, you will personally be noted as the "Authorised Representative" and as such, you will have to provide the usual proof of identity (certified copies of course) for yourself along with all your usual information of Name, address, date of birth etc.

You should also expect to have to provide proof of your residential address, too! This might be in the form of a utility (gas, phone or electricity) bill or bank statement no more than six months old. You can also expect to have to provide bank account information in the name of the trust/trustee.

You will also to have to complete and sign a "Corporate Account Resolution" form and sign off a personal guarantee on behalf of the trust. Lastly, you will probably need to provide a complete copy of your Trust Deed submitted with your application.

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Once your trading account is opened, you will need to transfer some money as a starting amount into the trading account. Then, you can trade with the "big boys"!

As this is a high risk activity, I *strongly* recommend you do a lot of research into Forex trading before starting. I found some good introductory information at:

global.fxdd.com/en/learning-centre/new-to-forex.html

which might help you. And perhaps consider "paper trading" with a practice account before risking your own money.

Lastly, as you might expect by now, and especially because of the risks involved, please also consider seeking independent financial advice before making any decision to trade this type of commodity.

Good luck!

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Room for you to scribble:

Property Investments

A Trust is, without a doubt, the very best way in which to own assets that will grow in value over time, such as property. I'll explain some of the reason why later in the Tax and "Magic Tricks" sections of this book.

Regardless of what type of property you buy - that is, whether you buy residential property, or, commercial property - you should understand that the property Title will show the name of the Trustee company only with no reference to the Trust whatsoever. This is not a mistake, but common practice because the Trust is not recognised.

So, the Title documents will not mention the Trust at all.

When purchasing the property, the contract should be signed by a director of the Trustee company, or, by a nominee of the Trust.

I normally suggest that you sign the contracts something like:

- "Trustee Company Pty Ltd and/or Nominee" or
- "Billy Bloggs and/or nominee" or
- "Trustee Company Pty Ltd ATF The Family Name Trust and/or nominee"

I personally just use the 1st option, these days.

The "and/or nominee" allows you a little flexibility if something goes wrong and you wish to find a replacement buyer.

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It can also provide you with secrecy at the time of the contract if you do not want the vendor to know exactly who is buying the property for whatever reason.

Before you do sign "and/or nominee", it might be best to clarify the law with your solicitor because each State and Territory has slightly different views on whether this can be done without creating problems. I'm aware of people who bought property in WA, for example, who were levied with double stamp duty because the contract was worded carelessly. A quick chat with the solicitor or conveyancer would avoid this type of problem completely, so, please be smart.

Now, if the Trust is a relatively new Trust it may not have the cash reserves to buy the property or even pay a deposit. So, it is perfectly normal for the people behind the Trust to lend money to the Trust to enable the purchase to go ahead.

For example, Billy & Millie Bloggs take $30,000 cash from their bank account and lend it to the Trust by depositing the money into the Trust bank account. The Trust can pay them interest on this loan if they want, or, it can be interest free just as easily. A sample minute recording this step can be found under the Sample Minutes in Appendix 1.

Also, it is common for the persons' own house, or assets, to be used as security and this does not pose any problems either. In this way, the bank might lend 100% or even 110% of the purchase price to the Trust because of the external security provided by the people behind the Trust.

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For example, Billy & Millie Bloggs have a home worth $300,000 and a mortgage over that home of just $70,000.

This means that they have lots of equity in their home. Billy & Millie allow the bank to take a second mortgage over their home as a full deposit towards their new investment property (I often use "IP" as an abbreviation for Investment Property) bought in the name of their Trust.

A picture of this might make a little more sense for some.

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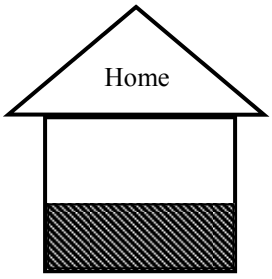
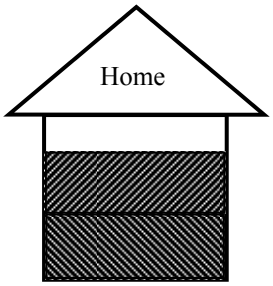
Before. . .



Value = $300,000

Mortgage Debt = $70,000

After. . .



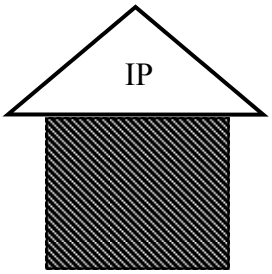
Value Of Home = $300,000

Original Mortgage = $70,000
Plus
2nd Mortgage = $100,000 for IP

$80,000 purchase of IP

$20,000 stamp duty on IP •

PLUS. . .



Value = $400,000

Mortgage = $320,000 •
Plus 2nd Mortgage from above

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Room for you to scribble:

Home Sweet Home

It is not that uncommon for some people to buy their family home in a Trust structure and this is usually done for two major reasons:

1. Asset Protection; and
2. Wealth Planning

Most business people and professionals are very cautious about personally investing in their own homes because of the possibility of being sued and losing everything.

Therefore, they use structures such as Trusts to own assets so that should the individual be sued, the assets such as the family home are quite safe.

Most people these days buy a home and stay in it for approximately seven years before they move onto something bigger and better.

(The banks know this and this is why they happily convince you to lock in fixed interest rates and long term mortgages. When you move, they make even more money from you!)

So, by buying your home in a Trust you have bought it in the right investment structure when you wish to convert it to an investment property. That is, you have planned ahead!

The Tax Office are currently looking at unit Trusts owning your home, but, have shown no real interest in Family Trusts doing so since they lost an important court case in the 1980's.

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In fact, I am aware that the Tax Office have issued at least one Private Binding Ruling (83291) addressing this very issue and confirming that:

- a Trust can rent a property to a beneficiary;
- a Trust can claim the interest, depreciation and repair costs amongst others as normal providing that the rents charged are at normal, commercial rates the same as if the property was rented to a stranger.

One piece of magic to this idea is that providing you pay rent to the Trust at commercial rates, the Trust will be able to claim the interest on the mortgage and all the usual bills relating to property investment as legitimate tax deductions without triggering the nasty consequences of Fringe Benefits Tax.

Furthermore, if you wish, the Trust can provide you with a fully furnished home and this would mean that the furniture within your home would also be tax deductible to the Trust.

As a final thought within this concept, you might even be able to claim:

- Rent of a home office on your own personal tax return; and
- Rental assistance from Centrelink, (depending upon your actual taxable income)

Magic, huh?

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The **downsides** to this idea is that you:

- Would lose the exemption from Capital Gains Tax when you sell the house, as it is not your principal place of residence; and
- Might have to pay Land Tax on the house when you would otherwise have been exempt from this tax.

These issues would be something that you would need to consider along with the potential benefits of having the Trust own your home and so you may need to seek specific expert advice for your existing and, just as importantly, your future circumstances before you actually make that decision.

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Room for you to scribble:

In Summary

The Trustee has a responsibility to the beneficiaries of the Trust to use the funds wisely and responsibly and as such, the Trustee should invest the money, as we have discussed, in investments such as:

- Cash deposits
- Shares and derivatives
- Property
- Forex or Currency
- Businesses
- Bullion

And, if you wish to, the Trust can own your home for a number of important reasons.

In doing so, each type of investment will see the name of the Trust and Trustee treated differently. Knowing this, you can avoid worry and invest confidently.

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Borrowing Money

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Room for you to scribble:

Borrowing Money

For anyone to make good progress with their wealth creation plans, it is inevitable that you will borrow money to assist you with your investing. This will be the case regardless of whether you borrow from a dedicated lending institution like a bank, or from yourself, a friend or associate, or even a family member.

In this chapter, I will cover various matters involved with:

- Borrowing from a bank
- Borrowing from private sources
- Other lending issues

All Trusts have a Trust Deed which will specifically allow the Trust to borrow money and it is worth reading your own Trust Deed to see exactly what is, and is not, allowed. For example, my Trust Deed says:

> "The Trustee shall have the following power . . . to borrow, and raise money's from, and to secure by mortgage, floating charge or any other form of security whatsoever . . . and upon such terms with or without security or interest as the Trustee shall deem fit; and the Trustee is hereby expressly empowered to join with any company or person in executing any mortgage or other document for the purpose of securing the payment of money . . ."

As you can see, there is not much that you cannot do under the terms of the Trust Deed and this is an important issue to realise as it empowers your Trust to borrow money as the Trustee likes.

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Borrowing Money From a Bank

When you consider that most of the real wealth in Australia is owned and controlled through Trusts, you will soon realise that the banks are very comfortable with lending money to Trusts and quite used to doing it.

In fact, I would go almost as far as saying that in dollar terms, the banks lend more money to Trusts than they do to individuals for investment purposes.

Surprising isn't it?

Banks will lend money to Trusts just as they will lend to you as an individual. In this same way, they will want the Trust to meet the two basic tests that they use on top of ensuring that you are a credible person with a sound history:

1. The serviceability test
2. The loan to valuation test

What do these tests mean?

Banks will lend money to just about anyone who can prove that they have enough income to repay the loan when required without causing undue stress or problems to the borrower.

To determine whether or not you can afford to repay the loan the banks use a simple formula based on a percentage of your income being allowable to use towards repaying debt.

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Commonly, it is about 35% to 40% of your gross income - that is, before tax. Each bank uses a slightly different formula for calculating this income and percentage in their serviceability test.

So, if you have an income of $100,000 pa, a bank will allow you to have borrowings that have about $35,000 to $40,000 pa in repayments before they feel that the debt will cause you problems. Each bank has slightly different rules on what they include as income (wages, rents, dividends, interest, pensions, etc.).

For example, some banks include all the rent you receive and others will only include, say, 70% of that same rent.

So, as I have stressed elsewhere in this book, it is important to do your homework and/or deal with a good mortgage broker who should be able to guide you so that you find the best deal.

For a Trust, it is quite common for the bank to take the income of the people behind the Trust into account. Although the bank lends money to the Trust, they will ask you to act as guarantor.

(Over the last couple of years though, we have started to see some banks ask all adult 'specified' beneficiaries (B1) to act as Guarantors. This tightening of policies can reduce some of the flexibility that we have enjoyed in the past. Accordingly, if your Trust is not yet created, it may be worth discussing this issue with your professional advisors before deciding on who to include as named or specified beneficiaries.)

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Room for you to scribble:

This means that if the Trust does not make the repayments, the bank will force you to personally make the repayments on the Trusts loan.

I have never seen a problem with this and happily sign the papers provided by the bank to enable me to borrow money through my own Trusts.

After all, what choice do you have?

Do you want the loan or not?

The second test involves a valuation of the assets to ensure that the debt is less than the bank's normal lending criteria of 80% (or 60% if you are borrowing via a "low doc" loan) of the value of the assets held as security.

They do this if you wish to borrow money personally and so there is no real difference whatsoever in borrowing through a Trust structure.

The reason why bank's like to lend less than the full value is so that in the event of you defaulting on the loan, they can sell your property quickly, and, still recover enough money from the sale to get their money back.

It is also worth noting that the banks will use non-trust assets as security for the Trust to borrow money.

So, if your family home is in your name, and there is plenty of equity within that property the bank will take that equity as security for the Trust to borrow against.

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For example, Billy & Millie Bloggs have an existing home worth $300,000 and a mortgage over that home of just $70,000. This means that they have lots of equity in their home.

Billy & Millie allow the bank to take a second mortgage over their home as a full deposit towards their new investment property bought in the name of their Trust.

Alternatively, you can draw down against that personal equity and lend that money to the Trust which we will deal with shortly in the next part of this chapter.

For example:

Billy & Millie have a home worth $300,000 and a mortgage of say $70,000. Billy & Mille approach another bank and refinance their existing home loan to a new loan with a new bank of say $200,000.

Obviously, $70,000 pays out the old home loan and so this leaves them with $130,000 to use towards their investments via a loan to the Trust.

This might look like:

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Room for you to scribble:

Before:

Value = $300,000

Debt = $ 70,000 with CBA

After:

Value = $300,000

New loan = $200,000 with NAB

$70,000 used to pay out old loan with CBA

$130,000 loaned to Bloggs Family Trust

Given that you have met these two tests, the banks will want to lend money to your Trust for it to buy assets. Again, remember that this is how the banks make money and so they will be more than happy to help you. Although, we all need to remember that as a result of the GFC (Global Financial Crisis) the Australian banks have less competition and so all lending rules are tighter than they were just a few years ago.

When you apply for the loan, the bank will ask for a copy of your Trust Deed for their solicitors to review to ensure that the deed has a paragraph (similar to the one quoted above from my own deed) authorising the Trustee to borrow money to buy investments.

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Room for you to scribble:

Obviously, if the Trust Deed does not allow the Trust to borrow money then the bank is legally unable to help you and all bets are off.

Bear in mind, too, that the bank's solicitor is likely to charge a small fee for the review of your Trust Deed.

The bank will also want to know the financial position of the Trust and so is likely to ask for the Balance Sheet and Profit & Loss Statement for the last two years of the Trust and quite possibly the Trust's tax return, too.

It is also common for them to ask for similar information for the people behind the Trust (who are often requested to act as Guarantors of the loan, these days) and so I would be prepared and have that information available if requested.

Since the Trust has borrowed money to buy assets, the Trust is responsible for making the repayments on the loan to the bank.

Something else that I have personally always provided to the bank, in addition to their requirements, is an analysis of likely income and capital gains.

Whilst this sounds difficult, it really isn't when you use the brilliant software "Property Investment Analysis" PIA software available from:

www.somersoft.com.au/software.htm

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This software (or something similar) is a *must* for all property investors. It is easy to use, only takes a few minutes and will help you make better decisions....and provides impressive reports for you to share with the bank to help you get that loan.

We even had some clients use it to keep records for their accountant each year, although it was not really designed for this.

To make your life a little easier, here is a checklist of information you will need to take to the bank when you apply for a loan through your Trust. I hope that you find it helpful.

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Checklist of Information to Take to the Bank for a Loan

- ☐ The Trust Deed (including any amendments)
- ☐ Constitution or "Memorandum & Articles of Association" of the Trustee Company
- ☐ Previous two years Income Tax Returns for the Trust
- ☐ Previous two years Income Tax Returns for the People behind the Trust
- ☐ The Trust Financial Statements for the last two years
- ☐ A current Statement of Assets & Liabilities (Balance Sheet) of the Trust
- ☐ A current Statement of Assets & Liabilities of the people behind the Trust
- ☐ A Cashflow projection of Income & Outgoings for the next year and/or PIA report
- ☐ Proof of Identity (if lodging application with a new bank)
- ☐ A copy of the contract to buy the asset
- ☐ A copy of the deposit receipt, where applicable
- ☐ An estimate of the rent to be received from the new investment property
- ☐ Anything else that you think will help the bank decide in your favour.

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Borrowing Money from Private Sources

There are a couple of different issues that we'll deal with here, some of which are very important as the tax law stands today.

It is common for the people behind the Trust to contribute money to the Trust from time to time to assist the Trust in buying assets.

This can be done via a couple of different ways including drawing down against their equity within their own home.

Interest Claims

It is important to note that if the people behind the Trust actually borrow money from a bank themselves and then on lend this money to the Trust, the individuals will ***not*** be eligible to claim a tax deduction for the interest.

Although this seems harsh at face value, the reason is because the courts have rightly decided that the very nature of the Trust is discretionary and, as such, you have no absolute right to the income of the Trust – even where you control the Trustee who makes the decision about who will benefit from the Trust income.

So, one way around this is for the Trust to enter into a loan agreement with the individuals who have borrowed money themselves.

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That is, providing there is a loan agreement *(I recommend that you ask your solicitor to draw up this agreement on your behalf)* between the Trust and the individual where interest is paid at agreed rates which are normal and commercial, the Tax Office will not dispute the interest claimed by the Trust.

However, the individual will then declare interest income from the Trust of an amount equivalent to, or even more than, the interest paid to the bank.

So, this should result in a NIL result at best, or at worst could create a tax bill for the individual which is not a good thing, but, does allow the interest paid to the bank to be tax deductible.

1. Billy & Millie Bloggs borrow $100,000 from the bank
2. Billy & Millie then lend that $100,000 to The Bloggs Family Trust
3. Billy & Millie pay the bank interest @ 7% of $100,000
4. Bloggs Family Trust Pays Billy & Millie 8% interest on loan of $100,000

Which would look like:

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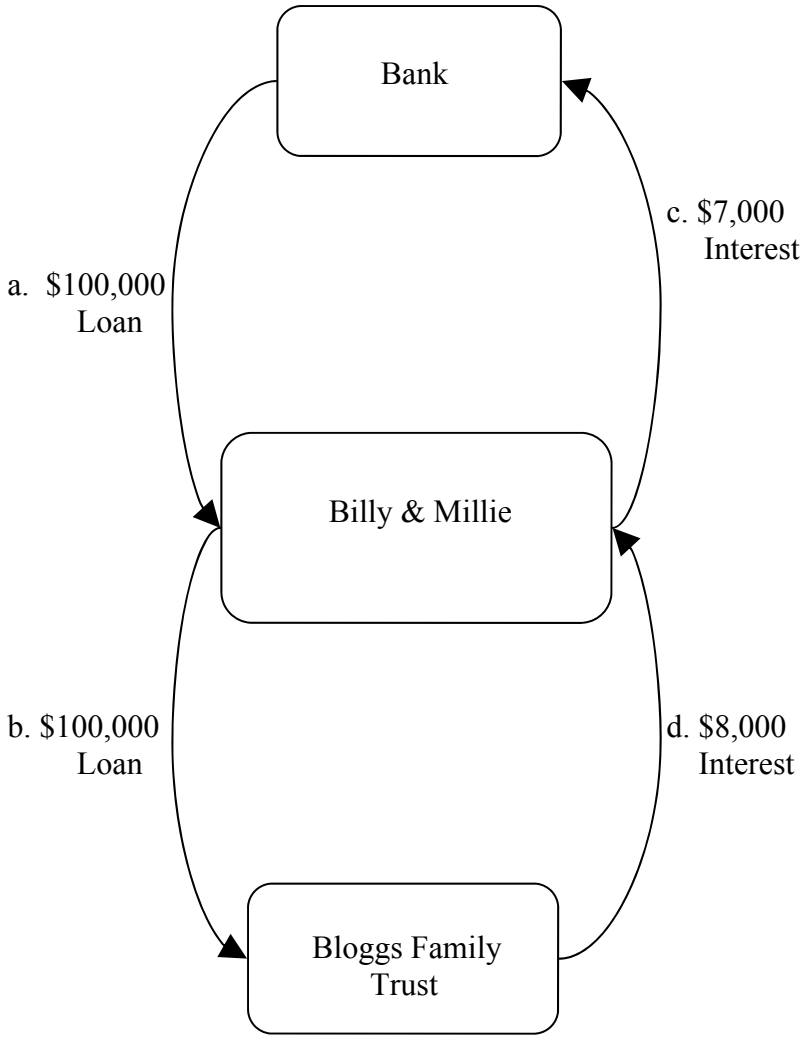

So, in Billy & Millie's personal Tax Return they would show in this example:

Income - Interest received	8,000
Expense - Interest paid	7,000
Profit or Net Income	$1,000

Which would be taxed at their normal rates of tax.

