Choosing an appropriate trading structure is one of the many important decisions a business owner will make. As bookkeepers in practice you will be exposed to an array of clients, trading under different structures. These structures could include Companies, Trusts, Partnerships or Sole Trader’s. In a previous edition we considered Accounting for Companies. In this edition we turn our attention to Trust structures and consider the different types of trusts commonly used.

Although the fundamentals of bookkeeping are no different when accounting for trusts, there are a number of accounting concepts which are peculiar to this style of structure. In addition, specific GST and income tax treatments apply to various aspects of accounting for trusts.

The article will firstly consider trusts at a conceptual level and in doing so provide you with some fundamentals which will assist you in relating to your clients affairs. We will then examine the most important peculiarities of accounting for trusts and provide coverage of any associated GST and income tax issues.

### FUNDAMENTALS OF TRUSTS

**Discretionary Trusts and Unit Trusts** are the two most common forms of trusts used for business structures. A less common form of trust is a Hybrid Trust. You may have also heard of a Testamentary Trust which we will also briefly consider. There are other types of trusts such as widely held publicly listed trusts which are complex in nature and are outside the scope of this article.

The focus of this article will be on Discretionary and Unit Trusts, the most common trusts used in the business arena. We have included a brief description of a Hybrid Trust and Testamentary Trust for the benefit of those who may have had access to these.

**Discretionary Trusts**

A Discretionary Trust is characterised by the discretion that is given to the trustee. The Trustee has the discretion to pay the income and/or capital of the trust to a number of beneficiaries in whatever proportion the Trustee determines. This can provide important tax minimisation benefits by giving the Trustee the flexibility to distribute income to beneficiaries on a lower tax bracket, or by directing capital gains to beneficiaries who have capital losses available to offset capital gains. By adopting this approach Trustees can ensure that they are minimising the amount of income tax payable on income of the trust.

A discretionary trust can be created to hold assets for the benefit of a class of beneficiaries. Family assets are often held in trust, under a trust deed nominating family members as beneficiaries. This allows the family to direct the income of an asset without actually owning the asset, which often provides important asset protection benefits.

A Family Trust is a type of Discretionary Trust which fits a family arrangement and where a Family Trust Election has been lodged. We will discuss the notion of the Family Trust Election later in the article.

**Unit Trusts**

A unit trust is a trust where the rights to the income and capital of the trust are fixed in proportion to the number of units held by a beneficiary. The Trustee has no discretion over how the income is distributed. The distribution is made according to unit holders. A unit trust is more commonly used where parties are dealing outside the family circle.

On the face of it, owning units in a Unit Trust is similar to owning shares in a company. However, they are two very different structures in the legal sense and how they are taxed. The Unit Holder in a Unit Trust has a proprietary interest in all of the trust property, unlike a company where the shareholders do not hold an interest in the underlying assets of the company.
Hybrid Trusts
A Hybrid Trust combines the characteristics of both a Unit Trust and Discretionary Trust. The beneficiaries hold their respective interests within a defined set of classes from ordinary units to a range of special classes of units with varying rights. While the income and capital of the trust will flow to the holder of the unit, they are not beneficially entitled to that income. Instead they are given the power to appoint that income (or capital) across a class of beneficiaries.

Testamentary Trusts
A Testamentary Trust is a trust created by a will and comes into effect upon the death of the “willmaker”. Generally, a Testamentary Trust is a discretionary trust (where the Trustee has full discretion about who benefits and to what extent, under the trust). A Testamentary Trust provides for the assets of a deceased estate to be retained in the trust for the enjoyment of the beneficiaries rather than having to distribute all of the assets of the deceased estate.

OPERATIONAL RULES

Trust Deed
Both Unit Trusts and Discretionary Trusts operate under a document called a Trust Deed. This document creates a trust and sets out all of the rules on how the trust will be operated. The trust deed will set out the powers and duties of the Trustee as well as the identity and entitlements of the beneficiaries. Trustees acting outside the terms of the trust are in breach of trust and can incur legal action by any aggrieved parties.

Appointor
The Appointor holds the most powerful position in the trust structure. While the trustee has the power of control over the activities of the trust, the appointor has the power to appoint and remove trustees in accordance with the terms of the trust deed. Where a beneficiary is also the appointor, this provides the beneficiary with ultimate control where it may be possible to appoint a Trustee that provides favourable treatment to that beneficiary. For this reason, extreme care should be taken when selecting the appointor of the trust.

