



# 30 JUNE TRUST DISTRIBUTIONS

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# Trust Distributions – Where do you start?

## ATO Guidelines?

## Trust Deed?

### Answer = The Trust Deed

- #1 Starting point
- Deed **provides** Rules, Operations & Governance of the Trust + Powers of the Trustee
- Determines what the trust income is, what constitutes it & how it is to be distributed
- Some external regulation of trusts via state based Trustee Acts *but* mostly falls down to the trust deed
  - No legislation like companies – Corporations Act 2001
  - No replaceable rules



# Trust Distributions – What can be distributed?

- The Income of the Trust
  - It is neither “accounting income” nor is it “taxable income”
  - Refer to the Trust Deed! Calculated per the terms of the deed by allocating
- In most cases tax on Trust income will be payable by the beneficiaries determined by their share of the trust’s income. Or in some cases the trustee.
- And remember each deed is unique. Impacted by how it was setup/clauses, provider / lawyer, etc.



# Trust Distributions – Trust Deed clauses

So what are the important clauses to read and understand in dealing with the distribution of trust income?

- **Income**
  - Not just an easy determination
  - Read and understand what it is comprised of per the **trust deed**
    - Sometimes it is defined as net income of the trust, sometimes the deed allows the trustee ability to determine if a receipt is capital or income
    - Some deeds don't even define income. What then? We must turn to any legislation, concepts of income and case law
  - Trust law has provided a definition of "*income of the trust estate*", which if allowable under the deed, provides for treatment of capital as income



# Trust Distributions – Trust Deed clauses

## ▪ **Distributions**

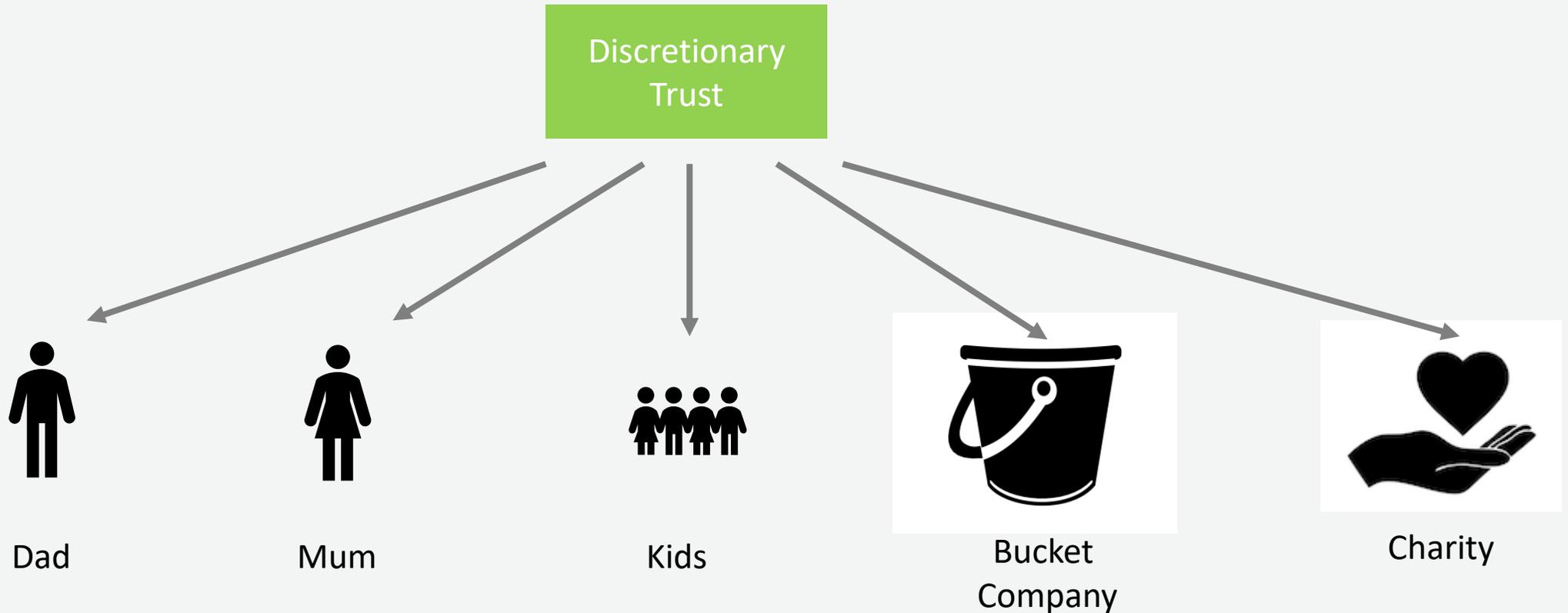
- Normally tells a trustee that they must resolve each year to distribute the trust's income to the nominated beneficiaries by a **particular time**
- The required date for that particular time each year is 30 June HOWEVER the deed can also specify another earlier date.  
Note: Capital gains can be by 31 August but not for any dealt with by 30 June
- What date takes precedence? The date in the deed

## ▪ **Beneficiaries**

- Deed names primary and may also include other general beneficiaries & default beneficiaries
- Default are entitled to get any income where a valid distribution has not been made by the trustee

# Trust Distributions – Beneficiaries / Tax Planning

Who might be some of the beneficiaries of a discretionary trust?



# Trust Distributions – Distribution Resolutions

## What are Trust Distribution Resolutions?

- **'Resolutions'** made by the **Trustee**, per the **Trust Deed**, to resolve who the **Trust** income is to be distributed to on or before year end.

## Why are they important?

- Assists with tax planning process! Opportunity to make this process mandatory with your clients.
- And the trust may get taxed at the highest rate of tax if there is any income to which no beneficiary is “presently entitled”



# Trust Distributions – Format of Resolutions

## What format & does it have to be in writing & what should it include?

- The ATO does not state that it has to be in writing, but the trust deed may say it must be
- Regardless of above there needs to be some evidence that a resolution was actually made before 30 June → so really it does need to be documented!
- A specific document is the best way to record. Provides evidence and avoids disputes with ATO or beneficiaries
- It is needed if the trustee wants to stream franked distributions or capital gains effectively. Beneficiary can only be specifically entitled to franked dividends or capital gains if it is recorded in writing in the records of the trust



# Trust Distributions – Format of Resolutions

- Not required to specify a \$ amount to make it effective (unless deed requires). It is often difficult to do this as trustees are unlikely to have the complete information pre 30 June.
- It can be a % = proportionate method
- You can allocate certain amounts and nominate a beneficiary/s to receive any balance
- The trustee can also confirm at a late date via an additional resolution the actual final \$ amounts with reference to the original resolution



# LYD Trust Distribution Resolution

- Nominate the clauses of the deed that deal with all of the areas we have discussed
- Provides documentation and evidence of the resolution
- Allows for income of the trust to be accounting, tax, trust income
- Allows for streaming of franked income and capital gains to nominated beneficiaries
- Allows for \$ and % to be allocated to beneficiaries
- Can be used for any trust deed not just LY Docs deeds





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