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Created Loan Accounts

The other type of loan that is quite common in a Trust is for the annual profit of the Trust to be distributed to the beneficiaries via a loan account. That is, we have satisfied the legal requirements to distribute the profit, but, this has been done via an accounting journal commonly known as a "book entry" rather than actually writing a cheque.

So, the profit is gone, but, we still have the money in our Trust bank account.

This "book entry" creates a loan between the Trust and the beneficiaries which the Trust will legally have to repay at some later stage, on demand, or, on the vesting of the Trust.

Over time, this loan can build to a substantial amount and I'll show you a terrific way of taking advantage of this situation later on in the "Magic Tricks" chapter ahead in relation to the refinancing principles.

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In Summary

The provisions of the Trust Deed specifically authorise a Trust to borrow money to achieve its business or investment purposes.

This borrowing can be from a bank or lending institution, or, from the individuals behind the Trust.

Borrowings can be interest free, or, at commercial rates of interest.

Banks will happily lend money to Trusts, although, they may require more information from you, and the Trust, before they do, and, they may ask you to act as Guarantor for the loans taken out by the Trust. This is quite normal and nothing to be too concerned about.

Refinancing loans can create opportunities.

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Keeping Score

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Room for you to scribble:

Keeping Score

In theory, keeping score and managing the paperwork should be one of the simplest parts of owning a Trust, but, so often it ends up being one of the hardest parts because we do not devote enough time, or effort, to doing it properly.

In fact, I believe that one of the biggest differences between the "Rich and Wealthy" and the "Wannabes" is their attitude towards paperwork.

Believe me, paperwork is not fun - and I did it for a living! But, it is a necessary evil that we all must do and especially if we want to have the maximum benefits possible from our Trust structure.

So, in this chapter I want to get you started on working on these different areas of paperwork for your Trust, and they are:

- The day to day money transactions within the Trust
- Recording your mindset with decisions that you make
- Maintaining your Trust Deed

If you get into a habit of spending a few minutes each week doing these things, it does get a lot easier, I promise you. Well, certainly easier than leaving it all to the end of the year and trying to do it all at once.

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Room for you to scribble:

Recording Your Mindset

I have found a great way to manage your Trust is for you to record all major decisions in the form of a minute of a meeting or resolution.

What does this mean?

Well, there are a number of examples later on in the book at Appendix 1, where I have shown how I would personally do this, but the most important thing for you to do is to simply just record what you are thinking at the time you make a decision on behalf of the Trust.

For example, I always look to see:

- What you were thinking in the lead up to the decision.
- The actual decision made
- And, the actions to be taken

Below, I have attached a blank, or pro-forma, minute for you to copy and use as often as you like to record your own mindset.

You'll see that it is simple to use with no real need to use fancy words or expressions., or use legal jargon.

I should note here that the experts at Macquarie Group Services recommend that you use "Resolutions" instead of "Minutes" as there is less onus of proof that a specific meeting, with specific people, occurred at a specific time.

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I suspect that Macquarie Group services think this way because many Trustees just do not bother keeping minutes at all and then try to do everything at the end of the year when the tax returns are done.

So, if you do keep minutes properly throughout the year then a Resolution is not necessary unless you would prefer this format instead.

So, I have attached a blank, or pro-forma, Resolution for you to copy and use as often as you like to record your own decisions. Feel free to use whichever one, Minute or Resolution that you would like. But only one!

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Minutes of a meeting of the Trustee of
The Family Trust

Date :

Held at :

Present :

IT WAS RESOLVED

There being no further business, the meeting then closed

Signed as a correct record:

_____ _____

Trustee **Trustee**

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Trustee Name PTY LTD

AS TRUSTEE

FOR THE FAMILY TRUST

RESOLUTION

Date:

We, being the directors of the above company, which acts as Trustee of the (Name of Trust) Trust are in favour of the following resolution:

IT WAS RESOLVED:

Signed as a true and correct record of the resolution

_____

Trustee

_____

Trustee

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Why do I want you to consider this idea?

Well, I have found that over time our memories blur a little and so recording this sort of information allows you to look back and instantly recall just what it was that you were trying to achieve.

Also, it makes your accountant's job a lot easier in trying to understand your frame of mind at the time you made important decisions on behalf of the Trust.

Finally, it makes it easier to get through a tax audit because the auditor does not have to guess at what you have done and why.

The facts are already there in a recorded format and my experience has been that the Tax Office loses interest when the records are that complete.

For example, the Tax Office arrives for an audit and start asking questions . . . what sort of message do you think that we give them if neither you, nor your accountant can remember what was done and why?

And, what sort of message do you think it sends if you simply smile and hand over the minutes after answering each questions promptly and confidently?

In audits, I have seen the Tax Office pack up and leave within ½ an hour simply because their perception was that if the records were this well kept then there would be nothing substantial for them to find.

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However, I have also seen them spend all day searching through incomplete records with a promise to return soon . . .

Which would you prefer?

Mind you, if you are doing the wrong things then using minutes/resolutions, or not, won't make a difference. You'll still be in trouble!!

Finally, there is one more important reason why I like to see people record this mindset and that is that from time to time life gets very tough. For example:

- The bank doesn't seem to understand what you are doing and why;
- Or, the tenant has just left your investment property and it is a complete mess;
- Or, the share market takes a sudden dive;
- Or, any one of a thousand different problems which might beset you.

It is worth being able to go back over your notes to remind yourself of what you are doing, and why you started on this magical journey.

Many a time, I have had people tell me that this very idea has saved their investments from being sold off for a quick sale because of the hassles that they were having at the time.

Can I suggest that you give this idea some serious thought?

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The Day to Day Transactions

Now, as I said earlier, your attitude towards paperwork and record keeping could well be the difference between you enjoying the sort of wealth of which you dream, and, being in a miserable financial state for the rest of your life.

I know that is a big statement, but, regrettably it is true. To start with, it is why the rich and wealthy appear to pay less tax than the rest of us and this is because they do keep track of every cent that they spend.

And, then knowing where the money comes from and where it goes means that it is respected more and not frittered away so easily; like the poor seem to do.

Keeping records for a Trust is no different really to the type of records that you keep for yourself.

You will need to track the money that comes in, and, the money that goes back out of the Trust bank account and importantly, you must remember that these records need to be kept for a minimum of five years.

Yes, it is that simple.

To start with, these records are what your accountant will use to prepare the tax return for the Trust each year. In doing so, the more information that you provide, and the better that information is presented, the less the accountant will charge you for looking after you, and, the less tax you should pay!

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Even more importantly, if the accountant charges less for basic services like preparing accounting records, then there is more money available for you to spend on getting advice from your accountant that will make you even more wealth.

So, you are using your money wisely and in doing so, starting to act like a wealthy person!

Ideally, you could use a software programme such as Quicken, MS Money, Quickbooks or MYOB as we find these very good and quite simple to use. Some people even prefer a spreadsheet where they note the money coming in and out of the Trust's bank account. Your accountant can probably email you a simple spreadsheet that he/she has designed. Just ask!

In using any of these methods, you need to note the following basic information:

Income

- The date money was received
- Who it was from
- What it was for
- The amount received

Payments

- The date you paid someone
- The cheque number, if you paid by cheque
- Who you paid
- What you paid them for – i.e., why you paid them
- The amount paid

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You should also reconcile your bank account with your accounting records, which means checking that your records match the banks.

Lastly, you should have totals of each type of income or payment that occurred during the financial year.

That is, for any given time frame, you should be able to know how much you have spent on say: insurance, bank interest, bank fees, gifts, or any other payment.

In the same way, you should be able to identify how much money has come in for rent of each property; dividends and especially the franking credits attached to these dividends; bank interest received; or any other type of income.

In this way, your records show a complete picture which you, your accountant, and the Tax Office can easily see.

Speaking of the Tax Office, I have attached later on, at Appendix 3, the Questionnaire that the Tax Office were sending out in 2002 about rental properties held in Trusts for the 2001 financial year. I understand that this is still reasonably current as at February 2011.

I have always worked on the basis of being forewarned is forearmed and just knowing the type of questions that the Tax Office might ask allows you to prepare your records in such a way as to be able to answer them properly, and, keep you out of trouble.

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Room for you to scribble:

Maintaining Your Trust Deed

As you know, the tax laws change all the time. So, it is a good idea for you to have your solicitor, or accountant, check your Trust Deed on a regular basis to ensure that it always remains relevant, flexible and accurate.

In fact, I would ask the following question of your accountant every year when you have the tax return prepared.

> "Have there been changes to the laws during the last year that might require my Trust Deed to be amended?"

But, rest assured that all good accountants should come to you first if laws change causing your deed to need amending.

Updating your Trust Deed like this will allow you to always use the Trust to your advantage and never fall foul of the tax laws as changes occur.

From time to time though, you will need to pay a solicitor to update your deed to reflect the changes to the law, or, even your own circumstances.

For example, after the recent court case, known as "Bamford", and the flow on effects of similar cases, appeals and reviews it is possible that many Trust Deeds will need to be reviewed (at the very least) and possibly amended.

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Room for you to scribble:	This will ensure that the Trust Deed is worded appropriately for you to continue to have the maximum flexibility to distribute the Trust's income in the most effective manner to minimize income tax. As always, the cost will be small in comparison to the benefits that you will maintain.

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Room for you to scribble:

Tax Return Checklist

The following checklist is a simple form for you to complete before taking your records to your accountant for him/her to prepare your Trust tax return. I hope that you find it helpful.

Trust Tax Return Checklist

- ☐ Name of Trust
- ☐ The Trust's Tax File Number
- ☐ The Trust's ABN
- ☐ Year

If this is the first return prepared by this accountant, please attach a copy of the following records:

- ☐ A copy of the Trust Deed
- ☐ A copy of the previous tax return for the Trust
- ☐ A copy of the Trust's last financial statement

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Trust Tax Return Checklist (Cont.)

You will need to provide the following information:

	Yes	No
1. A back up disk of your Trust's accounting records		
• Have these records been reconciled?	□	□
• Is there a password on the file?	□	□
• If so, what is it?		
2. Copies of any minutes/resolutions recording decisions made by the Trustee during the year	□	□
3. Copies of all papers regarding investments bought or sold by the Trust during the year. This will include:		
• Contracts	□	□
• Solicitors Letters	□	□
• Bank Letters	□	□
• Other	□	□
4. Copies of all loan statements for the year	□	□
5. Copies of any contracts and paperwork for new loans taken out by the Trust during the year	□	□
6. Copies of statements for all dividends received during the year from shares owned by the Trust	□	□
7. Were there losses brought forward from previous years? If so, please explain how much these losses are, and, from which year they came.	□	□

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In Summary

A Trust is the perfect vehicle to own your wealth creating assets, however, it is useless to you if you do not use it properly and as such it is important for you to:

1. Keep a record of all decisions made on behalf of the Trust

2. Keep records of all money coming into the Trust, and, going out of the Trust and be aware that these records will need to be kept for a minimum of five years. (And, in relation to assets such as properties and shares, for 5 years ***after*** the asset has actually been sold.)

3. Be aware that the Tax Office may want to see these records from time to time

You will also need to check with your accountant or solicitor to see if your Trust Deed needs changing every now and then to ensure that it is always accurate and relevant. Like your car, your Trust Deed may need fine tuning every now and then.

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Down to Business

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Room for you to scribble:

Down to Business

Many people use a Trust to own and operate a business and so we'll look at the issues involved in doing so in this Chapter.

Again, as you will have seen throughout this book, one of the reasons why a Trust is so commonly used for a business is because of its flexibility, asset protection, and its ability to reduce your income tax.

Your Trust Deed will specifically allow your Trust to operate a business and my deed says, for example:

> "The Trustee is empowered to . . . **To Operate a Business**: To carry on any business which the Trustee, in its absolute discretion think fit . . ."

If you have created a Trust to operate your business then you **MUST** not also buy investments in that same Trust or you will compromise the integrity of the asset protection benefits of the Trust.

This is so the investment assets are safely away from reach if the business Trust is sued or goes into bankruptcy

It is far better to have two separate Trusts – one to own and run the business, and, one to own the investment and wealth creating assets. This is exactly what your accountant or solicitor does for themselves in most cases. Well, the clever ones, that is!

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In running the business from the Trust, you will need to consider:

- Registering a business name
- Applying for a Tax File Number, ABN & perhaps registering for GST and as an employer
- Open a business bank account
- Employment Issues
- Other insurances, as required
- Image
- Planning
- Record Keeping
- Marketing

Some of these issues we have covered previously in other Chapters of this book and so I will not go over them again here.

By the way, a long time ago, I created a booklet of "Better Business Tips". If you would like a copy (updated by my son, James) please send an email to James at:

james@houseofwealth.com.au

and he'll shoot you a free copy by return email.

I hope they prove helpful!

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Room for you to scribble:

GST

I was hopeful of not having to cover this topic because it is such a minefield that anything we do here is likely to be only scratching the surface . . .

However, if your expected income from the business is more than $75,000 in a year then you will have no choice but to register the Trust for GST which will be done as part of your ABN application.

This means that you will charge GST to your customers and then give that money to the Tax Office in a BAS every three months.

However, before we give the money to the Tax Office you are allowed to deduct from the amount you collected any GST that you paid out in your payments to suppliers.

So, if you collected $22,000 from your customers for the quarter then this would include $2,000 GST, which we owe to the Tax Office.

However, if the payments that you made in that same quarter were $16,500 then you could deduct the $1,500 from the money owing to the Tax Office.

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It looks like this:

GST Collected in $22,000	$2,000
Less, GST paid out in $16,500	$1,500

Obviously then, you would only pay the Tax Office the difference of $500.

This fact becomes even more interesting when you remember that the Trust deducts all GST included in the expenses that is incurs in earning its income.

With this in mind, those unusual tax deductions that I use in the Appendix (such as alcohol, chocolate and or sex toys) also have GST in the price.

So, not only do we get a tax deduction for these things BUT the Tax Office will even refund the GST on them. *Magic*!!

The other major issue to be aware of with regard to the GST is the "Tax Invoice" which is something that you must provide to all of your customers and something that you should get from every person who provides you with goods or services.

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Room for you to scribble:

On your tax invoice, you should show:

- The date of supply
- Your Business Name
- Your business ABN
- The words "Tax Invoice"
- A brief description of the items or services supplied
- The GST amount included within the price
- The total amount payable including GST.

Now, the only other thing that is particularly important for you to know is that when it comes time for you to pay your suppliers, you must ensure that you have a tax invoice from them that quotes the above information.

If you do not, two things can happen:

You will not be allowed to claim the GST that you have paid to them for the goods or services that they have provided to you.

This will mean that you pay more tax to the Tax Office than you need to and this will hurt your Cashflow.

The other issue is that if the supplier has not quoted their ABN you MUST deduct 46.5% of their invoice in tax and give that to the Tax Office when you complete your next BAS.

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If you do not, and the Tax Office catches you, they will ask you to pay:

- The 46.5% tax anyway even though you have already paid the supplier in full; and
- Penalties and fines for not doing as you should.

As you can see, being registered for the GST means that your obligation to keep good business records is even more important, or onerous, than normal because the Tax Office are now showing a willingness to audit small businesses to ensure that you are doing the right thing.

In fact, almost every year the Tax Office again warns that they plan to continue to look at businesses to ensure that their GST records are correct and lodged on time.

You can find more information about the GST directly from the Tax Office web site at:

http://www.ato.gov.au/business/

And, as always, I recommend you sit down with your accountant and discuss the issues involved with GST and your business. This may be an opportunity to fine tune a few areas, after all.

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Room for you to scribble:

Employing People

If you are operating a business through your Trust you will employ staff regardless of whether those staff are related to you, or not.

In employing staff you will pay wages and this means that the Trust will have to:

Deduct tax from those wages in accordance with the Tax Office schedules called "Pay As You Go (PAYG) Withholding Tax Tables" and this tax should be given to the Tax Office every time you lodge a Business Activity Statement or BAS.

This is normally every three months, but could be monthly for some businesses.

The Tax Office issue very heavy penalties if you do not deduct the right amount of tax and even bigger fines if you do not hand that money over to the Tax Office when you should.

More information on this topic is available from the Tax Office web site at:

http://www.ato.gov.au/business/

You will also have to register the Trust for Workers Compensation purposes, which will mean that your business is protected if any of your employees (including you) are injured in an accident or mishap at work.

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You will also have to pay superannuation for each employee, including yourselves, of a minimum amount equivalent to 9% of the gross wages.

You are required to make this superannuation payment every three months at the very latest. Again, there are serious fines and charges if this payment is not made, or is late.

There are a number of basic software programs that will keep the employment records that you are required to keep by law.

I recommend that you take a good look at the ones available from Quickbooks and MYOB as well as the more specialised programs. Common legal requirements that you will have to comply with will include:

1. Keeping holiday leave owing to each employee,
2. Sick leave owing to each employee; and
3. The requirement to provide a pay slip with each wage.

The evidence suggests that the various government departments will place greater emphasis on you to keep this information and provide your employees with the details required.

I know it is a hassle, but, if you plan on running a business through a Trust, or any other structure for that matter, then it is something that you will have to get used to, I am afraid.

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One final magic tip that you may find helpful or interesting, about employing people through a Trust is that a Trust, like a company, can pay a redundancy payment to the people behind it who were employees on the sale of the business owned by the Trust.

This could allow the Trust to make a tax free payment to each of you of :

- $8,126; plus
- $4,064 for every year of service

when using the 2011 prescribed rates (each year is different).

Again, this redundancy payment could be paid via a cash payment, or, a book entry via an accounting journal entry where no actual cash changes hands. This redundancy payment is a legitimate tax deduction for the Trust but is tax free income to the individual.

So, for example, if you owned a business for 20 years in a Trust structure, and you sold the business and retired the Trust would pay you an amount of $89,406 entirely tax free. Of course, if the Trust employs both you and your spouse, then you each could receive this amount....tax free.

Wow!! What a tax saving this could be!