Trustees
The Trustee is responsible for the day to day running of the trust. Their powers are defined in the trust deed. One of their most important powers is to determine who will benefit from the income and assets of the trust. A Trustee can be a natural person, more than one person, or a company.

Beneficiaries
Beneficiaries usually have no direct control over the trust, but are the ultimate stakeholders in the property and income of the trust. In some trust deeds, the power is given to the Beneficiaries to appoint or remove Trustees and in these cases a beneficiary has a dual role as an appointor. A beneficiary can take action in court against a Trustee that is in breach of trust or has failed in its fiduciary duties.

Settlor
The settlor is the person who the law treats as establishing the trust. The settlor pays a nominal sum, usually $10, to the Trustee to formally establish the trust. This person is sometimes the client’s accountant or solicitor, or whoever else has assisted in the formation of the trust. The bulk of the trust’s assets will be contributed later by the client and related persons, not the settlor.

The settlor does not benefit from the trust. Their role is merely a formality and once the trust starts the settlor has no rights whatsoever in respect of the trust.

The $10 sum will usually be the first deposit to the bank account of the trust. Bookkeepers accounting for this deposit should establish a new account in the Equity Section of the Balance Sheet. The account should be labelled Settlement Sum and the deposit should be coded to this account. Once the deposit has been allocated, the entry will appear in the Balance Sheet as follows:

<table>
<thead>
<tr>
<th>Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement Sum $10 Cr</td>
</tr>
<tr>
<td>GST Code N-T</td>
</tr>
<tr>
<td>Total Equity $10 Cr</td>
</tr>
</tbody>
</table>

(Where N-T=non-reportable BAS transaction)

Advantages of the Trust Structure
There are a number of advantages of using a trust structure:

- **Asset Protection** – Asset Protection can be afforded by both Unit Trusts and Discretionary Trusts in some cases. In the case of Discretionary Trusts, ultimate protection is provided where the Trustee of the Trust is a company. The assets of the trust are protected in the event of a claim against the principal or beneficiary of the trust. Likewise, the personal assets of the principal are protected from creditors of the trust. Careful consideration must be given to individuals agreeing to act as Trustees. An individual trustee can be personally liable for the debts and transactions they undertake on behalf of the trust and if they are sued, their liability is not limited by the extent of the trust’s assets.
- **The Trust is Not Taxed as a Separate Entity** – Trust income is distributed to beneficiaries and taxed at the beneficiary's marginal tax rate. In the case of Discretionary Trusts, distributions can be made at the discretion of the Trustee which can provide some important tax planning advantages. In the case of Unit Trusts, distributions are made to beneficiaries in accordance with their unit holding. In both cases, a company can be a beneficiary meaning the tax on this distribution would be limited to the corporate tax rate.

- **Less Regulated Than Companies** – Companies are governed by the Corporations Act and are regulated in Australia by the Australian Securities and Investment Commission. No such regulation applies to Trusts. There are no yearly on-going lodgement fees, as is the case with companies.

- **Employment and Salary Package Benefits** – Trusts can employ principals and provide salary package arrangements and superannuation support for employees. Principals can obtain superannuation benefits where the trust makes deductible superannuation contributions to a complying superannuation fund, up to the employees allowable age band limit.

- **Capital Gains Tax Advantages** – The 50% discount factor on capital gains on assets disposed of after 12 months applies to both types of Trusts. The small business CGT concessions may also apply.

**Disadvantages of the Trust Structure**

There are a number of disadvantages of using a trust structure:

- **Cannot Distribute Trust Losses** – In the event that a trust makes a loss, the loss is retained in the trust and carried forward to be offset against future income of the trust. Losses cannot be distributed to beneficiaries and hence no taxation benefit can be gained by the beneficiaries in this event.

- **Costly to Establish** – The Trust structure is more costly to establish than a partnership or sole trader, but are generally not as costly to establish as a company. In the event that a corporate trustee is required, then the costs can be extensive with the need to establish both a company and a trust.

- **No Perpetual Existence** – Trusts normally have a life of up to 80 years. This differs to a company which has a perpetual existence.