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Room for you to scribble:

Insurances

As a business you will require a number of different types of insurances to ensure that you remain properly protected. In most instances, I would suggest a visit to an insurance broker is best because:

1. They know what insurances you need, and do not need.

2. They shop around for the best policy coverage as well as the best prices.

Common insurances might be for public liability, product liability, as well as to cover your business assets from fire or theft, professional indemnity, electronic equipment, machinery breakdown and glass, amongst other things.

Some businesses also look at a business interruption insurance, which covers you for the down time if the business is interrupted by a fire or other serious problem.

Being properly insured is your responsibility and you place your future and your wealth plans at risk if you are not covered. So, have a chat to your insurance broker about your particular needs. They'll know what you should consider.

If you don't have an insurance broker you can trust, I'm happy to recommend the broker who looks after me. Just ask!

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Room for you to scribble:

Image

One of the things you may not have given a great deal of thought to is the image of your business within the Trust. Not many people do! This might be the signage that you use, the letterheads and business cards and the colour schemes of your business amongst other things.

One thing I learned a long time ago is that it is important for the business to portray a consistent image.

For example, when you think of McDonald's you will think of the Golden Arches regardless of where you live anywhere around the world. Similarly, when you see the apple symbol you know it is an Apple product even if you don't know anything else about that item.

In theory, your business cards should look like your letterheads and both should look like your signage, and, like your webpage.

This way, over time, people will come to associate the one image with your business and in doing so you have created a significantly greater value to your business when you decide to sell it.

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Planning

Every business needs to plan for the future or it really won't have one.

So, I believe that as a business owner you should consider completing a business plan that will force you to think about various issues such as:

- The threats to your business
- The direction you wish to take
- The issues that will come up in time such as premises, staff, and your own retirement

Having thought about these issues you can start to research ways to deal with them and make sure that the issues are something that you can manage well. In a way, that old boy scout motto of "*Be Prepared*" applies here.

I suggest that you consider buying the MAUS business plan software, or similar product. It is not that expensive and works in such a way that you answer questions that the software poses to you and in doing so, it creates a business plan for you.

Please understand, it is not necessarily the plan that is important here, it is the fact that you have considered the implications of each issue and thought about the future.

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In light of the natural disasters of cyclones, floods and fires over the last few years it is even more timely for you to consider how to make sure your business can cope with problems.... Even if they're unexpected!

I also recommend that you buy (and read!!) a book by Michael Gerber called "*The E Myth Revisited*" as this provides a wonderful walk through of a business consultant helping a small business. It is priceless information. You can find more information at www.e-myth.com

I would consider buying and playing a board game called "*Leverage: The Game of Business*." as this is a great way to learn about improving your business.

The game shows you how to improve the key elements of any business in a way that you can then apply to your own existing or new business. I highly recommend that you play it often.

I would recommend that you go to seminars and workshops; read various newsletters, magazines and books that will teach you more about the business that you are operating, and, the administration of the business so that the business provides you with what you want and need.

Finally, I am a big believer in learning about marketing and promotion so that you can grow your business and reap the rewards that you seek. This aspect of your business should be easy and most importantly, lots of fun.

And, of course, making time to talk to your accountant and/or business coach on a regular basis could prove very helpful.

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Marketing

Unfortunately, marketing a business is sadly often mistaken for advertising, when in fact it is a lot, lot more.

The simple truth is that marketing your business (through a Trust structure, or not) is a lot simpler, easier and more effective than placing an ad but it does involve a lot more effort.

You see, the purpose of marketing is threefold:

- To bring new customers to your business;
- To convince existing and new customers alike to buy your products or services; and
- To reinforce the relationship/connection between your business, your products or services and your customers.

After all, a successful business is one that has customers who "want" to deal with them and tell others of the good experience.

This success often sees pricing of your goods or services as irrelevant allowing you to charge more than another business might fear to charge.

A good start is to make sure that your business always delivers on its promises as nothing will sour a relationship with your customer quicker than disappointing them.

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Another important part of marketing is to remain in contact with your customers via letters, newsletter, blogs, email and social networking sites.

And, further, to be pro-active with fixing the odd problem that does come along, rather than blaming someone else - rightly or wrongly.

This way, you can convert an initial disappointment to a winning result and probably gain extra goodwill through the *now* happy customer telling others about your efforts on their behalf.

You should also make sure that it is easy to deal with your business. The easier, and more satisfying, that it is to buy from you the less reason there is for customers to go elsewhere.

And, make your business fun! Enjoy what you do and your customers will enjoy dealing with you too!

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In Summary

Your Trust is empowered to operate a business of any kind.

In owning the business through the Trust you **MUST** remember not to have the same Trust own your wealth creation assets such as investment properties.

The Trust will need to register the business as an employer and, as such, will have to pay:

- Wages
- Superannuation
- Work cover

And, keep records of annual leave, sick leave and other employee details.

The Trust will need to consider GST and if the income is sufficient to register for GST, the business will have record keeping responsibilities more onerous than normal.

The Trust should ensure that it is properly insured for all realistic contingencies and risks.

The Trust should consider the image that it wishes the business to portray to the world and then do everything possible to ensure that the image is consistently presented.

The Trust will need to plan for the future direction of the business.

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Dale Gatherum-Goss
Trust Magic

The Trust's
Tax Return

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The Trust's Tax Return

Each year, the Trust must lodge a tax return with the Tax Office to show the income that it earned, the expenses that it paid, and, how the profit was dealt with for the year. Your accountant will do this for you, with your help.

Most of the tax return is fairly easy and basic to understand. It shows the income that the Trust has received from various sources, minus, the expenses that the Trust has paid out during the year to earn that income.

The difference between the two is either a:

- Profit (where income is more than expenses); or
- a Loss (where expenses are more than income).

Losses are carried forward to the next financial year where they can be offset against the profit made in that year. Losses can continue to carry forward indefinitely until such time as they are absorbed by profits; or, the Trust is wound up. That is, they do not expire if not immediately used.

Profits are a little more interesting in that if the Trustee does not distribute those profits to the beneficiaries of the Trust, then, the Trustee will pay tax at 46.5% of the profit. Ouch!

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So, in this chapter, I will cover five of the more important concepts in using the Trust to your advantage, and they are:

1. Closely Held Trusts
2. Tax Planning
3. Reverse Planning
4. After Profit Advantages
5. Before Profit Advantages

However, the most important thing to remember is that your accountant should know these things and take advantage of them for you.

Your job is to present the relevant information to the accountant for them to use on your behalf, and then to be open to suggestions and discussions on how the Trust could be used to help you save tax both now, and, into the future.

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Closely Held Trusts

Recently, new rules were introduced that became effective as of 1 July 2010, that requires all "Closely Held" Trusts to collect Tax File Numbers (TFN's) and/or ABNs for all beneficiaries of the Trust. Further, once that information has been collected, the Trust will legally have to provide those TFNs to the Tax Office on a prescribed form (that has yet to be designed at the time of writing this book) and by a prescribed date - currently expected by 31st July.

Firstly, what is a "Closely Held" Trust?

Without going into all the legal jargon, it is almost all Family or Discretionary Trusts and Hybrid Discretionary Trusts (HDTs).

So, the new rules will apply to you. But, don't worry as this is something that your accountant should look after on your behalf after asking questions of you first.

However, as it is still your responsibility as Trustee of the Trust, I recommend you discuss these new rules with your accountant *before* the end of the financial year.

To help you comply with these new rules, I have attached a sample form for you to use to collect this information and provide it to your accountant. I suspect that most accountants will have a similar looking form for you to use, so, do ask.

Feel free to use my form though:

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Beneficiary TFN Record

Complete and retain in Trust permanent tax information.

Trustee Name _____

Trust Name _____

TFN of Trust : _____

ABN of Trust : _____

Full Name	DOB	TFN	Residential Address Postal Address	Date TFN Reported Tax Office

The trustee should use this page to record all beneficiary details to report to the Tax Office under the new "Closely Held Trust" rules. This information should be considered confidential and kept securely.

NB. The Trust only needs to provide the beneficiary's TFN to the Tax Office ONCE.

_____ Trustee

_____ Trustee

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The other part of the new rules states that if the Trust distributes income to a beneficiary that does not have a TFN, then the Trust must deduct 46.5% tax first from that distribution. This withholding tax should be sent to the Tax Office each year.

So, an example would be:

The Trust elects to distribute $1,000 to Grandma Ethel, but Grandma Ethel is proving a little difficult and does not want to provide her TFN.

Therefore, the Trust deducts $465 from the payment due to Grandma Ethel and sends this $465 to the Tax Office instead.

The remaining $535 can be sent to Grandma Ethel with the payment summary showing that she received $1,000 but $465 tax was withheld.

Grandma Ethel is likely to have some, or all, of this tax refunded when she lodges her own income tax return, depending upon her own circumstances and other income.

Lastly, the Trustee is required to report to the Tax Office all payments and tax amounts withheld from those payments, if any, and provide a payment summary to the beneficiary.... Even when the beneficiary has already provided their TFN.

Please note though that children under the age of 18 are currently exempt from having to provide a TFN.

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Tax Planning

Every smart investor, and businessperson, knows that to pay less tax each year they need to be acutely aware of their circumstances and to take decisive action when needed.

As part of this, I know that the clever ones indulge in a little tax planning each year somewhere between March and May where they have their accountant look at the results to date, plus the Trustee's expectations of what will transpire between then and the end of June.

With this expected profit, an estimate of the likely tax payable can be prepared.

Obviously, if the profit is negligible, so is the likely tax and therefore no action may be required to change the results.

However, if the profits look substantial then the next step would be for the accountant and Trustee to look at ways in which the Trust can reduce its profit before the end of June.

Most importantly, by being aware of the impending tax problem the Trustee has the ability to plan for it; and take steps to reduce it where possible before it is too late.

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Typical ways of doing this might be to:

- Bring forward some spending that was originally planned for the following year; eg:
  - Prepaying interest for the coming year on investment loans
  - Making Superannuation Contributions
  - Buying tools and equipment needed in the near future.

- Hold off on completing some work so that invoicing is deferred to the following year;

- Use some of the "magic tricks" that I mention in one of the later chapters.

- Defer signing the contract to sell that property a few days until after the 30th June. CGT applies to the date contracts are signed *not* when settlement occurs.

Furthermore, it allows your accountant the opportunity and time to get more information from the Trustee about some of the other issues we're about to explore in an attempt to save you even more tax.

A good example of what I mean here is that a client recently sold a couple of Investment Properties and made a healthy profit. Wonderful! But....despite some subtle promptings from the accountant via newsletters etc., this same client did not tell his accountant of the sales until the tax returns were prepared.

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The tax bill ended up being $80,000 (and that was a good deal better than the $100,000 the accountant originally estimated!)

However, if the client had spoken to his accountant at the time of the sales, he might have had some strategies to consider and implement in time to make a difference to the tax bill.

Lastly, and if nothing else, knowing in advance the likely amount of tax that you will owe in 6-12 months gives you enough time to either save up for it, or, to borrow money to pay the tax bill on time.

This will save fines from the Tax Office, and, penalty interest....and probably quite a lot of stress!

Like a good boy scout....be prepared!

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Reverse Planning

I mentioned earlier in the book that Trusts cannot claim losses. Instead, that loss carries forward to future years to offset against future profits, so, at worse the benefits are delayed not lost.

However, sometimes, it is important to almost "force" the Trust to make a profit.

Why?

Well, there are a couple of reasons, but one might be to show the bank a positive result in order to obtain a loan for the business; or for future investments.

Another possible reason, is that if the Trust has also received franked dividends during the year, then, those tax credits are lost if the Trust makes a loss. These credits do not carry forward like the losses.

So, if the tax planning can help the Trust make a profit then all the tax credits can be utilised. Even a $1 profit might be distributed along with $1,000 in tax credits.

An example might be:

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The Robins Trust has investments in shares, property and in bank accounts. It expects the following results at the end of the year, at face value:

$1,000	Interest Income
5,000	Dividend Income (including $2,000 franking credits)
(8,000)	Loss from a negatively geared Investment Property (IP)

So, if nothing else happens the Trust can expect a $2,000 loss for the year. If a loss happens, as we have discussed above, the tax credits from the dividends are lost, too. Ouch!

But, with a bit of careful planning with your accountant, the Trust may be able to:

- defer paying an expense, or two, in relation to the investment property; or,
- move some money into a short term interest bearing account; or,
- sell one of the shares for a small profit, for example.

The result might now look like:

1,000	Capital Gain on Sale of Shares
1,101	Interest Income
5,000	Dividend Income (including $2,000 Franking Credits)
(7,100)	Loss from Negatively Geared IP
$ 1	Profit

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Now, the Trust could distribute the net income for the year of $1 to any beneficiary plus the $2,000 tax credits and this will mean that the beneficiary will receive a $2,000 tax refund. Nice!!

In this case, the reverse planning means a bigger tax refund than would otherwise be the case.

Obviously, what is important here is for you to be aware of the issues, and, for you to communicate with you accountant and work together towards achieving the best result possible for your circumstances.

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After Profit Advantages

The distribution of the profits is one of the reasons why a Trust is so attractive to use and this is because the Trustee has complete discretion as to who can benefit from the Trust.

This means that we can distribute profit to:

(i) anyone related to you who has no income of their own and thus pay no tax, then,
(ii) if there is still profit left over, we can distribute that to people who have a small income and who pay tax at 15% or,
(iii) if there is still profit left over, we can distribute more of the income to people at the 30% tax rate, or,
(iv) even to a company that you own which also pays tax at 30%.
(v) if we have to, we can distribute more of the income to people at the 37% tax rate.

As you can imagine, each of these is much better than paying tax at 46.5% of the income. This also means that you have more money left over to enjoy a richer lifestyle, or, to invest in further assets as you wish.

And, the decisions made in one year have no bearing whatsoever to the next year.

That is, you can mix the distributions each year to suit your circumstances. Next year, we start again with a clean slate.

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Now, when we talk about distributing profit, this can be done in two different ways.

The first is that the Trustee draws a cheque and pays the profit out to the beneficiaries. The problem with this is that the Trusts bank account can be severely depleted each year, which limits your ability to continue to create wealth. For example, we could show this along the following lines:

Money in the bank:
Before distribution = $4,000
Profit = $3,000

Therefore, after writing cheques for $3,000 to distribute profit

Money in the bank = $1,000 after distribution of profit.

The second way to distribute profit is for the accountant to create book entries where the profit is distributed by journal entries.

Effectively, these journals show that the Trust distributed the profit, and then, the beneficiary loaned the money back to the Trust.

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The result looks a little like:

Money in the bank before distribution = $4,000
Profit = $3,000

No cheques drawn or written
but Trust now owes $3,000 to beneficiaries
because of "Book Entry" distribution

Money in the bank after distribution
of profit = $4,000

For example, one magic tip you might like to be aware of using is that if the Trustee gives a small amount to children beneficiaries, the Trust Deed should allow those funds to be actually paid to the parent or guardian of the child for the child's education and medical welfare.

For example, in one of my Trust Deed's it actually says:

> "...the Trustee may in its absolute discretion pay such income to the parent or guardian of any such beneficiary.....towards the maintenance, education advancement or the benefit of the beneficiary..."

Now, that is pretty clear, isn't it?

This would mean that whilst no tax is paid on this small distribution, the parent still gets the money in their hand. Your accountant should be aware of this possibility and so you should not need to be fully familiar with the exact details of how it works.

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The potential traps with "book entry" distributions are:

- That the beneficiary may come back to the Trust at a later date and demand all the money that has been loaned back to the Trust; and

- That the beneficiary might have to pay tax on that distribution and not have the funds to do so.

To avoid both problems, I have always thought it worthwhile for the Trustee to take the following steps:

1. Write a cheque to the beneficiary for the full distribution
2. Ask the beneficiary to keep the amount necessary to pay the tax on that distribution, plus perhaps a little more to thank them for their efforts
3. Accept funds or a loan from the people behind the Trust if they give the funds back to the Trust for future use within the Trust.

Yes, you are out of pocket, but, the savings in tax mean that you are well in front of where you would have been if the profit was distributed to a high income earner, or, not distributed at all.

And, let's face it, if you can save $5,000 every year for 20 years that is a great deal of money which stays in your hands and in doing so, makes you wealthier.

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This same process is also used for Capital Gains made by the Trust on the sale of assets such as shares, or properties.

Another form of magic that is possible within a Trust is to "stream" the income to where you want it.

What does this mean?

Well, it means that all the dividends that a Trust receives from its share holding can be distributed to the one person, and, all the bank interest that the Trust receives can be distributed to another person, and all the Capital Gains that a Trust makes can be distributed to someone else, for example.

This is an important concept because it allows for the different rates of tax to be paid on different types of income and you remain in control.

For example, if a Trust has sold some shares for a Capital Gain of $20,000 it will have to distribute that gain to one of the beneficiaries – and, if our options include:

Millie - who has an income of $12,000, (15% tax bracket) or

Billy - who has an income of $90,000 (38.5% tax bracket) and has a Capital Loss brought forward of $25,000

By distributing the Capital Gain to Millie, she would actually pay a higher rate of tax (at least 15%) than Billy because he could have used the Capital Gain to offset against his Capital Losses and in doing so pay no tax at all!

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Now, if the Trust also received a fully franked dividend before it sold those shares it would be best if we streamed that dividend income to Millie alone because she will get a bigger tax refund as a result of the imputation credits (tax credit of 30%) being more than her tax rate of 15%.

It is this flexibility that makes a massive difference in saving you tax on the income that the Trust earns.

Now, after telling you that a Trust can choose to stream its net income, or profit, to different beneficiaries it is worth noting that in July 2010 the Tax Office withdrew one of its long standing rulings as a result of the "Bamford" court case. So, while the Trust Deed says you can do this, the Tax Office may now take a different approach than they have for the past 18 or 19 years.

At the time of writing this book, it is unclear exactly what the tax law will be moving forward and the experts themselves seem divided over whether this streaming will continue to be an effective tool in the future.

My thoughts are that you and your accountant should continue to monitor the situation.

Lastly, a well worded distribution minute or resolution should still allow your Trust to take advantage of income streaming in your tax planning into the future.

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Before Profit Advantages

The Trust is a business entity and as such, it can claim expenses as legitimate tax deductions that are not possible for you as an employee, or individual, to claim.

Ideally, we would like to have as many of your normally personal expenses paid for from the Trust so that you do not need as much disposable income as you otherwise would.

Please note, I am not advocating that you spend more money than you currently do, just changing the way that you currently spend money.

You see, if you have to earn money, pay tax on that money to spend what's left then you have to work on an 'after tax' basis. However, if the Trust earns money, pays for expenses and then is taxed on what is left there is a much lower rate of tax paid on the same amount of income.