**ACCOUNTING FOR TRUST DISTRIBUTIONS**

The essence of a trust structure is that the trust distributes its net income each year to its beneficiaries. We will consider the taxation consequences of this later in the article, but the purpose here is to consider how the distribution can be made and how to account for it in the books of the Trust.

There are a number of ways in which a distribution can be made to beneficiaries:

- **Cash Distribution** – Once a distribution is confirmed by a trustee, a physical cash payment from the Trust’s Bank account is made to the Beneficiary.

- **Distribution Reinvested as a Loan** – In practice, it is often the case that the funds are retained in the trust to increase working capital or assets of the trust. The distribution is still made to the beneficiary from a taxation perspective, which means the beneficiary must declare the amount in their tax returns and pay any tax liability, however the funds are not physically paid to the beneficiary in the first instance. In these cases the unpaid distribution is recognised as a liability in the books of the trust as a Loan to the Beneficiary.

- **Mix of the above** – A trust may make partial cash distribution and post the remaining unpaid distributions to a Loan owed to the beneficiary.

- **Distribution of Property** – A distribution could also be made in the form of trust property. An asset of the trust could be transferred directly to a beneficiary as part of a distribution. The trust will need to consider the capital gains tax and stamp duty costs of doing this.

Bookkeepers often face practical issues when dealing with the required entries in relation to the recording of the trust distribution. Here we will explore the various steps that could be used to account for these entries correctly.

- The bookkeeper should establish the following accounts under the equity section of their client’s Balance Sheet. These accounts need to be established for each beneficiary. In this case we will assume the Beneficiaries are called Mr Very Rich and his Wife Mrs Mary Rich.
Once the bookkeeper is satisfied that the accounts of the trust are final for the year (and this would often be after the accountant has made any necessary adjustments), a Profit and Loss Statement should be run as at the end of the financial year. The Trust capital account would currently show an amount in the account, “Current Year Earnings”. Once the accounts are in final form and the year has been rolled over to a new financial year, most software packages would automatically transfer this amount to a Retained Earnings Account. We will assume that this has happened in our example. Remember that a Trust does not have retained earnings as Trust income is always distributed to beneficiaries and it is this amount that needs to be cleared to zero by distributing the amount to the beneficiaries. We will assume the trust has recorded a net profit for distribution for the year of $50,000 which is to be distributed equally between Mr and Mrs Rich. This amount has been retained by the trust and will be recorded as an unpaid distribution to the Riches. The following journals need to be processed:

<table>
<thead>
<tr>
<th>Account</th>
<th>Tax Code</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retained Earnings</td>
<td>N-T</td>
<td>50,000</td>
<td>25,000</td>
</tr>
<tr>
<td>Distribution – V Rich</td>
<td>N-T</td>
<td></td>
<td>25,000</td>
</tr>
<tr>
<td>Distribution – M Rich</td>
<td>N-T</td>
<td></td>
<td>25,000</td>
</tr>
</tbody>
</table>

(Where N-T=outside the scope of the GST system)

This Journal records the amount of the distribution to which the beneficiaries are entitled. The following journal deals with how the amount is paid, depending on whether a cash distribution is made or whether the distribution is reinvested.

In the case of a Cash Distribution:

<table>
<thead>
<tr>
<th>Account</th>
<th>Tax Code</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less Paid – V Rich</td>
<td>N-T</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>Less Paid – M Rich</td>
<td>N-T</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>Cash at Bank</td>
<td>N-T</td>
<td></td>
<td>50,000</td>
</tr>
</tbody>
</table>

(Where N-T=outside the scope of the GST system)

In the case of a Reinvested Distribution:

Two other accounts need to be established under the Liability section of the Balance Sheet –
- Loan Beneficiary – V Rich
- Loan Beneficiary – M Rich

<table>
<thead>
<tr>
<th>Account</th>
<th>Tax Code</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less Paid – V Rich</td>
<td>N-T</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>Less Paid – M Rich</td>
<td>N-T</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>Loan Beneficiary – V Rich</td>
<td>N-T</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>Loan Beneficiary – M Rich</td>
<td>N-T</td>
<td>25,000</td>
<td></td>
</tr>
</tbody>
</table>

(Where N-T=outside the scope of the GST system)

After processing the journals and assuming the second scenario where the distributions have not been physically paid, the Balance Sheet of the Trust should look like the following:
Balance Sheet  
As at 30 June 2009

**Assets**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash at Bank</td>
<td>$50,010 Dr</td>
</tr>
</tbody>
</table>

**Liabilities**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan – Beneficiary V Rich</td>
<td>$25,000 Cr</td>
</tr>
<tr>
<td>Loan – Beneficiary M Rich</td>
<td>$25,000 Cr</td>
</tr>
</tbody>
</table>

**Net Assets**  
$10 Dr

**Equity**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement Sum</td>
<td>$10 Cr</td>
</tr>
<tr>
<td>Retained Earnings</td>
<td>$0</td>
</tr>
<tr>
<td>V Rich Distribution – V Rich</td>
<td>$25,000 Cr</td>
</tr>
<tr>
<td>Less Paid – V Rich</td>
<td>$25,000 Dr</td>
</tr>
<tr>
<td>M Rich Distribution – M Rich</td>
<td>$25,000 Cr</td>
</tr>
<tr>
<td>Less Paid – V Rich</td>
<td>$25,000 Dr</td>
</tr>
</tbody>
</table>

**Total Equity**  
$10 Cr

If the Trust incurs a loss, a distribution will not be made to beneficiaries. In these cases, the loss will be retained in the trust and can be shown as a negative in retained earnings. In the year that the Trust next reports a profit, the distribution journal would be for the amount of positive retained earnings i.e. the net profit after deducting the negative retained earnings from losses from prior years.

**FORMATION EXPENSES**

The most common formation expense faced by both a Discretionary and Unit Trust is the establishment of the Trust Deed. Further, if a Corporate Trustee is required, there will also be formation costs in relation to the purchase of the company to act as Trustee. A Trust Deed is a legal document normally drafted by a solicitor. There are firms which specialise in the creation of trusts and often a Trust Deed is purchased of the shelf from these deed suppliers. In relation to the registration of the company, this can take place directly with the ASIC or more usually through using the services of a specialist shelf company supplier.

Where the services of a specialist provider is employed to purchase the Trust and Corporate Trustee, they will supply all necessary documents including, trust deed, relevant minutes evidencing existence, the companies constitution and all other relevant documentation in a binder. There will be separate binders for both the Trust and Corporate Trustee. A copy of the Trust Deed will need to be supplied to the bank to evidence existence in order to open a bank account in the trust name.

If a firm is engaged to assist with the formation, their fee will typically include GST. In the case of the fee in relation to the Corporate Trustee, a component of their fee will typically be GST-free (representing the amount they expended to ASIC to acquire the company).

The initial purchase of the Trust and or Company will generally be paid by the trustee/principal. Thus, one of the initial entries to be entered into the trust’s new accounting file is to record these formation costs together with the indebtedness to the principal. While there are no hard and fast treatments of this formation expense, the ABN preferred treatment is to book this amount as an intangible asset in the balance sheet.

**Example**

Jeff engages Jill’s Incorporation Services to purchase a Discretionary Trust and a Corporate Trustee. Jeff is charged $440 for the establishment of the Discretionary Trust and $1,180 for the Company, comprising $740 worth of GST-free outlay to acquire the company off ASIC and $440 for Jill’s services. Jeff pays the amount using his Visa Card. Jeff will seek a reimbursement from the Trust in due course once the bank account is set up and has sufficient funds.

<table>
<thead>
<tr>
<th>Account</th>
<th>Tax Code</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formation Expense (Asset)</td>
<td>N-T</td>
<td>880.00</td>
<td></td>
</tr>
<tr>
<td>Formation Expense (Asset)</td>
<td>FRE</td>
<td>740.00</td>
<td></td>
</tr>
<tr>
<td>Loan Beneficiaries</td>
<td>N-T</td>
<td>0</td>
<td>1,620.00</td>
</tr>
</tbody>
</table>

(Where GST = Acquisition with GST in the price, FRE = Acquisition with no GST in the price; N-T = non-reportable BAS transaction)
The GST component of the fee is of particular interest. In our article covering Accounting for Companies, we detailed the circumstances where this GST could be claimed by the company at the time the reimbursement was made to the Director. There are special GST rules which apply to Pre-Establishment Costs. Unfortunately these rules are unique to company trading structures and do not extend to other structures such as Trusts. As such, the GST component is not able to be claimed by the Trust at the time that the costs are reimbursed to the trustee/principal. As such, in the example above we have applied a GST code of N-T to the portion of the payment that was subject to GST.