And, for those of you using a Trust to run your business, remember that we already discussed the GST benefits or savings here as well as the tax savings.

Have a look at this scenario:

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At the moment, you earn	$100.00
You pay tax at 46.5%, which is	$46.50
Leaving you with	$53.50
You buy a Chocolate for	$30.00
This leaves you with	**$23.50 left**
However, if the Trust earns	$100.00
It buys the chocolate (as a thank you) for	$30.00
Leaving it with	$70.00
This is then taxed at say 31.50%, which is	$22.05
This leaves	**$47.95 left**

So, between the dual effects of a lower tax rate and the "before tax" nature of the chocolate instead of "after tax" we have an extra $24.45 left over to use to your advantage.

Now, try using bigger amounts, and/or doing it more often, and you will see how magical the proper use of the Trust could be to your circumstances.

This is one of the ways that the rich and wealthy can pay as little tax as they do . . .

I have attached a list of potential tax deductions at Appendix 2 for you to see some of the things that it is possible for the Trust to pay for instead of you. You will note that I have been deliberately outrageous in places just to highlight the fact that the limits are only imposed by you, not the tax law.

Enjoy!

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To take advantage of these ideas, you should preferably have:

- The receipts to prove that the money was spent;
- A note on, or with, the receipt to explain why the Trust paid for the item;
- And, I often record the reasoning in a minute or resolution to formalise the process just as the Trustee would if it was paying expenses for an independent party.

In the "Magic Tricks" chapter of this book I have included many other ideas and explained them in further detail for you to consider in reducing your taxes through the Trust. You'll enjoy some of the possibilities, too!

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In Summary

The Trust must prepare and lodge a tax return every year.

1. In doing so, the return will show all the income earned by the Trust less all the expenses incurred by the Trust including some of the more unusual expenses noted in the Appendix.
2. Then, the Trust will distribute the profit to the beneficiaries who will pay the least amount of tax on that profit.
3. The Trust should plan for its likely tax and do what it can to reduce that tax through active tax management.
4. The Trustee is now required to collect tax file numbers (TFN's) from its beneficiaries, and, to provide these TFN's to the Tax Office on a prescribed form at the end of the year, and, to deduct 46.5% tax first if no TFN is recorded.

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Hybrid Trusts

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Room for you to scribble:

Hybrid Trusts

In this chapter, we will look at one of the more controversially magical concepts to appear in Trusts over the last 15 years or so, the Hybrid Trust.

In a nutshell, a Hybrid Trust is a cross between a Family Trust and a Unit Trust. It was created to allow an individual to still get the tax advantages of negative gearing into investments, whilst retaining the incredible advantages of using a Trust to buy wealth producing assets.

Since first writing this book in 2003, when little was known about Hybrid Trusts outside of the experts, we now see a good many people use them and discussion abound on Internet forums and the like, about how they work and which type is most appropriate.

We use the term "Hybrid Trust" as a generic expression that covers:

- Hybrid Discretionary Trusts (the most common)
- Hybrid Unit Trusts
- Class Trusts
- Property Investor Trusts ™

For the purposes of this book though, I refer to "Hybrid Discretionary Trusts" when I mention the term "Hybrid Trust".

In all other ways, a Hybrid Trust will work much the same, on a day to day basis, as a normal discretionary Trust in terms of earning income, paying bills and owning assets.

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As you probably know, a traditional discretionary, or family, Trust does not allow for the individuals to take advantage of the negative gearing tax benefits and so a well written Hybrid Trust is an attractive option for high income earners.

However, I do note that a poorly written Trust Deed, minutes, and unit certificates may still see a tax benefit denied; thus making the choice of Trust Deed very important.

It simple terms, a Hybrid Trust works like this:

1. The individual borrows money from the bank in their own name
2. The individual uses the borrowed funds to buy units in the Hybrid Trust which is then an asset of the individual
3. The Hybrid Trust uses the cash paid by the individual to buy an investment property (IP) without borrowing money at all.

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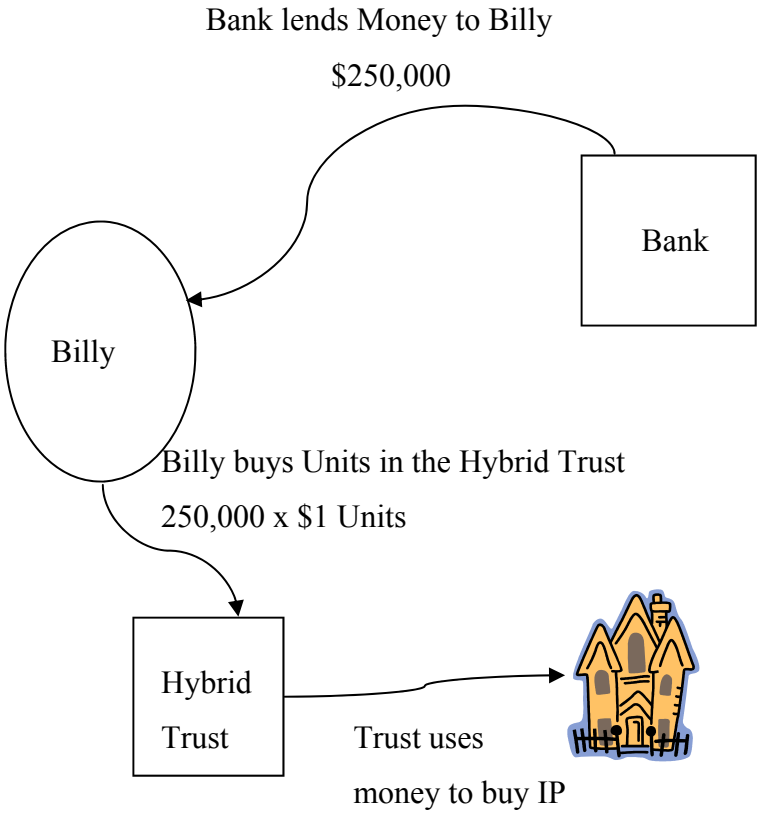
The diagram below might help you to see this a little easier.



The individual will claim the interest and bank fees on the loan in their personal tax return.

Over the last 3-4 years we have seen the Tax Office issue a couple of negative Private Binding Rulings (PBR's) that have denied this tax deduction. However, closer inspection of these PBR's shows that the Trust Deeds were either:

- Not a Hybrid Trust at all; or
- An inferior worded Hybrid Trust.

Furthermore, in 2008 the Tax Office issued T2008/D16 and TA 2008/3 effectively warning that they may not allow all or some of the interest paid by the individual in *SOME* circumstances.

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Recently, the Tax Office noted that TD 2008/D16 has been withdrawn and replaced with TD 2009/17 and TD 2009/17EC.

Again these show that the Tax Office may not allow some or all of the interest paid as a tax deduction in *SOME* circumstances.

They will, however, continue to allow deductions in the right circumstances.

This ruling was issued to combat some of the more ridiculous claims and practices being espoused by some of the companies marketing their own Trust Deeds.

I'm aware that, at the time of writing this book, the Tax Office have flagged replacing these rulings too. As always expect change!

Importantly at the same time, I know that the Tax Office continue to allow deductions for the individuals when a well written Hybrid Trust is involved and the Trust is used as it should be.

Potentially even more importantly, during 2010 the court case of "Forrest" was decided that saw the courts allow a tax deduction for interest claimed in the use of a Hybrid Trust.

This decision alone should give you a great deal of comfort if you already use a Hybrid Trust in your investments.

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Whilst this decision, and a few positive "Private Rulings" where the Tax Office approved the use of a Hybrid Trust, as I describe here, are all convincing; the matter, sadly, still seems to be open to interpretation depending upon the personal thoughts, beliefs and bias of the commentator.

So, some accountants are still reluctant to recommend these structures.

Given the diversity of views you would be wise to discuss your own situation with expert advisors.

The Hybrid Trust will show the rental income from the property less all property related expenses in its tax return. The Trust will then have a profit from this activity because it has not borrowed any money and this profit is then distributed to the individual who bought the units.

This is because the individual who bought the units has an "entitlement" to the income of the Hybrid Trust by right of the units (and their definitions, obligations and rules under the Trust Deed) that he or she borrowed money to acquire.

The individual will show a profit distribution from the Trust as income and will offset this income by a tax deduction for the loan interest and fees.

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For example, let's assume the following:

Billy has borrowed $250,000 from a bank to buy units in a Hybrid Trust at a rate of say 7.5%.

1. The Trust has bought an investment property for $240,000 that receives $270 per week rent.

2. The Trust might show the following result:

Rental income	14,040
Less	
Agents Fees	960
Council Rates	800
Depreciation *	2,000
Insurance	320
Special Building Write Off Allowance *	3,000
Water Rates	360
Total Deductions	$7,440
Net Profit	**$6,600**

This profit is then distributed to Billy because he owns the units in the Trust entitling him to all of the income of the Trust.

* These two items are book entries created by an accounting journal. The Trust has not had to pay any money to benefit from these tax deductions.

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So, Billy's personal tax return would look like:

Income from Hybrid Trust	6,600
Less, Bank Interest paid	18,750
Less, Bank Fees paid	110
Net Loss	**$12,260**

And, as a result of this situation, Billy could expect to get a tax refund of about $4,720 if he has an income of more than $80,000 a year (after this loss is deducted).

In this way, Billy has the investment property in the Trust exactly where it should be for long term wealth creation, and, asset protection.

At the same time, he is able to take advantage of the negative gearing benefits in the short term bearing in mind that each year moving forward the rent should rise and the depreciation benefits will fall away, thus producing more profit for the Trust to distribute to the unit holder, Billy.

In the above example, Billy is out of pocket by $14,140 which is the tax refund received of $4,720 less the payments to the bank for fees and interest. ($4,720 - $18,750 - $110 = $14,140)

However, Billy is out of pocket by even less when the Trust's "cash" profit (excluding depreciation and the special building write off allowance which do not cost him anything) of $11,600 ($6,600 + $2,000 + $3,000) is taken into consideration.

In fact, Billy is now only out of pocket $2,540!
($14,140 - $11,600)

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Furthermore, if Billy finds the Cashflow a little tight, he can ask his accountant to prepare and lodge an application to vary the amount of tax deducted from his wages each week so that he gets his tax refund each pay packet rather than at the end of the year.

This is the same "15-15 variation" prepared for ordinary investors in negatively geared investment properties when no Trust is involved.

One potential issue you might find is difficult to deal with is that many banks and mortgage brokers will not fully understand this Hybrid Trust concept.

So, it will be important for you to be clear about how it all works so that you can lead or guide them to the conclusion that you want them to arrive at.

One bank asked someone to have their solicitor provide a letter explaining the commercial benefits of this arrangement and so it is possible that you will be presented with a similar request.

If so, possible suggestions that you could make to your solicitor would include:

1. The Hybrid Trust needs to attract investment from unit holders and just like the banks would want, it might have to provide security for the loan that the investor takes out to buy the units in the Hybrid Trust.

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2. The Hybrid Trust allows flexibility for the current situation as well as all the future possibilities.

3. The Hybrid Trust provides asset protection for the investments bought within the Trust.

4. The Hybrid Trust provides potential stamp duty savings if the properties are later transferred to a related entity such as a self managed superannuation fund.

5. The Hybrid Trust provides an ability to pass assets to a new generation without attracting income taxes or stamp duties. This estate planning is a valuable feature of the Trust.

I have attached, below, a letter that I used with my own Hybrid Trust when we bought a property in early 2004.

I hope that you can use it for your own purposes to make life easier if you use a hybrid Trust. Please feel free to modify it to suit your own purposes.

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8 June 2004

Mr Paul Wood
Manager
NAB
Canterbury Road
Bayswater North Vic 3153

Hi Paul

Further to our discussions, I now wish to apply for a loan of $325,000 as detailed below:

Name of Borrower:

Dale J Gatherum-Goss
1 Jones Street
Jonestown Vic 3333

Purpose of Loan:

To buy 325,000 x $1 units in The ABC Trust. This Trust will then use that money towards the purchase of a property at 2 Smith Ave, Smithtown without borrowings.

Paul, I note that your legal department looked at these hybrid Trust Deeds last year and were quite comfortable with the Trust providing its asset as security for an individual's loan.

Security Offered:

A registered first mortgage over the property at 2 Smith Ave, Smithtown which has been valued at $370,000

And, Emily Gatherum-Goss agrees to provide additional security in the form of mortgages over the properties at:

1 Jones Street, Jonestown

I have attached the following information for your records and to make the transaction that little bit easier:

1. The contract to purchase the property at 2 Smith Street, Smithtown in the name of the Trustee company, Triple AAA Pty Ltd

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2. A copy of the deposit paid on this transaction
3. A summary of the officeholders of the Trustee company, Triple AAA Pty Ltd
4. A copy of the certificate of incorporation of the Trustee company
5. A copy of the Constitution of the Trustee company, Triple AAA Pty Ltd
6. A copy of the ATO advice of the Tax File Number and ABN of the Trust
7. A stamped copy of the Trust Deed of the ABC Trust
8. A copy of the Balance Sheet of the Trust as at today

Lastly, I have been advised by the real estate agent who will manage this investment that the property should rent easily and quickly because of its obvious quality and that we can expect rents about $350pw. This information can be confirmed by Mr. Phil Manning at Ray White, Mt Evelyn on 9736 1914.

I note that this Trust is a new entity that had no transactions or tax returns until this purchase.

I also note that you already have the 2003 income tax returns and financial statements, as well as the interim financial statements for me and the Trust to 31st December 2003.

Paul, I trust that you have everything that you need, however, please feel free to contact me if you would like anything else whatsoever.

Thank you for your help and I look forward to hearing from you soon.

DALE J. GATHERUM-GOSS

Encl.

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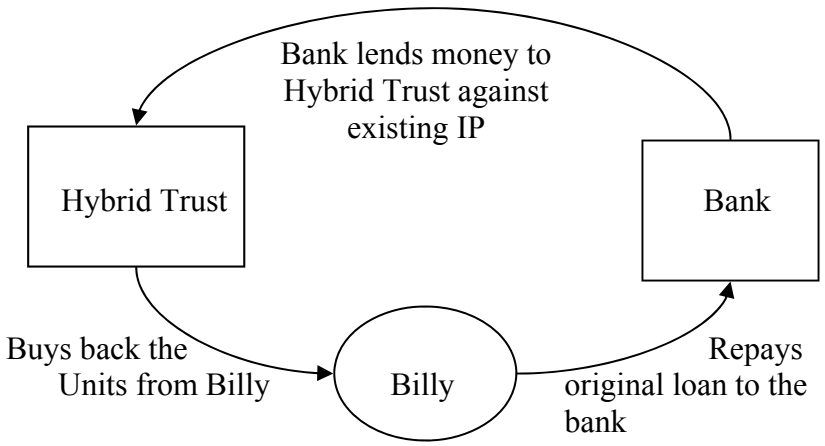
So, What Happens a Few Years Down the Track?

At any point in time it is possible for the Trust to go to the bank and borrow money against the security of the investment property to repay Billy, who in turn, will repay his loan with the bank.

In taking out the new loan the Hybrid Trust will buy back its units from Billy and the Trust will effectively revert to a traditional discretionary Trust with all the usual flexibility of being able to distribute income to whomever it likes.



Of course, Billy would have a CGT liability on the redemption of his units as he will have disposed of his asset (the units) at a deemed price equivalent to the market value of the Units.

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The market value could be calculated via a number of different ways which may create some planning opportunities for your accountant.

Most times, however, the value of the Units will relate to the underlying value of the property bought by the Trust when the units were issued.

Alternatively, Billy can always go and repeat this process of personally borrowing money from the bank to buy more units in the Hybrid Trust and so continue to gain negative gearing tax advantages whilst the trust buys more investment properties.

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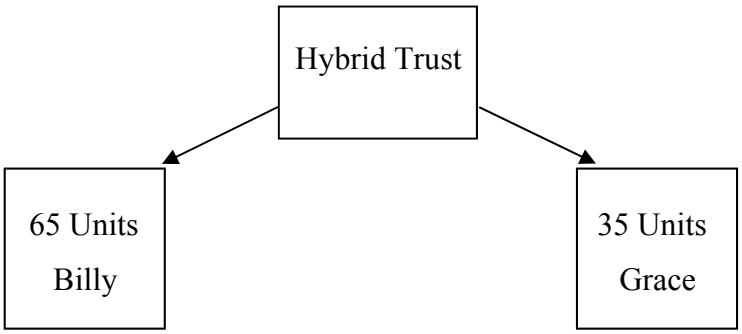
Investing With Another Person

The Hybrid Trust structure is also a convenient way of allowing two unrelated families to invest in a business or property without having to establish and maintain a complicated structure of a Unit Trust being owned by two Family Trusts.

This will make it easier to manage and will save on professional fees each year.

The Hybrid Trust enables one family to contribute more money originally to the deal than the other family and as such the ownership of the units can be structured to reflect this too.

So, if Billy puts in $65,000 and Grace puts in $35,000 to start the Trust then Billy can own 65% of the units, which in turn would entitle him to 65% of the income of the Hybrid Trust. Of course, in this same sense, Grace would own 35% of the units and be entitled to 35% of the income from the Hybrid Trust.



Therefore, in using a Hybrid Trust, each family can be entitled to one half share of the income of the Trust, or any other proportion, in accordance with their ownership of the units.

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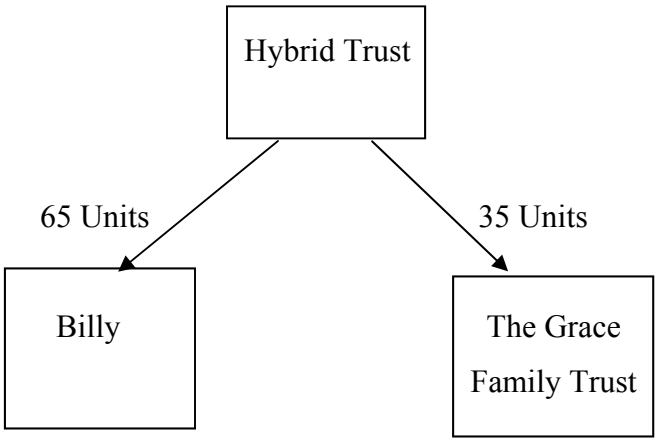
For example, Billy and Millie might have their units owned under Billy's name whilst Millie's best friend, Grace might have her units owned by her existing Family Trust.



Each family can do as they please whilst keeping the structure that they use between them as simple and as cost effective as possible.