**Income Tax Treatment of Formation Costs**

Prior to 30 June 2001, formation costs such as those discussed earlier were not deductible for income tax purposes. However, reforms brought about by section 40-880 of the Tax Act which deals with so-called “Business related costs” changed this. The following types of capital expenditure incurred after 30 June 2001 qualify for deduction to the extent that the business is, was or will be carried on for a taxable purpose:

- expenditure to establish your business structure—such expenditure includes the costs of incorporating a company or creating a partnership or trust through which you will carry on your business but does not include the costs of acquiring a franchise or goodwill;
- expenditure to convert your business structure to a different structure—such as the costs of transferring your business assets to a partnership because you have decided to start carrying on your business through a partnership rather than as a sole trader;
- expenditure to raise equity for your business
- costs of defending your business against a takeover
- costs to the business of unsuccessfully attempting a takeover
- costs of liquidating a company that carried on a business and of which you are a shareholder, and
- costs to stop carrying on your business—such as the legal costs of terminating the services of employees when the business ceases.

This section of the Act provides that you can deduct 20% of the expenditure in the year you incur it and in each of the following four years. There is no day-based pro-rating that is required in the first year.

Therefore, at the end of the year, you can post a journal entry to re-allocate 20% of the GST-exclusive formation costs to an expense code, thereby reducing the intangible asset balance by the same amount. This re-allocation would not be reportable for BAS purposes.

**Example**

Continuing the previous example, when considering a journal entry to re-allocate the deductible portion of Jeff's formation expenses at the end of year one would make use of an account “Less: Written Off” which would sit directly beneath the “Formation Expenses” asset account. Although the amount written-off could be credited directly to the asset account, this might make it more difficult to quantify the amount to be written-off in subsequent years.

<table>
<thead>
<tr>
<th>Account</th>
<th>Tax Code</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formation Expenses (Profit &amp; Loss)</td>
<td>N-T</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less Written Off (Balance Sheet)</td>
<td>N-T</td>
<td>324.00</td>
<td></td>
</tr>
</tbody>
</table>

(Where N-T=non-reportable BAS transaction)

Jeff’s Balance Sheet would then appear as follows:

<table>
<thead>
<tr>
<th>Intangible Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formation Expenses</td>
</tr>
<tr>
<td>Less: Written-Off</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

**INCOME TAX CONSIDERATIONS**

All income earned by a trust and expenses incurred in earning that income, must be shown in a Trust tax return. A trust generally does not pay tax on its income. Instead, the Trustee makes distributions of the income to its beneficiaries and it is the beneficiaries that include the distributions in their tax returns and pays any tax liability.

In limited circumstances a Trustee may pay tax on any balance of income to which no beneficiary is presently entitled, or where the beneficiary is a non-resident for taxation purposes, or under a legal disability. In practice, this is seldom the case and is beyond the scope of this article.

Like other business structures, there can be differences between accounting profit and taxable income. This situation arises where a trust incurs expenses which are not tax deductible. In the books of the trust, it is the accounting profit that is distributed to respective beneficiary loan accounts. The trust will provide the
beneficiaries with a statement of the taxable portion of the distribution. The beneficiaries will include the taxable distribution in their respective income tax returns.

The Trust Deed will play an important role in how distributions are made to various beneficiaries. An appropriately drafted trust deed will allow a Trustee to distribute different classes of income (e.g., capital gains or dividend income) to the most appropriate beneficiaries from a taxation perspective.

While, it is the accountant’s role to deal with taxation issues surrounding the trust, it is useful for bookkeepers to have knowledge of the specific taxation areas relating to trusts. Following we explore some of these issues further.

**Interest Deductibility on Certain Borrowings**
There are special rules that exist in relation to the deductibility of interest that the trust incurs in relation to a loan used to repay beneficiaries. Taxation Ruling 2005/12 sets out the Tax Office’s view on the matter.

The ruling states that interest will be deductible if the funds are borrowed to repay to a beneficiary an amount previously invested by the beneficiary, in an assessable income-earning activity, or business, carried on by the Trustee in the capacity of Trustee of the trust. Previously invested amounts include among other things, amounts of unpaid present entitlement retained by the trustee under agreement with the beneficiary.