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Stamp Duty Savings

One final advantage of using a Hybrid Trust to own investments is that at some stage you might wish to transfer the ownership of an asset, say an investment property, within the Trust to a related party.

The Hybrid Trust can do so with a minimal amount of stamp duty in some States if the Hybrid Trust redeems the units owned by the unit holder and issues new units to someone else, or, a related entity such as a self managed superannuation fund.

Whilst there is still a small amount of stamp duty to pay on this transaction it can be substantially smaller than normal stamp duty on the transfer of property.

As always, if this feature is attractive to you then it would be wise for you to discuss your circumstances and your objectives with your accountant to see if this Hybrid Trust; or, a different type of Unit Trust structure might be appropriate for your needs.

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Further Reading?

If this advanced structure appeals to you, and I can recommend it, then you might like to do further research on this topic. I suggest that you look at the following web sites:

Chris Batten at

www.investorone.com.au

Macquarie Group Services at

prc.macquariegs.com.au

Brett Davies Lawyers at

www.taxlawyers.com.au/Manuals/HybridTrusts.aspx

Chris Batten had a book that is worth buying and it is called "Investment Structures 2002" and this was available from his web site. It is one of the few publications that even remotely discusses Hybrid Trusts.

Brett Davies also has an article or two available from his web site that looks at Hybrid Trusts.

Although you might need to read each document a couple of times to understand the concepts fully, it is worth persevering.

And free copies of articles that I wrote for the API Magazine on Hybrid Trusts can be found on my web site:

www.trustmagic.com.au

under the "Free Articles" page.

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In Summary

In looking at the Hybrid Trust we have seen that:

1. A Hybrid Trust is a cross between a Unit Trust and a Discretionary (or Family) Trust which enables an asset to be owned through a Trust and still allows the individual to take advantage of the short term negative gearing benefits if the deed is worded properly.

2. The Hybrid Trust effectively converts to a normal discretionary Trust when the short term benefits have expired and there are no longer units issued.

3. A Hybrid Trust allows two different people to use a Trust to own businesses or properties using a simple structure rather than a more complicated one. This, in turn, will save money on professional fees such as accountants.

4. The Hybrid Trust could save a substantial amount of money in stamp duty if you choose to transfer the property held within the Trust to your own self managed superannuation fund on retirement.

5. The Tax Office are rightly cracking down on the improper use of Hybrid Trusts when they are not drawn up properly and not used in a normal commercial way. So, be careful and seek proper advice before making any decisions.

And, in doing so, perhaps it is worth considering seeking more advice from your accountant or solicitor, or information from experts such as Chris Batten, Brett Davies or Macquarie Group Services.

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Land Tax Trusts

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Background

One of the biggest drawbacks of using a Trust for property investment is the potential to pay a LOT more land tax than you would if the same property was owned in an individual's name.

In particular, as a result of a court case in Victoria in 2005, most Trusts now pay a higher rate of land tax simply because the tax free threshold does not apply. Or, via a surcharge on top of the normal land tax rates. Ouch!

So, it is no great surprise that over the last five years we have seen various tax experts look for a legal way of addressing this problem because they acknowledge that a Trust is still the best way to own assets rather than for you to buy those assets in your own name.

I'm aware that a "new" type of Trust has been designed that is known as a "Land Tax Unit Trust". And because the land tax is a State Tax there is a different Trust wording to the Trust Deed for each State or Territory. That makes it hard for me to talk about them at length here, too! And it potentially means you would need a different Land Tax Unit Trust for each state you invest in.

In essence, this Trust is a Unit Trust, which whilst still a Trust, acts differently to a Family Trust in that the profit or net income each year must be distributed to the Unit holder in exactly the same proportion as the units held by each Unit Holder.

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That is, there is no discretion as to who will receive the net income each year.

In simple terms, a unit trust works much the same way a Hybrid Trust does and so I suggest you refer back to that chapter to see how it works rather than me repeat it all here.

In summary though as a Unit Trust:

- The units can be redeemed at a later date (watch possible stamp duty and Capital Gains Tax issues);
- The individual can still borrow money to buy the Units in the trust (thus claiming a negative gearing benefit) so that the trust can buy a property;
- The Trust can issue new units in addition to those initially issued; and
- The Trust can still claim the unusual tax deductions that I discuss in greater detail later on in the Appendix.

As a Unit Trust at heart, the Land Tax Unit Trust has additional, carefully worded clauses added to the Trust Deed to ensure that the trust can claim the tax-free threshold for land tax purposes.

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The more thorough, professional experts have already confirmed this type of Trust meets the State or Territory Governments requirement to reduce the doubt and protect you.

However, as always, this does not guarantee that you will continue to benefit if the Governments change the rules.

Once again, you would need to review those changes to the laws in light of your Trust Deed and see if changes can be made to the Deed that will not cause problems, and, enable you to continue to benefit from Land Tax savings as originally designed.

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Land Tax

Each State charges land tax on the value of the land component of property owned by investors. To make matters difficult in a book like this and discuss the tax fully, each State or Territory has different:

- rates of tax
- thresholds before land tax is payable
- rules on how a trust is treated.

But, as an example, in NSW land tax is currently payable at 1.6% of the land value up to $2,366,000, after which a higher rate of 2% applies. The tax-free threshold is currently $387,000 but this will change every year.

So, if you own a property with land assessed as valued at $500,000 the tax is calculated as:

Land Value	500,000
Tax Free Value	387,000
Taxable Value	$113,000

x 1.6% tax	$1,808
"Fee" for using the threshold	100
Total Payable	**$1,908 pa**

Now, whilst this is bad or ugly enough ..... If no threshold is available as is the case for Trusts, then land tax is payable on the whole $500,000 value of land.

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Land Value	500,000	
Tax Free Value	-	
Taxable Value	$500,000	
x 1.6% tax		$ 8000
Fee		-
Total Payable		**$ 8,000 pa *Ouch!!!***

In Victoria, a Trust pays a land surcharge of 0.375% on land value above $25,000 and up to $1.8 million. Above $1.8 million and below $3 million that surcharge tapers away. This surcharge is on top of the normal land tax paid by non-Trusts.

So, a trust that owns a property with land valued at $500,000 will be assessed:

Land Value	500,000	
Tax Free Value	25,000	
Taxable Value	$475,000	
x 0.375 tax		**$1,781.25**

on top of the normal land tax payable. Ouch!

Now, I stress that this tax applies to the value of the land and not the market value of the whole property including the buildings. Just as well, too!!

It is also worth mentioning that this tax is one of the other reasons (apart from asset protection) why most serious investors will not buy more than a couple of properties per Trust.

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What to Do?

Sadly, land tax is a problem for all property investors....big or small. One thing I would recommend though is that you write to your local Member of Parliament and complain about this tax, perhaps even threaten to vote for his or her opponent....will it help? Probably not! But, you will feel better and if enough people do it then the Government may consider changes out of self preservation, if nothing else!

If you are yet to buy properties in your trust, then perhaps discuss the idea of a Land Tax Unit Trust with your legal and/or tax advisors to see if it suits your circumstances.

Unfortunately, transferring existing properties will trigger both stamp duty and Capital Gains Tax problems and so this drastic option may not help either let alone set back your wealth goals.

Lastly, if you already own property in a trust structure I suggest a chat with your advisors in case something can be done via an amendment of your existing Trust Deed. This may not be possible for Family or Discretionary Trusts, but may help existing Unit Trusts depending upon the wording of the Trust Deed.

However, great care will be needed to ensure greater problems are not created and so expert opinion will be needed.

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Summary

In looking at Land Tax Unit Trusts we have seen that:

- Land tax is an expensive cost for all property investors, but even more so for those who own property via a Trust structure in some States or Territories.
- Carefully worded unique Trust Deeds have been created to allow some investors to legally minimise these taxes.
- There is not a great deal that can be done about properties already owned, but, it may still be worth raising the matter for discussion with your tax and legal advisors.
- A Land Tax Unit Trust is, at heart, a normal Unit Trust when it come to the general tax issues.
- Expert advice is needed if you are thinking of utilizing these structures to ensure that you get the advantages you are seeking.

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Magic Tricks

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Magic Tricks

When many people talk about Trusts, they instantly think they are evil things that the rich people use to evade taxes. The problem is that this is only half true . . .

Trusts are not evil at all. They are merely a legal structure that has many advantages and benefits.

However, the rich people of this world do use them to reduce their taxes, but, not to evade taxes at all. And, yes, there is a big difference. It is your right to reduce your taxes where you legally can and only a fool would not do so, as Kerry Packer so famously and publicly, opined a few years ago!

However, tax evasion is illegal and a crime punishable by a jail sentence and/or large monetary fines if you are caught.

Trusts allow you to use the tax system to your advantage and legally reduce your tax and in this chapter I'll show you some of the more practical and legal ways that you can use the Trust to your advantage as well.

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We'll have a look at:

- Unusual tax deductions
- Profit Distributions
- Wages
- Motor Vehicles
- Travelling Allowances
- Capital Distributions
- Refinancing
- Cloning

Of course, some of these issues have been dealt with in other chapters of this book, but they are important enough to warrant attention again here in a little more detail.

And, don't forget some of the other tricks mentioned earlier in this book, but not repeated here:

- Redundancy Payments
- Claiming the GST
- Distributing income to children, but paying the money to the parents instead.
- Home office rental
- Using profit distributions to pay for gifts

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Unusual Tax Deductions

In the Appendix I have included a list of potential tax deductions that you can review to see if you can use them to your advantage and whilst some of them are obvious, some expenses certainly are a little more adventurous!

The important thing to remember is that you should only claim expenses for which you have receipts, and, in circumstances which both you and your accountant feel comfortable in claiming regardless of what I may say here.

A Trust is a legal entity and so it is common for the Trustee to have to pay business expenses to keep the Trust running smoothly and properly. These can include things like accounting fees, insurance, repairs and registration fees on an annual basis for example, that we will all be used to seeing.

However, it is also appropriate for a Trustee to pay expenses of an otherwise personal nature from the Trusts bank account such as:

- Alcohol
- Music
- Chocolate and
- Sex toys

Yes, the finer things in life!

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The first thing to remember with these types of claims is that they are legally allowed when you change the way that you think. That is, instead of you thinking that they are private expenses and therefore paid from 'after tax' dollars, you need to think of them as business costs and therefore paid from 'before tax' dollars.

For example, many businesses will buy bottles of wine or scotch as a gift to:

1. Business associates such as accountants, solicitors, insurance brokers and the like to say thank you for looking after them;
2. Say thank you to their better customers for their patronage; and
3. Their staff members as a reward for a job well done, or as a Christmas bonus or anything along these lines.

The very same principles apply to the music that you might buy for the Trust's office, or, as a gift to an employee of the Trust - yes, you!

OK, that sounds fine, but how do ***you*** benefit from something like this? Simple, the Trust can buy such things for you to enjoy from it's 'before tax' income which means that you do not need to buy them from your own 'after tax' dollars.

A sample minute for this can be seen in the Appendices.

I want to emphasize this very point. You see although I have mentioned it before, it is worth stating again.

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If the Trust can buy things from 'before tax' dollars (that you would normally buy from your 'after tax' dollars) then you will have more money available to either enjoy a richer lifestyle, or, to reinvest into more assets.

That is, we do not want you to spend more money than you do now, just, spend the same amount but from a different perspective.

If you can grasp this simple magic trick then you will be much better off than you are now.

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Profit Distributions

Although I have touched on this before, I'd like to go over this again in much more detail because of the potential magic that it achieves . . .

A Trust does not pay tax on the profit that it makes. We know this from before.

Instead, the Trustee distributes that profit to the beneficiaries of the Trust who will pay tax at their own marginal rates of tax.

This provides an opportunity to pay taxes at much lower rates of tax on the income than you would if the profit was heaped on top of your existing income and of course the less tax that you pay the more money that you have for a richer lifestyle and/or further investments.

Now remember, too, that the beneficiaries of the Trust will usually include:

- You and your spouse
- Each of your children
- Your parents and those of your spouse
- Your siblings and those of your spouse
- Your nieces and nephews
- Your grandchildren, and
- Companies or other Trusts that you own or control

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So, you (as the Trustee) can look at the profit of the Trust and decide whom amongst this list you would like to distribute income to and generally this will be done in the following order:

1. Those that will not pay tax at all on the income (such as children or adults who have no other income at all.)
2. Then, those that will pay tax at the 15% level such as low income earners, or, someone on a pension.
3. Then, those people who will pay tax at a 30% rate such as people who earn a normal income.
4. Then, to a company that you own.
5. Then, to those people who will pay tax at 37%
6. And finally to anyone who is at the top rate of tax of 45%

For many years now, there has been a lack of consensus between accountants, lawyers and the Tax Office as to how a Trust's income should be distributed.

Some experts argued that a quantum approach should be used. That is:

Beneficiary A	To receive the first	$x;
Beneficiary B	To receive the next	$y;
Beneficiary C	The receive the next	$z
etc.etc.		

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Some experts argue a proportional approach should be used. That is:

Beneficiary A	To receive the first	10%, .
Beneficiary B	To receive the next	5%;
Beneficiary C	To receive the balance	85%

Well, in 2010, the matter was finally decided by the courts in what is now known as the "Bamford" case. We should all use the proportional approach now.

Why was this an issue?

Well, there were two major issues. The first was that many times the Trust's accounting profit was different to the Trust's taxable income and that created problems. For example, the accounting records might show a small loss, but, because an expense was not allowable as a tax deduction, the tax return shows a small profit.

The second issue was if, or when, the Tax Office disallowed claims and caused the tax return result to be amended. Who should be taxed on that share of the net income or profit then?

Obviously, a carefully worded profit/income distribution minute should address this issue which is why I have noted (see my sample in the Appendix) that one beneficiary should receive the balance, after we have distributed the income we want to give to the low taxed and no taxed beneficiaries; and why I have always included instructions in that same minute or resolution as to what should happen to the net income or profit if the Tax Office make amendments.

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It's worth remembering that under tax law, if income is not properly distributed by a Trust, then, that income is automatically taxed at the highest rates of tax possible.

Let's have a look at this with some numbers . . .

For the sake of this discussion we'll assume that the profit of the Trust is $50,000 and that you personally earn $80,000 and your spouse earns an income of $37,000.

If the Trustee paid that profit to you, you would be up for a tax bill of $18,500, which is not particularly nice and is our worst case scenario. So, what other options could we use to legally minimise this tax . . .

- If you had 3 children we could give each $3,333 and pay no tax at all.
- If you had 10 nieces and nephews, you could give each say $100 and pay no tax at all.
- You might have 2 parents who have no other income save for the old age pension and we can give them $1,000 each without them paying tax or losing any of their pension.
- Finally, we could pay the rest to your spouse, for example, who will pay tax at her tax rate that will come to $11,100.

You have saved a minimum of $7,400 in this simple way.

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Or, if we do exactly as we did above, but, give $3,333 to each of the 10 nieces and nephews before we give the balance to your parents and spouse then the total tax bill will be about $1,401 which saves another $9,699 on the first scenario and a decent $17,099 tax saving on the original $18,500 possible tax bill.

Yes, less than 10% of the original tax payable if all the income went to you!

Now, here is something special for you to think about . . .

You probably already buy Christmas presents and birthday presents for your nieces, nephews, parents and children as it is, don't you?

Well, if you use the Trust properly then those presents can be bought with the same profit that you distribute from the Trust, which means that they are effectively bought from pre tax dollars.

I'll explain.

The Trust makes the profit from its normal activities. That profit is distributed to the individuals, as above, via a book entry allocated to each individual.

That is, we have effectively given the profit to each individual who has then loaned the money back to the Trust.

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Then, when Christmas comes around you are within your rights for the Trust to pay for the gifts or presents that you would normally buy for that individual and this will reduce the amount of money, or loan, that the Trust owes that person.

The same applies for the birthday presents.

Again, because the Trust has paid for the items then you personally need less money than you did previously.

Now that is magic!

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Wages

As we have mentioned previously, a Trust is a business entity and as such it can pay wages to you, your spouse and to your children.

These wages can be paid for the administration activities of the Trust, or, for the running of the Trust's business or investments.

Now, you should also realise that wages can be paid to your teenage children if they actually work for the Trust, and, that those wages are not taxed at penalty rates like the profit distribution.

Yes, instead of being allowed to have $3,333 pa tax free, the children can have $15,000 pa tax free – now I bet that could make a difference!

Again, let me explain in more detail.

When John Howard was treasurer in the 1980's laws were passed that taxed children's income at penalty rates once it got above $450 per year.

Years later, with the introduction of the "Low Income Rebate" the tax free threshold for children became $3,333 pa before the penalty rates kicked in.

This is unless the income was actually earned by the individual through his or her own efforts such as employment income.

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So, your Trust could pay wages of up to $15,000 each to your teenage children without them paying a cent in tax at all and could save you anywhere between $4,500 per child to $6,750 per child in taxes.

Obviously though, we may need to consider Centrelink entitlements, such as Youth Allowance, that might be lost if we head down this road. At that point, it might be a trade off to see which path provides the greater advantages.

If you have two children and do this over five years, you could find that the saving is something like a tremendous $67,500!!!

This wage could replace, for example, the pocket money that you might currently pay your children. Again, we replace 'after tax' expenses with 'before tax' expenses which makes you richer.

Now, the secret to this magic trick is that the children must actually work for the wage and not receive it for nothing.

I normally suggest that you consider keeping the following records to assist you should the Tax Office ask questions:

- Pay them this wage just as you would anyone else with payslips and the appropriate employee records being maintained.

- Have a job description of the work expected of each child.

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- Ensure that the amount paid to each child is reasonable in terms of the normal amounts paid to other people for similar services. That is, you would not pay a cleaner $60 per hour, so, you cannot claim that this is what you are paying your 15 year old child.

- Keep diaries for at least a month showing the type of work performed and the amount of time that it took for each child.

One tip worth considering is that in many families, it is the teenage children who maintain the computers, software, and Internet facilities of the household and it is often these facilities that are used to earn investment income.

So, the children could be paid wages by the Trust for their IT knowledge in these circumstances.

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Motor Vehicles

Like most things, a Trust can buy a car just as easily as you can. However, it is my personal preference that whilst a Trust can do so, and, claim 100% of the costs in relation to the car, it might not always be the best result for a number of reasons.

To start with, Fringe Benefits Tax (FBT) would apply and that might mean an unnecessary amount of paperwork for you; and, possibly more tax payable than might be necessary. Still, this is not the major reason....

Secondly, and most importantly, I am always reluctant to mix investment assets with risk assets and I consider that a car might be a risk asset if that car is involved in an accident.

After all, if anyone is hurt then I would hate for some clever lawyer to attempt to sue the Trust because the Trust owns investment assets as well as the car....regardless of whether they would win, or not.

Lastly, we might be able to achieve a better result for you, tax wise, from the Trust not owning the car, but you personally owning it instead.

So, unless you have a Trust that owns and runs your business, I suggest that we look at one of our other options instead. That is, if your Trust is an investment Trust, then, I suggest that you do not buy the car in the name of the Trust.

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Instead, it might be worthwhile you owning the car in your own name and the Trust pay you a "Vehicle Allowance" to compensate you for using that car on the Trust's behalf.

As with other such payments, too, the Trust can actually pay you an amount of money, or, it can do so via an accounting journal when, in effect, no money changes hands but instead the Trust is deemed to have paid you the money but in effect the Trust still owes this money to you.

Of course, the Trust will have to actually hand over the money one day...perhaps when it refinances as we have discussed elsewhere in this book.

In this idea, the vehicle allowance that you receive would be an expense to the Trust and thus reduce the Trust's profit or net income. However, in your own individual tax return this allowance would be income that you have to declare. Against this income, you would then personally claim the car expenses as deductions.

Now, it should be no surprise to you that you can claim motor vehicle expenses in your tax return IF you use your car, or cars, to travel in relation to your employment; your business or your investments. Most people are already aware of this and are claiming the use of their car on their tax return already.

However, what you may not be aware of is that there are four different possible ways to claim a car.

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They are:

- By keeping a log book for three months and noting the business, work or investment travel and then claiming the income related percentage of the costs;
- Claiming 1/3rd of the costs of the car;
- Claiming 12% of the original cost of the car; or
- Claiming up to 5,000 kms at the prescribed rate per km. (This rate changes each year and is different for small, medium and large cars)

Now, this is the case for individuals regardless of whether a Trust is involved, or not.

Obviously, we should use the method that provides you with the greatest tax benefits and this method could change every year depending upon your circumstances. We can swap and change each year to suit our needs. The secret is for you to keep records that allow your accountant to quickly, and easily, decide which method gives you the best tax result.

To start with, you should keep a log book for three months. This only needs to be done once every five years unless your travel patterns change in which case, a new log book should be kept for another three months.

In addition to this log book, you should keep a record of the costs that you incur in buying, keeping and maintaining your car, or cars.

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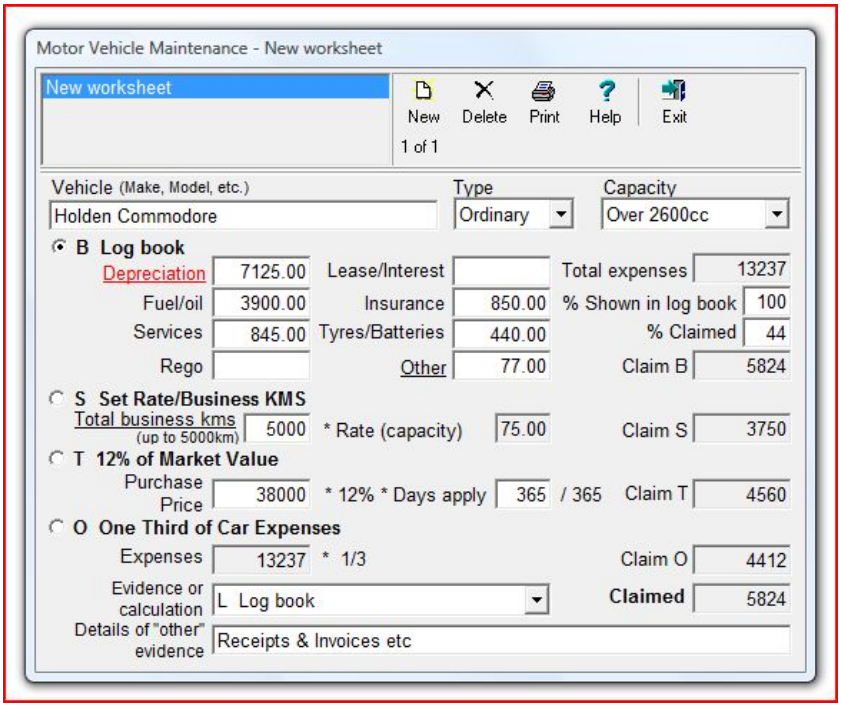
By doing so, you enable your accountant to prepare a worksheet similar to this one:



Where, as you can see from the above example, your accountant can easily see which of the four methods will provide you with the best result. However, I stress that he or she cannot do this if you do not provide information that enables them to make these calculations on your behalf.

Above, the end result based on the information input, was that a log book method would provide, this year, the biggest claim. Next year, however, it may be different indeed and so a new worksheet would be prepared to compare results.

Now, sadly, the reality for many people is that a log book is hard work and not something that they are prepared to keep. If so, this would rule out this method entirely.

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Of the four methods noted above, it should be mentioned that the first three are only available to you if your travel more than 5,000 kms in the year. If you don't do that many, or, if you fail to keep proper records, then, you can only use the last one. That is, the "cents per km" method.

However, even this is not so bad when we look closely at the tax rules. This is because the law says that you can claim up to 5,000 kms per person, per car. The law also says that the only proof that you need to supply to the Tax Office to be able to claim this method is a reasonable estimate of the number of km's travelled.

Now, this might not sound like much, but, it does mean that if your family has two cars and that both you and your spouse each use both cars quite a bit for income producing purposes, the result get's quite interesting:

Billy claims his car	5,000 kms x 75c/km	$ 3,750
Billy also claims		
Millie's car	5,000 kms x 75c/km	$ 3,750
Millie claims her car	5,000 kms x 75c/km	$ 3,750
Millie also claims		
Billy's car	5,000 kms x 75c/km	$ 3,750

In total then,

Billy & Millie can, between them, claim $15,000

And, the only proof that either Billy, or Millie, might need is a reasonable estimate of how they each arrived at an estimate of travelling 5,000 kms per car.

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Now, at even an average 31.5% tax rate, this deduction of $15,000 would save at least $4,725 in tax each year.

So, what constitutes income earning activity? Well, there are no clear guidelines in tax law and that might be a good thing. You see, most of the tax laws are older and do not always reflect the way that we live our lives today. However, to give you an idea, the travel could include trips:

- To visit your accountant to discuss tax related matters
- To visit your property manager in relation to your investment properties
- To go to the bank to make a deposit; or, to discuss your banking needs in relation to a refinance
- To meet with your financial advisor; or, your mortgage broker; or your share broker or your insurance broker
- To inspect your existing investment properties
- To undertake repairs or maintenance on existing investment properties
- To attend meetings on behalf of the Trust
- To buy supplies for the business, or for the office etc
- To go to the Post office to collect or send business or investment related mail

Obviously, this is not an exhaustive list and I am sure that you can come up with a LOT more possibilities now that you have an inkling of what might be possible.

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I should note though, that you can only claim up to 5,000 kms per car, per person....regardless of whether you actually travel a lot, lot more kms in one particular car.

So, if you do travel a lot of kms in relation to your income earning activity on behalf of the Trust, you would be wise to keep a log book and receipts so that you open the possibilities of achieving a better result.

Oh, and a good tip to remember is that accountants do not like piles of paper to wade through, sort and then add up. So, it is better for you to do this first and simply provide your accountant with a summary of the expenses. That is, a total for the amount you spent on petrol; a total for the amount you spent on repairs; and so on and so forth.

If nothing else, you won't be paying your accountant to add up something that you could have added just as well...and possibly even better!

As always, it might be worthwhile for you to spend a few minutes with your accountant to discuss this matter and to determine a strategy that will work best in your own circumstances.

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Travelling Allowance

Another magic trick that is not used as often as it could be is a travelling allowance that a Trust can pay to you for travelling on its behalf. This travel allowance can effectively be tax free money that you receive!

The background to this one is that our politicians are paid an allowance for travelling away from home that is shown as income, but they can then claim the same amount as an automatic tax deduction.

The same laws apply to us as well.

So, the Trust can pay you a daily allowance for any travel that you do away from home and this allowance is a tax deduction to the Trust that will reduce its profit.

That allowance is income to you and your accountant will offset this income by the automatic tax deduction so that the income is effectively tax free to you.

Now, this tax deduction is regardless of how much you spend. That is, you might be paid an allowance of $200 per day but spend only $20 on food for the day and $25 on a hostel for the night and you can still claim the $200 per day as a tax deduction.

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And, no receipts are necessary at all!

In fact, the Ruling provided by the Commissioner of Taxation (and updated every year) actually says that if the allowance is not shown on the PAYG Summary, then, neither the allowance nor the subsequent claim need to be shown on your Individual Tax Return.

In the same way, if you stay with friends for the night and incur no expenses at all for food or accommodation that allowance is still payable by the Trust and still deductible to both the Trust and to you.

The actual rates that can be paid change every year and depend upon the income range that you earn, as well as the city or town that you travel to. For example, in 2011 the following rates apply as per Tax Office Ruling TD2010/19:

For those earning a wage below $97,100 you can have a daily tax free allowance for each city of:

Adelaide	$267.35
Brisbane	$311.35
Canberra	$255.35
Darwin	$282.35
Hobart	$227.35
Melbourne	$283.35
Perth	$274.35
Sydney	$293.35

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As part of that same Tax Office Ruling, there are also prescribed tax free amounts payable for country areas, and, for overseas, too.

In addition there are specified amounts payable if you earn more than $97,100 per year in wages meaning that you can get a higher daily allowance or even more benefit from this idea.

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Capital Distributions

Under the present laws, it is possible for the Trust to make a tax free distribution of capital to the beneficiaries.

What exactly does this mean?

Well, it means that the Trust can give you money tax free and you can live off this if you like instead of earning a wage.

The Trust does this by revaluing its assets to their current market value.

Then, it creates accounting journal entries that records the new values of the assets on one side of the ledger, and, creates an equity account called "asset revaluation reserves" on the other side.

Then, at some stage the Trust can distribute cash to the beneficiaries from the reserve that will be tax free to whomever receives it.

This can be done as often as you like and is a common strategy applied by the wealthy to maintain a rich and wonderful lifestyle with only a small or negligible income.

Let's look at an example . . .

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Assume for a moment that the Trust has an asset, which is an investment property that was bought in 1990 for $200,000. It is now worth $600,000.

The Trust obtains a valuation reflecting this new value of $600,000 and the accountant creates a journal entry that shows an increase in the value of the property, and, the creation of the reserve account. This will look like:

DR	Asset Account	Investment Property at 2011 valuation	$400,000
CR	Equity Account	Asset Revaluation Reserve	$400,000

Then, the Trust can use its funds to distribute an amount to the beneficiaries of let's say $50,000. The asset revaluation reserve is reduced by the $50,000 and so is the bank account of the Trust.

The beneficiaries will not pay tax on this money at all.

The only consequences of this magic trick are that there will be Capital Gains Tax implications in time to come when the asset is eventually sold.

Now, before you get too carried away with this idea, you should be aware that I understand that this piece of magic is under review by the Government and may well change.

So, given this review, I would recommend that you please check with your accountant before doing anything with this concept.

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Finally on this point, it is possible that the Trust will not have the cash to pay you the money because we created the extra asset and reserve out of thin air.

No money changed hands at all and this leads me to the next magic trick . . .

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Refinancing

During the course of this book you will have read of the "book entries" to distribute profit from the Trust to the beneficiaries. Well, over time, these distributions will accumulate such that the Trust owes each of the beneficiaries quite a sum of money.

Furthermore, at times it is common for the Trust to borrow money from you to help pay for the costs of the Trust when the Cashflow has been tight, or, when the Trust needed finance to help it buy investment assets.

In any of the above cases, it is worth noting that the Trust can borrow money from a traditional source such as a bank and use those funds to repay the loans owing to the beneficiary. That is, the Trust can pay you a large sum of money from borrowed funds.

More importantly, you do not pay tax on that money because the existing loan from you to the Trust is now being repaid and this repayment is not treated as taxable income in your hands.

Even more exciting is the fact that the Trust can claim a tax deduction for the fees and interest paid on this new loan regardless of what you personally do with the money when it passes to you.

This is so even if you use the funds to pay for a holiday, a boat, reduce your home loan or any other totally private purpose.

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This concept has been considered by the courts (Roberts and Smith cases) and found to be an entirely acceptable situation and in early 2003 the tax office also issued a ruling confirming that they had no argument with this practice. In 2005, the tax office finalised a ruling confirming that in most cases the interest would still be tax deductible when a Trust borrows money to repay loans from:

- Other banks; or
- Beneficiaries.

The Tax Office does note, though, that the longer that the original loan has been in place the easier it is for the Tax Office to accept that the refinancing relates to the Trust's income earning activities.

The Ruling also notes that if a Trust borrows money for the sole purpose of making an immediate profit distribution, then, the interest may not be tax deductible.

The Tax Office also note in the Ruling that they would place greater emphasis on documentation that supports the loan that the Trust has created with it's beneficiaries each year when the Trust makes a profit/income distribution on paper only.

You might recall that earlier in the book I mentioned that the income or profit could be distributed by a book entry or accounting journal resulting in the Trust owing money to the beneficiary instead of physically paying the amounts at that time.

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With this in mind, perhaps it might be worthwhile for you to consider:

- A separate minute or resolution noting that the profit distribution paid by way of an accounting journal is now treated as a loan to the Trust and is to be repaid, in full, at a future date; and/or
  (see Appendix for an example)

- A letter of understanding between the parties acknowledging that the Trust owes the money to the beneficiaries who have been kind enough to allow the Trust to keep the funds, on loan; and/or

- A simple loan agreement

In the example above, under capital distributions, we talked about creating an increased value of an asset and offsetting this against an equity account. To take this further:

1. The Trust can distribute by book entries the unrealised capital profit of $50,000 to the beneficiaries, which creates a loan account owing to the beneficiaries.

2. Then, the Trust can borrow money from the bank using the equity within the asset as security for the loan

3. Finally, the Trust can use the money borrowed from the bank to repay the loan owing to the beneficiaries

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(Please note, some accountants are not so comfortable with the Trust claiming the interest on loans taken out by the Trust to reduce a beneficiaries loan created from a revaluation alone; as a result of that same Tax Office ruling. Therefore, you would be wise to discuss the issues with you own advisors before making any decisions.)

I also note that not all tax experts agree with the Tax Office on some parts of their Ruling. In particular, there is a part of the Ruling where the Tax Office state that they do not believe that interest paid on a loan taken out by the Trust will be tax deductible where the Trust has borrowed the money to pay out loans to beneficiaries for:

- internally generated goodwill; or
- revaluation of assets (see earlier chapter)

Sadly, we shall have to wait for this matter to be clarified through a court case at some future stage before we know which view is correct. viz: Can the interest on such a loan used in relation to a re-valuation of an asset be claimed, or not?

In the meantime, the Trust can continue to legally claim a tax deduction for the interest it pays on a loan taken out to replace another loan - even if that other loan is with a beneficiary of the Trust.

This is probably something for you to discuss with your advisors when you are ready, as they will help you do this properly and without potential problems and with the tax office rulings on this subject in mind.

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Cloning

Changes to the tax laws made in 2008 mean that it is no longer possible to get any tax benefits from "cloning" one Trust to create a 2nd Trust. Until recently, assets could be split between the two or more Trusts without the need to pay CGT.

This was a useful estate planning tool and one that may still be of benefit to you under some circumstances. As always, seek expert legal and tax advice before making any decisions.

This opportunity comes about by allowing a 2nd (or more for that matter) Trust to be created that is the "clone" or "mirror" of your original Trust.

Once this new Trust is created it is possible for assets in the original Trust to be moved from the original Trust to the new Trust. You now need to watch out for Capital Gains Tax payable through the transaction though.

The new Trust will need to be essentially the same as the original in terms of :

- The Appointor
- The Beneficiaries
- The rights and obligations of the Trustee
- The vesting date.

Of course, given how important this is to get right, you must have the new Trust Deed drawn up by a solicitor who will review your original Trust at the same time.

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By the way, if the asset to be moved from the original Trust to the new cloned Trust is mortgaged then you will need to talk to the bank in question and ensure that they are comfortable with the change of ownership and so that the bank can draw up new security documents, if required.

The benefits of this form of magic are an increased flexibility and a greater ability to control your wealth and tax situation when circumstances change.

For example, you might have a Trust that owns a number of properties and as part of arranging your will, you wish to split those properties into separate Trusts for each of your children to avoid problems after your death. Accordingly, using the ability to clone or mirror your existing Trust will enable you to achieve control of your own estate and avoid problems for your family after you have gone.

Alternatively, you may have a business owned by a Trust that also owns the property from which the business is run. For asset protection purposes, it might be smarter to clone the Trust and transfer the property to the new Trust (even though CGT is now payable) let alone the ability, or new opportunity, of the business to pay rent to the new Trust as a way of transferring wealth and keeping control of your situation.

Of course, as with any major tax decision, there will be GST and Stamp Duty implications, too, from such a cloning. However, with careful advice and planning, both of these should not be a problem at all.

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In Summary

The Trust allows a number of magical things to happen which will allow you to use the law to your advantage and pay less tax through any of the following ideas:

- **Unusual tax deductions** - Yes, I really did say that the Trust could buy you, and possibly claim for, those adult toys as a tax deduction!!
- **Profit Distributions** - Through being able to distribute taxable profit to non taxed, or even low taxed, beneficiaries.
- **Wages** - Being able to pay wages to family members including teenage children and thus use the first $15,000 tax free threshold fully as often as you can.
- **Motor vehicles** - There are four different ways that cars can be claimed, creating opportunities to use the Trust to pay less tax.
- **Travelling Allowances** - Being able to pay a tax free allowance for you to travel away from home on behalf of the Trust.
- **Capital Distributions** - How a Trust can draw down on the equity within the Trust's assets to pay money out of the Trust to the beneficiaries without them having to pay tax on that income.

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- **Refinancing** - The ability to have the Trust replace one loan with another and still claim tax deductions for interest and fees even though you personally use the money for private purposes.

- **Cloning** - The ability to move assets from one Trust to another even though CGT now applies when it didn't a couple of years ago.

And, this is not an exhaustive list!

There are many other tactics and magic tricks that allow a Trust to work to your advantage, however, these are some major ones for you to consider using after discussing them with your accountant.

I hope they have helped you understand a little more of the magic of Trusts.

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The King Is Dead, Long Live The King!

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The King Is Dead, Long Live The King!

In Australia, there is a law that says that a Trust cannot live forever. You may have heard differently because some clever marketing that I have seen does suggest otherwise….but, generally speaking, a Trust is alive for no more than 80 years from the date that it was first created.