In practice, you may see the situation where distributions have not been physically paid to beneficiaries over a number of years. The trust has been accumulating the funds (and creating loans to the beneficiaries) to build up working capital and assets in the trust. At the same time Beneficiaries may have private non-deductible debt. At some time the Trust may be in a position to borrow funds to repay the distributions shown as loans to the beneficiaries. The trust can claim a tax deduction for the interest on the borrowings. The beneficiaries could use the loan repayments to repay their private debt, thereby effectively transferring non-deductible debt to deductible debt. As a bookkeeper in practice, if this situation was identified it should be referred to the clients tax advisor for further specific advice.

Funds borrowed by the trust to finance non-assessable distributions, internally generated goodwill, or unrealised revaluations of assets would not be deductible.

**Distributions to Corporate Beneficiaries**
It is common in practice to see a company used as a beneficiary of a trust. This allows trust profits to be distributed to a company (sometimes called a bucket company) and taxed at the corporate tax rate.

Complex tax rules could apply where a trust distribution was made to a company and the distribution was not physically paid in cash, but recorded via journal entry. If a loan was then made from the trust to a shareholder or associate of the company, then this payment was taken to be a deemed dividend and taxed as an unfranked dividend to the recipient. This was the tax position up to 12 December 2002 under s109UB.

The section was replaced by s109XB effective from 12 December 2002, which now allows loans by Trusts to a shareholder of a private company to be repaid or put on a commercial footing within specified timeframes, in order to escape the application of the deemed dividend rules.

These are important issues that should be identified by your client’s accountant and appropriate paperwork will need to be put in place. From a bookkeeping standpoint, the key task is to ensure that all loans are correctly recorded to the appropriate individual in the balance sheet loan account for that beneficiary.

**Family Trust Elections**
A family trust election is an election that is made for income tax purposes in order to make a discretionary trust, a family trust. The concept of a family trust election was originally introduced as part of the trust loss measures that apply to losses that a trust wanted to deduct after 9 May 1995. As part of the trust loss measures, complex tests were introduced to determine whether a loss could be carried forward and claimed. If a trust was controlled by a family group and made a family trust election, the number of tests to be passed in order to claim a carry forward loss was reduced to one (the income injection test).

Following the introduction of the trust loss measures, the family trust election was extended and now has application in anti-franking credit trading provisions. Broadly, unless the Trustee of a discretionary trust has elected to be a family trust, the beneficiary can be denied franking credits made as part of a distribution.

The rules in relation to the Trust loss measures and Franking credit trading are complex taxation rules and it is not the intention of this article to fully explore these issues. The important thing to note is that generally where a Discretionary Trust is set up to run a family business or hold assets of a family group, the lodgement of a Family Trust Election ensures that these trusts don’t have to jump through all of the hoops that apply to these measures.

The downside of making a family trust election is family trust distributions tax. This would apply if a distribution was made to someone outside the family group and basically imposes tax at the top marginal rate on the Trustee of the Trust. Hence, an election would not be made where a Discretionary Trust is a trading structure involving unrelated parties, although in these cases a Unit Trust may be the preferred trading structure.
There should be no onus on bookkeepers to address issues in relation to Family Trust Elections for their clients, as this is a very much a tax issue and should be the responsibility of the accountant.

The election is made as part of the Trust Tax Return and once made is irrevocable. The election only needs to be lodged once.

**Trust Variation Minute**
A Trust Variation Minute is generally prepared by the client’s accountant at the time of preparing year end financial statements and the income tax return of the trust. The purpose of the variation minute is to record details of what would happen to a distribution in the event that the Tax Office was to disallow a deduction to the trust. If a variation minute did not exist and the taxable income of the trust was varied at a later date, then all beneficiaries would be similarly affected.

The variation minute provides a safeguard to allow Trustees to deal with any disallowed items and hence changes to distributions, in the most tax effective manner to the most appropriate beneficiary.

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**Disclaimer**
This edition was originally written in March 2006 and last updated in February 2010. Information contained herein is general in nature and is intended to provide guidance to bookkeepers in providing bookkeeping services for their clients. It is not intended to be taken as a substitute for you or your clients seeking professional advice in relation to their own specific circumstances.

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