The only exception to this law is if the Trustee of the Trust is a resident of South Australia, where there is no specified time limit to the life of the Trust.

However, a Trust may be closed or vested (as the lawyers and accountants would say) any time before the end of the 80 year period by a choice made by the Trustee of the Trust. This may be done by a simple minute. (see a sample in the appendices)

When the Trustee decides on an early vesting, or the 80 year life time of the Trust comes to an end, the Trustee will:

- Close all bank accounts
- Instruct the share broker to either sell all the shares on the open market and convert the assets to cash; or transfer the shares "in specie" to the beneficiaries of the Trust
- Either sell the properties owned by the Trust at that time on the open market and thus convert the asset to a cash position; or, transfer the properties to the beneficiaries of the Trust.

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Of course, the Trustee would be wise to seek both legal and tax advice at the time and before making any decisions at all as making the wrong decision could be ***very*** costly in terms of Capital Gains Tax and stamp duty…..thus seriously diluting the wealth created over the life time of the Trust.

However, most Trustees would simply transfer the assets "in specie" (which means, "as is") to the beneficiaries of the Trust via a carefully worded minute of a meeting as doing so will generally mean that the transfer will be exempt from both Stamp Duty and Capital Gains Tax (CGT).

This is where it gets a little tricky though as each Trust Deed is different and it is the Trust Deed that decides how the assets are to be distributed on the vesting of the Trust and which beneficiary will receive them. Some Trust Deeds require the Trustee to make a decision, and, some Trust Deeds require the assets to be distributed to a Primary beneficiary.

Your solicitor or conveyancer, will possibly need a lot of information from the Trustee to prove that the Trust owned the assets and that the beneficiary was entitled to the asset, according to the Trust Deed, to ensure that the "in specie" transfer is exempt from Stamp Duty. Each State, or Territory, has a different list of requirements and information to be presented when claiming the exemption.

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By the way, the good news is that when a beneficiary of the Trust receives the property or parcel of shares without having to pay for them as a result of this "in specie" distribution they are deemed, by tax law, to have received them with a cost base for CGT purposes equivalent to the market value of that property, or, that parcel of shares, at the time of the transfer.

This means that if the beneficiary so desired, after seeking the appropriate professional advice at the time, that they could then sell that same asset to a new Trust with no CGT to pay, just the stamp duty payable by the Trust and so begins a new journey. The king is dead; long live the king!

Unfortunately, the "law of perpetuity" means that the assets of the Trust cannot be distributed directly to another Trust with a new 80 year life time.

Now, I am normally loathe to talk about the tax issues when a Trust vests simply because 80 years is a long, long time and the law could easily change somewhere between now and the end of your Trust. Not to mention the fact that neither you, nor I, are likely to be here in 80 years time to pass on the knowledge gleaned today!!!

So, whilst this is the law, as I understand it now, please expect that to really get the magic from your Trust at the time it vests; you must seek proper advice from your solicitor and accountant at the time that the Trust is to vest.

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In Summary

Although a Trust has only a limited life, the flexibility and benefits of a Trust are not diminished when it comes to an end with careful planning at that time.

- A Trust lives for no more than 80 years
- At the end of its life, the Trust can distribute its assets to the beneficiaries of the Trust and avoid both stamp duty and CGT
- It is vitally important for the Trustee to seek advice based on the law at the time that the Trust is vested; and the wording of the Trust Deed, before any decisions are made.

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Questions
&
Answers

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Questions and Answers

Over the years I have constantly been asked questions that appear over and over again from different people at different times and in different circumstances. All of those questions are real, and all of them valid questions needing serious and respectful answers as people try to understand the magic of Trusts.

So, whilst some of the bigger issues have been dealt with in earlier chapters of this book, I thought it might be a good idea to include a cross section of Q & A's that might help you to understand more.

Good luck and remember to keep asking questions of your accountant, advisors, and solicitor so that you get more from your Trust.

The following information is not designed to be comprehensive, or all encompassing, but hopefully it will cover most of the issues that come to your mind with your Trust. If they do not, you are more than welcome to email me directly with your questions and I will do my best to answer them as best I can.

We'll have a look at issues under each of these topics:

- Structure FAQ's
- Financial & Tax FAQ's
- Investing FAQ's

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Structure FAQ's

Q. Can we add extra beneficiaries of the Trust later on?

A. Yes, you can, but, in doing so you risk "resettling" the Trust which means that the old Trust dies and a new Trust is created. In practical terms this would mean that the old Trust effectively sells the assets of that Trust to the new one and this would mean that the new Trust would pay stamp duty all over again.

And, if that is not painful enough, there is Capital Gains Tax payable on the deemed sale of the assets from the old Trust to the new Trust.

Importantly, you should also realise that the definitions of a beneficiary within a Trust is so broad that you never really need to add a beneficiary anyway because virtually everyone ever related to any of the primary beneficiaries is already a beneficiary of the Trust.

Q. Can we remove one of the beneficiaries later on?

A. Again, yes, you can remove a beneficiary based on the powers granted to the Trustee; however, there is no need to do so when you remember that the Trustee has absolute discretion as to who can benefit from the Trust. In practical terms this means that you can ignore a wayward child, or a separated spouse, and they can never force you to do anything for them from the Trust.

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Q. I understand that the Tax Office has been aggressive towards Hybrid Trusts and has disallowed claims for some. Is this true?

A. Yes and No.

The Tax Office have indeed refused to allow tax deductions on some inferior worded Hybrid Trust Deeds. However, they have also shown no hesitation in allowing tax deductions for well written and managed Hybrid Discretionary Trusts.

A recent court case "Forrest" also saw the courts over rule the Tax Office and allow such a claim too.

If you are considering establishing a Hybrid Trust then I would strongly recommend that you do so only after seeking expert advice given recent draft rulings. They can still work for you, but it is more important than ever to set it up properly.

Q. Does a Trust live forever?

A. No, all Trusts live for a maximum of 80 years under the law despite some clever assertions by some people marketing Trusts.

When a Trust comes to the end of it's life, after 80 years or by choice earlier than the vesting date, the assets of the Trust are distributed to the beneficiaries of the Trust and there are usually concessions available to ensure that this distribution is not taxed too painfully.

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Q. What happens if the Appointor dies?

A. The Appointor's "personal representative" or Executor as per his or her legal will takes on this role.

The experts at Macquarie Group Services also suggest that the Appointor and the persons controlling or driving the Trust can also prepare a "Memorandum of Wishes" that might assist the executor to understand your wishes. This "Memorandum of Wishes" is not legally binding, but it does create an 'expectation' that the executors will take your wishes into consideration in their decision making.

Q. Can we change the Trustee of the Trust?

A. Yes, at any time. It is the Appointor's role to choose a new Trustee and a sample minute is attached showing the appointment of a new Trustee for you to use if and when required. However, it will be important for you to notify the lenders and the titles office urgently if you do change Trustees.

Also, depending upon the wording of your Trust Deed, you may need a "deed" drawn up by your solicitor to change Trustees.

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Q. If I get remarried later on, can I add my new spouse to the Trust as a beneficiary?

A. There is no need to do so as the definition of the secondary or general class of beneficiaries within your Trust Deed already includes spouses of the primary beneficiary, being you.

Q. Two of my children are listed as primary beneficiaries, what happens if we have more children after the Trust has been created?

A. Your future children are already included as beneficiaries under the General Class of beneficiary within the Trust Deed definitions because they are related to you. Therefore, there is no action required.

Q. Can the Trust Deed itself be changed?

A. Yes, it can if the Trust Deed has a provision allowing the deed to be changed, which I would expect from any well written Trust Deed. All changes should be carefully approached after taking advice because of the potential for re-settling the Trust if done in the wrong way.

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Q. How long does the Trust live for?

A. The Trust has a limited span of 80 years at the most. However, the Trust can also be wound up (known as "vested") earlier at the discretion of the Trustee and the Appointor. At the end of 80 years the assets of the Trust are distributed to the beneficiaries of the Trust in accordance with the terms of the Trust Deed.

Q. Can I convert my Family Trust to a Hybrid Trust?

A. Whilst I understand that technically you can . . . the very real danger is that in doing so you will cause the Trust to be "re-settled". This means that the old Trust stops and a new one is deemed to start.

The effect of this is that the assets of the old Trust are deemed to have been disposed of to the new Trust, which means that the Trustee will have to pay stamp duty on the value of the assets and Capital Gains Tax on the disposal.

Given this potential cost, I would normally suggest that you do not change the Trust structure at all without expert advice!

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Q. My accountant has established a Trust for me; do I need to make a new will?

A. Yes, it is always a good idea to update your will when your circumstances in life have changed. You should inform the solicitor who is preparing your will that you are the Appointor, or director and shareholder of the Trustee company of a Trust.

Q. When my Trust was created, no one was appointed Controller. Is this a problem?

A. No, it is not. If your Trust Deed talks of a Controller you can add one at any time (seek advice before you do) or leave the role blank.

If your Trust Deed makes no mention of a Controller, then it is not a problem at all and you can seek advice, if you wish, about amending your Trust Deed to include the role.

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Financial & Tax FAQ's

Q. Can the Trust borrow money?

A. Yes, the Trust can borrow money from traditional sources like Banks, or, from personal lending from individuals, or corporations.

Q. Can the Trust have a credit card?

A. Yes, it can and this is quite common.

Q. Can the Trust buy a car?

A. Yes, it can, but in doing so you may have to worry about Fringe Benefits Tax (FBT) being payable each year. Furthermore, for what it is worth, I would not normally suggest that a Trust used for holding investments also owns a car simply because of the risks involved in compromising the asset protection integrity.

Q. Will the Tax Office think it suspicious if I start to use a Trust now?

A. No, they are quite used to people making this decision. In fact, it is your right to use whatever means available to you to legally reduce your taxes and establishing a Trust for the long term wealth that you are creating does not contravene any laws whatsoever.

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Q. Does the Trust need to be audited every year?

A. No, the Trust does not need to ever be audited at all, unless, the people within the Trust decide, for whatever reason, to do so. I have never seen this happen though and can think of no good reason to do so.

Q. What if the Trust makes a loss?

A. This will happen from time to time and is not a problem at all. The loss is quarantined within the Trust and carries forward to the next year when it can be offset against the profits in that second year.

If the Trust makes a second loss then that is added to the first loss and a larger amount is carried forward until such time as the Trust makes a profit.

These losses are carried forward indefinitely.

Q. What rate of tax does a Trust pay?

A. A Trust does not pay tax at all, unless, it fails to distribute income to the beneficiaries and in this case it is at a rate of 46.5%. Normally though, the Trust will distribute its income to the beneficiaries who will pay tax at their respective rates of tax which should be lower than 46.5% if the power of the Trust is used properly.

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Q. Will the Government change the laws affecting Trusts for the worse?

A. Realistically, you can never really tell what the Governments will, or will not do. However, it is my honest and fervent belief that the Governments will not make dramatic changes to Trust laws for a number of reasons, which are:

- The politicians all use Trusts to protect their own assets
- The people who make donations to political parties are the wealthy people who own their assets through a Trust and their donations give them the ability to ask "favours" of those in parliament.
- The precedents of Trust laws go back about a thousand years and are unlikely to be readily forgotten.

This is not to say that we won't see change, but, most changes often stop outright mischief and not legitimate tax planning. In fact, some changes, when properly analysed, work to the advantage of those people who own Trusts.

Q. Can I have my wage earned by the Trust?

A. No, you cannot. Changes to the rules in 1999/2000 meant that any chance of you using a Trust to contract your income instead of being an employee was made virtually impossible.

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Q. Does a Trust pay Capital Gains Tax?

A. No, a Trust will make a Capital Gain on the sale of its shares, investment properties or other assets, but, that Capital Gain is distributed out to the beneficiaries of the Trust who will pay tax on that gain at their own rate of tax.

A family Trust allows the 50% general exemption on the Capital Gain to be accessed by the beneficiaries of the Trust and so they will only pay tax on half the gain if the Trust owned the assets for more than one year.

Q. Can I distribute profit to beneficiaries who live overseas?

A. Yes, you can. In doing so, you will need to deduct withholding tax from the money that you allocate to them. Furthermore, you will need to be registered with the tax office to do so and will need to complete some forms which will be lodged with the tax office with the tax that you withhold.

Q. My Trust owes me money. Can the Trust borrow enough money from a bank and use these funds to pay me out, and, get a tax deduction for the interest that it pays?

A. Yes, it can and in support of this the Tax Office released a ruling confirming that this is the case.

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Q. If I separate from my spouse, can the Family Court get to assets within the Trust?

A. Yes, they can. The family court has shown a willingness to look through the structures used by couples for about the last 20 years now and there is no immediate likelihood that will change.

However, if the Trust was created before the relationship with your spouse began then the assets within the Trust may be protected from this sort of attack.

If you are at all concerned then, obviously, I recommend you discuss your own situation with your solicitor.

Q. How does Centrelink see Trusts?

A. The rules have changed within the last few years and Centrelink will look at the people who control the Trusts, such as the Appointor and Trustee, and then assess these people on the income of the Trust, and, the assets of the Trust. This could mean a change in plans for people who own Trusts and wish to access the Social Security benefits such as the pension.

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Q. What ongoing costs do I have with a Trust?

A. You will have a fee of about $200 to $300 to the government (ASIC) every year to register the Trustee company. On top of this, you will have accounting fees which will vary from year to year depending upon the accountant involved, the quality of the records that you present to the accountant, and the complexity of the issues within your Trust for that year.

Q. In using my Trust to buy investments, I can see that there will be a cash shortfall from time to time. How can I get some of my money into the Trust?

A. Simple, you merely loan the money to the Trust and the Trust will repay you these funds, free of tax, at some later stage when it can afford to do so. Or, you can 'gift' the money to the Trust and this will mean better asset protection for you, but, the money cannot be repaid to you.

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Investing FAQ's

Q. Can the Trust invest money in whatever it likes?

A. Yes, it can and your Trust Deed will show this through the powers granted to the Trustee.

Q. Whose name should appear on the contract to buy an investment property?

A. The name of the Trustee, regardless of whether you add the fact that the Trustee is acting in that capacity.

Q. Can the Trust own both my businesses and my investments assets?

A. Whilst technically, it can, I believe that this would be a silly move because you place all your eggs in one basket and this compromises the asset protection integrity normally available. It would be much wiser to have one entity own the business and another owning the investment assets.

Q. What name appears on the bank account?

A. The full name is "Trustee Company Pty Ltd as Trustee for The Surname Family Trust"

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Appendices

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Sample Minutes

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Sample Minutes

Throughout the book I have mentioned that I have included a collection of sample minutes that might make your life easier.

Here they are, but the most important thing to remember is that the purpose of the minutes is merely to record the mindset that you had at the time and the decisions that you made.

Remembering this, it is then important for you to use your own words when you draft your own minutes. In that way, you cannot go wrong . . .

Here are a number of sample minutes for you to use, as is, or modify to suit your circumstances:

- Minute to use when opening a bank account
- Minute to use when buying shares
- Minute to use when buying an investment property
- Minute to use when borrowing money
- Minute to use when borrowing from an individual
- Minute to use when distributing profit at the end of each year
- Minute to use when distributing profit at the end of each year post "Bamford"
- Minute noting loan to be repaid
- Minute to use when changing Trustee of the Trust

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- Minute to use when issuing units in the hybrid Trust
- Minute to use when buying a business
- Minute to Authorise The Trustee to Buy Gifts
- Minute to Vest the Trust Early

Again, it is more important that you record the decision that you make and not necessarily worry about the words that you use to record that decision.

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Minutes of a Meeting of the Trustee of

The Family Name Trust

Held at Your Home Address

On Saturday the 1st of January, 2011

Present Billy Bloggs
Millie Bloggs

Bank Account **It was resolved** by the Trustee to open a bank account for the Trust with the Kilsyth branch of the NAB. Both Billy & Millie are to be authorised to operate the account on behalf of the Trust.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at Your Home Address

On Wednesday the 2nd of February, 2011

Present Billy Bloggs
Millie Bloggs

Shares **It was resolved** by the Trustee, after much discussion, to buy shares as an asset for the Trust. Namely, to buy 100 shares in the National Australia Bank (NAB) at, or below, $21.50 per share. Millie was authorised to contact stockbroker to open an account and place an order on behalf of the Trust.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at Your Home Address

On Thursday the 3rd of March, 2011

Present Billy Bloggs
Millie Bloggs

Property **It was resolved** by the Trustee, after much discussion, to buy an investment property, and in particular, a property at 63 Wealth Street, Riches for an amount of not more than $350,000.

Billy was authorised to negotiate with the vendor and their agent on behalf of the Trust and to sign the contract as required on behalf of the Trust.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at Your Home Address

On Monday the 4th of April, 2011

Present Billy Bloggs
Millie Bloggs

Borrowing **It was resolved** by the Trustee, after much discussion, to take out a mortgage of $280,000 to enable the Trustee to buy the investment property at 63 Wealth Street, Riches. Millie was authorised to contact a mortgage broker with the view of finalising an application to borrow money and sign the mortgage documents on behalf of the Trust.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at Your Home Address

On Thursday the 5th of May, 2011

Present Billy Bloggs
Millie Bloggs

Borrowing **It was resolved** by the Trustee, after much discussion, to borrow $70,000 from Billy & Millie Bloggs to enable the Trustee to buy the investment property at 63 Wealth Street, Riches.

The loan will be repaid to Billy & Millie when the value of the property has increased enough for the Trust to draw down a new loan from the bank against the equity in the investment.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at **On**	Your Home Address Wednesday the 29th of June, 2011
Present	Billy Bloggs Millie Bloggs
Determination Income	**It was resolved** that, irrespective of how the income and expenses **of** of the Trust have been recorded throughout the year ending 30 June 2011, to the extent permitted by the Trust Deed, the income of the Trust includes all amounts (including capital gains) taken into account in calculating the net income of the Trust as defined in S.95 (1) of the Income Tax Assessment Act 1936 ('net income"), and the income of the Trust available for distribution is determined to be equal to the net income of the Trust as assessed or amended from time to time.
Character of Income	**It was noted that**, to the extent permitted by the Trust Deed, the company as Trustee had kept appropriate records and accounts to be able to identify different classes and types of income and capital.
Trust Income under	**It was resolved** that pursuant to the power vested in the Trustee the Deed of Settlement that the net income of the Trust for the year ended 30th June, 2011, be applied in the following manner: The investment Income of the Trust - comprising Interest Earned, Dividends Received and Net Rental Income to: The first $3,333, or part thereof, to Jimmy Bloggs The next $3,333, or part thereof, if any, to Timmy Bloggs The balance, if any, to Millie Bloggs.
Variation Of Income	**It was resolved** that should the Commissioner of Taxation disallow any amount as a deduction or include any amount in the assessable income of the Trust, such amounts are to be deemed to be distributed on 30th June, 2011 to: Millie Bloggs in full as the 'balance beneficiary'
Payment Of Distribution	**It was further resolved** that where relevant, upon the total amount of the said income for the year ended 30th June, 2011, being determined with the aforesaid resolution be paid in cash to such beneficiary or credited to such beneficiary.

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Ratification Of Trustee's Actions	**It was resolved** that all actions of the Trustee during the year relating to the investment of the Trust monies and application of Trust income be ratified and confirmed.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

Please Note: This minute is not something that you will need to worry about too much. Your accountant should provide you with something similar and appropriate to your specific circumstances.

Moreover, as a result of the decision in the "Bamford" case recently, your profit or income distribution minute may look like the next page instead....

It will have the same effect though.

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at	Your Home Address
On	Wednesday the 29th of June, 2011
Present	Billy Bloggs Millie Bloggs
Character of Income	**It was noted that**, to the extent permitted by the Trust Deed, the company as trustee had kept appropriate records and accounts to be able to identify different classes and types of income and capital.
Trust Income	**It was resolved** that pursuant to the power vested in the Trustee under the Deed of Settlement that the net income of the Trust for the year ended 30th June, 2011, be applied in the following manner: The first 10%, or part thereof, to Jimmy Bloggs The next 10%, or part thereof, if any, to Timmy Bloggs The balance, if any, to Millie Bloggs.
Variation Of Income	**It was resolved** that should the Commissioner of Taxation disallow any amount as a deduction or include any amount in the assessable income of the Trust, such amounts are to be deemed to be distributed on 30th June, 2011 to: Millie Bloggs in full
Payment Of Distribution	**It was further resolved** that where relevant, upon the total amount of the said income for the year ended 30th June, 2011, being determined with the aforesaid resolution be paid in cash to such beneficiary or credited to such beneficiary.
Ratification Of Trustee's Actions	**It was resolved** that all actions of the Trustee during they year relating to the investment of the Trust monies and application of Trust income be ratified and confirmed.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Please Note: This minute is not something that you will need to worry about too much. Your accountant should provide you with something similar and appropriate to your specific circumstances.

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at Your Home Address

On Monday the 12th of December, 2011

Present Billy Bloggs
Millie Bloggs

Change of Trustee The Company, "Trustee Company Pty Ltd" is no longer required to be the Trustee of The Family Name Trust and in accordance with the Trust Deed and with the consent of the Appointor, **It was resolved** to accept the resignation tendered by the company effective as of the close of this meeting.

It was also resolved to accept the appointment of the new Trustee as nominated by the Appointor, "New Trustee Company Pty Ltd" effective as of the close of this meeting.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

Trustee **Trustee**

Appointor

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Minutes of a Meeting of the Trustees of
The Family Name Trust

Held at Your Home Address

On Thursday the 7th of July 2011

Present Billy Bloggs
Millie Bloggs

Loan The trustee noted the profit, or income, distribution for the year has been completed in accordance with its decision of 29th June 2011. It was also noted that the distribution was made by way of an accounting journal.

It was resolved that the trustee would repay this loan at a future date when sufficient funds are available, or, at the demand of the beneficiaries to whom funds are owed.

There being no further business the meeting was then closed.

Signed as a correct record

Billy Bloggs **Millie Bloggs**

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Minute of a Meeting of the Trustee of
The Family Name Hybrid Trust

Held at Your Home Address

On Monday the 8th of August, 2011

Present Billy Bloggs
Millie Bloggs

Issuing Units The chairman tabled an application from Billy Bloggs requesting that the Trustee issue 300,000 x $1 income units in the Trust to Billy as of today. After much discussion, **It was resolved** to accept the application and for the units entitling the unit holder to the income of the Trust, to be issued at the closure of the meeting. Millie Bloggs was requested to notify the accountant of the units being issued.

There being no further business, the meeting was then closed.

Signed as a correct record

Billy Bloggs Millie Bloggs

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Minute of a Meeting of the Trustee of
The Family Name Trust

Held at	Your Home Address
On	Friday the 9th of September, 2011
Present	Billy Bloggs Millie Bloggs
Buying a Business	The chairman tabled information from Billy Bloggs about a business that he and Millie have been investigating. Billy demonstrated to the meeting that the proposed business met the needs and criteria previously specified and after much discussion, **It was resolved** to make an offer to buy the business after completing the due diligence process with final discussions with the Trust's accountant and solicitor.

There being no further business, the meeting was then closed.

Signed as a correct record

Billy Bloggs Millie Bloggs

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Minutes of a Meeting of the Trustee of

The Family Name Trust

Held at Your Home Address

On Monday the 10th of October, 2011

Present Billy Bloggs
Millie Bloggs

Rewards It was noted that over the last year both Billy & Millie Bloggs have personally contributed a large amount of time and effort to the trust in selecting profitable share trades and in renovating the trust's properties. Accordingly, **It was resolved** by the trustee to purchase a small gift, or even a gift voucher, of no more than $300 each to express the trustee's gratitude for Billy & Millie's efforts in producing increased income and wealth for the trust.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Minutes of a Meeting of the Trustee of
The Family Name Trust

Held at	Your Home Address
On	Friday the11th of November, 2011
Present	Billy Bloggs Millie Bloggs
Vesting the Trust	**It was resolved** by the trustee that in accordance with the rules allowed by Clause 7 of the Trust Deed, the trust should be wound up. Billy Bloggs was asked to seek specific advice from the trust's solicitor and tax accountant as to how to do this properly and tax effectively.

There being no further business, the meeting was then closed.

Signed as a correct record:

Billy Bloggs **Millie Bloggs**

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Potential Tax Deductions

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An Introduction into Income Tax Law

Not all accountants, or tax practitioners, read and understand tax law the same way. That is why, for example, we see so many issues in tax law go to the court for the judges to decide on what they think is right and what is wrong.

It is also interesting to note that it is not uncommon for court decisions on tax related matters to be split three in favour and two against...or vice versa.

In fact, I remember one famous (or should that be infamous?!) case where, after various appeals and hearings eleven judges had heard one argument. The result? Six judges said Yes, and five judges said No.

But! The end result is that the final answer was No simply because the verdict in that final case was two judges voted for Yes whilst three judges for No.

Lastly, it is well worth noting that the Tax Office is not always right. That is, just because they issue a tax ruling does not make their opinion law. They are quite often wrong. However, it is foolish to disregard a Tax Office Ruling or Opinion without a strong case usually backed by expert advice.

So, if our legal system and the smartest and wisest people in the country cannot be absolutely certain how the tax law should be read, interpreted and applied, then...how can a simple accountant hope to be 100% right, all the time? ....How can you?

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All any accountant can do is seek opinions from more learned people than themselves and study the law and the court decisions that apply to the law.

All you can do is to perform your own research and ask intelligent open questions that allow for answers and opportunities to be explored.

For example, if you ask an accountant .... Can I claim this, or that? The answer has to be a yes or a no.

Accountants are taught, and trained, to be conservative and so they will often say no as a way of protecting the client....you, not to mention themselves!

However, if you ask an accountant ... How can I claim this, or that?

Then you are assuming it can be done and the accountant will open his or her mind to find a way for that particular item to be claimed.

This is one of the most important tools an investor or business person can develop.

So, it is with the above comments in mind that I ask you to view the list attached of potential General tax deductions. Keep in mind that rules change all the time, as does the interpretation of those rules, so discuss these ideas with you accountant if you are thinking of using them.

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The list is not complete, nor exhaustive, I merely wanted to give you an idea of some of the more interesting and unusual tax deductions and give you an example of the reasoning behind why something might be tax deductible under certain circumstances.

To be an allowable tax deduction, an expense must pass the rules in Section 8-1, which says:

8-1(1)
You can deduct from your assessable income any loss or outgoing to the extent that:

(a) it is incurred in gaining or producing your assessable income; or
(b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income

8-1(2)
However, you cannot deduct a loss or outgoing under this section to the extent that:

(a) it is a loss or outgoing of capital, or of a capital nature; or
(b) it is a loss or outgoing of a private or domestic nature; or
(c) it is incurred in relation to gaining or producing you exempt income or your non-assessable non-exempt income; or
(d) a provision of this Act prevents you from deducting it.

8-1(3)
A loss or outgoing that you can deduct under this section is called a ***general deduction***.

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And this excerpt just shows the Tax Office own thinking; as an example:

From the ATO Ruling MT 2042 (now withdrawn and replaced in essence by TR 2007/12)

> "On the other hand, relatively inexpensive Christmas gifts of food or drink that will be consumed by the employees at home (such as a bottle of whiskey or wine or a hamper of food) are not regarded as being the provision of entertainment for the purposes of subsection 51AE(4). **Expenditure incurred on such gifts will be treated as an allowable deduction in calculating the taxable income of the employer.**"

Straight from the horse's mouth!

Finally, it is also worth remembering that accountants, like magicians, all have their own magic tricks to ply. Like magicians, too, accountants are not always keen to tell "how" they perform their tricks! However, I encourage you to ask your accountant about the tricks they use and how they might save you from paying more tax than you might otherwise pay.

Have fun with these!!

It might just save you a lot of money!

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Potential Tax Deductions

Expense	Circumstances
Accounting	Always tax deductible.
Advertising	To generate more business. To sell income producing assets.
Alcohol	As gifts given to staff, customers and business associates. At conclusion of CPD seminar with finger food.
Apps (eg. iPhone, iPad Android)	Work and business related. Investment related. Motivational. As gifts or rewards to employees of the business.
Bad Debts	A shitty way to get a tax deduction.
Bank Fees	All fees paid on business or investment related accounts.
Birthday Presents	Under $300 for all employees.
Bonuses	Given to employees for jobs well done.
Books	Work and business related. Investment related. Motivational. As gifts or rewards to employees of the business.
Christmas Hampers	Under $300 each to employees.
Christmas Presents	For all employees at less than $300 per time.
Cleaning Products	Used in business premises.
Clothing	Protective in nature. Registered uniforms.
Commission	Paid to produce income stream.

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Coffee Machine	For use by employees in a home office.
Crockery	Used in Tea Room of business.
Cutlery	Used in Tea Room of business.
Dining at Cafe's/Restaurants	Yes, but, watch FBT traps.
Donations	To registered charities.
Easter Eggs	For reception area. For all employees.
First Aid	For a safe working environment.
Financial Planning Advice	Apart from the initial fee.
Flowers	Used in reception or waiting room of business. As gifts to employees or business associates.
Food	Staff amenities (tea, coffee, biscuits etc) for tea room. Provided at meetings. Provided at training seminars.
Furniture	Bought for office & under $300 per item.
Funeral Costs	For employers or directors
Gifts	To employees providing under $300 a time and given infrequently.
Gift Vouchers	For all employees at under $300 per time. To business associates or customers.
GPS Navigator	Used for business or investment related travel
Greeting Cards	Used as marketing tools within business.
Guard Dog	Costs of owning and maintaining guard dog.

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Home Office Expenses	See specific items.
Insurance	Income protection or asset protection.
Interest	On loans used to buy income producing assets. On debt used in business operations. On tax related debt.
Internet Fees	Where the business uses the Internet for research, communication, advertising, or other business purposes.
iPad	Used on the road for the email/ internet; to keep photos of stock or investment properties.
iPod	Used in the trusts office for professional development materials or even for back ground music or to store photos of investment properties.
iTunes Gift Card	For all employees at under $300 per time. To business associates or customers
Laundry	Cleaning and maintenance of work clothing.
Leasing	Business assets such as premises, equipment and vehicles.
Legal Fees	Care needed here. See me please.
Library	See Books above.
Magazines	Professional, business or investment related. General - Used in reception, tea room or waiting room.
Marketing	Activities that promote the business.
Movie Tickets	As a small bonus or reward for your employees.

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Motor Car	4 ways of claiming car. Log Book helps dramatically and keeps options open.
Music	Used in office environment. Given as gift to employees or business associates
Newspapers	As per magazines.
Office Costs	Stationery, and sundry items needed for business operations.
Parking	Short term parking re business or investment travel.
Petty Cash	Small float for minor cash expenses.
Photography	Where photos are used to promote the business. Where photos are of work performed.
Pictures & Prints	For display in office area.
Plant Hire	Hire costs of plant used within business.
Political Dues	The first $1,500 is a tax deduction.
Postage	All business postage is tax deductible.
Postal Order costs	Pseudo bank fees.
Purchases	For resale within business.
Professional Development Courses	To improve skills used within business. To motivate employees and to boost morale.
Radio's etc	Used to provide music or training at work.
Rent	Business premises.

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Relocation Expenses	To move office or business premises. To relocate prospective employees closer to business.
Repairs & Maintenance	On business assets.
Replacements	Any business assets below $300.
Secretary's Day Present	For all secretarial and clerical staff.
Security	To protect business assets.
Seminars	Re business or investment. Re morale or motivation
Sex Toys	Now THAT got your attention!!!
Software	Used for business/investment or record keeping purposes.
Spare Parts	Needed for business assets.
Staff Expenses	Required for a safe & harmonious working environment.
Stationery	All requirements within office.
Storage	Business items.
Subscriptions	To magazines or journals. To business associations.
Superannuation	For all employees.
Tax Advice	Of course!!
Telephone	Business phone & mobile phones.
Tools of Trade	Under $300 per item is an immediate tax deduction.
Toys	Used in reception or waiting area of the business.
Travel	On business purposes.
Travel Allowance	A window of opportunity to save a fortune in tax.

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Union Dues	As well as other professional dues.
Utilities	Electricity, Gas, Rates & Water where business related.
Wages	To all employees of the business. To children *IF* they work within the business.

General Rules to bear in mind.

To help me get you the best result with your tax deductions we need to:

1. Keep receipts for a minimum of 5 years.
2. Keep diary entries of meetings and decisions reached. This helps to justify your claim in some cases.
3. Keep a travel diary when you travel on business purposes. This should include an agenda for your trip, names and places of people met, and a report of conclusions reached.
4. Prepare and keep minutes of meetings wherein you decide to follow a certain path. These minutes should record your thinking and justification.
5. Whilst these items all may be claimed as deduction in the right circumstances you should ***never*** claim anything that you or your accountant are not comfortable with.

February 2011

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Dale Gatherum-Goss
Trust Magic

Trust Rental Property Questionnaire

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Room for you to scribble:

The Tax Office review of Rental Properties within Trusts

In 2003 the Tax Office decided to review investing in rental properties through Trust structures. In doing so, they do not suggest that anything is wrong with this approach but instead that some people might not be acting as diligently as they could.

I have attached the Questionnaire in full for your records and for you to do a prudential check of your own situation. Obviously, if you find anything that worries you, it would be wise to discuss them with your accountant to clarify any possible concerns.

I would not be overly worried by moves like this by the Tax Office. More often than not, they are "fishing expeditions" in the hope of understanding more about what people are doing.

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Trust Rental Property Questionnaire

Name of Trustee:_____Tax File Number:_____

As trustee of the above trust we ask you to complete this Questionnaire to assist in the review of the 2001 Trust tax return. If you need more space to complete the question in this Questionnaire, please attach a separate sheet of paper with the appropriate information. There is no need to attach supporting documentation. We will request this at a later date if required.

A. Trust Structure

Trust details

1. What type of trust is the above named trust?

   Unit Trust ☐ Discretionary Trust ☐

   Fixed Trust ☐ Other ☐

   If "Other" please state what type of trust_____

2. List all trustees of the trust _____

   _____

3. If the trustee is a corporate trustee
   a.) List the directors for the past 5 years
   b.) List the shareholders for the past 5 years
   c.) Does the corporate trustee operate any commercial/investment activities other than acting as a corporate trustee for this trust?

   Yes ☐ No ☐

   If yes, please provide full details for the past 5 years on a separate sheet of paper.

4. If the trust is a unit trust, list all the unit holders with unit holding for the past 5 years.

		Current Unit Holder
Unit Holder's Name_____	No. of Units Held_____	Yes ☐No ☐
Unit Holder's Name_____	No. of Units Held_____	Yes ☐No ☐
Unit Holder's Name_____	No. of Units Held_____	Yes ☐No ☐
Unit Holder's Name_____	No. of Units Held_____	Yes ☐No ☐

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B. Rental Property Arrangements

Rental Property Information

The following rental property was declared in the trust return:

Property 1:
If the address for any property is incorrect, please provide the correct address:

_____

_____

5. For property 1, please complete the following details:
   a.) Date of acquisition _____/_____/_____
   b.) What was the purchase price of the property? _____/_____/_____

6. What was the property used for (eg. Residential, commercial) and how long was it rented for in the 2001 financial year?
   a.) Use of property _____
   b.) No. of years rented _____
   c.) Name of the tenant(s) who rented the property for the last 3 years, including their period of tenancy _____

7. How often was the rent charged for the property?

   ☐ Weekly ☐ Fortnightly ☐ Monthly ☐ Other

8. How much rent was charged in the 2001 financial year (eg Weekly)? $_____

9. How were the rental payments paid?

   ☐Cash ☐Cheque ☐Direct Credit ☐Other

10. How does the trust/trustee record the rental payments?

    _____

11. Has the trust/trustee reviewed the amount of rent payable? Yes ☐ No ☐

    If yes, please describe the procedure for the review(s) including how often they occur.

    _____

12. Has the property been sold? Yes ☐ No ☐
    If yes, when was the property sold? _____/_____/_____

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Lease

13. Does the trust have a signed lease agreement with the tenant? Yes ☐ No ☐

14. What is the term of the lease? _____

Funding and Borrowing Information

15. Did the trust/trustee borrow funds to assist in the purchase of the of the rental property? Yes ☐ No ☐
    If yes, please complete the following:
    a.) Name of financial institution _____
    b.) Name and address of branch _____

16. Did any other party advise or assist the trust/trustee in obtaining finance? Yes ☐ No ☐

17. What is the property used for? Eg residential _____

18. Name of the tenant(s) who rented the property _____

19. Period tenant(s) have occupied the property _____

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Afterword

We sincerely hope that you enjoyed this book, and found it helpful to your own circumstances.

If so, you may also be interested in Dale's other product:

"Wealth Sabotage!"

Dale wrote Wealth Sabotage!" in 2006 with the help of his son, James, to take the mystery out of financial planning and to give you simple and powerfully useful tools to take control of your own financial affairs.

More information is available at our website:

www.trustmagic.com.au

Thanks for your kindness and for considering Dale's books and products. And please, don't forget to email us and let us know how much you benefitted from and or enjoyed the book.

Enjoy!!

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