

TRUST LAW

Australia's trust assets more valuable than its GDP

By Anthony Grant

Trusts in New Zealand are in a state of flux. Many solicitors and accountants are writing to their clients, informing them of the impending disclosure regime under the Trusts Act 2019 and asking if they want to wind up their trusts.

This is unsettling some settlers.

I think the pessimism is misplaced. The disclosure regime can easily be managed. No parent wants a child to become demotivated, lazy and dependent on trust income. No child, if told that its parents are not willing to see such an outcome, should be too surprised.

Most New Zealand family trusts are discretionary and children, if told that trust wealth is to be used constructively – and not destructively – will not think their parents unreasonable.

The novelty of the disclosure regime does not detract from the fundamental importance of trusts as an irreplaceable mechanism for assisting with wealth preservation and wealth management.

In my experience, New Zealand lawyers tend to be rather insular in their understanding of the use of trusts elsewhere, so I have decided to give some information about how trusts are used in Australia.

The value of the assets held by trusts in Australia in the 2015/2016 year was more than A\$3 trillion. (That year is the latest for which I have been able to find relevant information.) The sum of A\$3 trillion is enormous. To put it in perspective, Wikipedia estimate the GDP of Australia in 2019 was A\$1.9 trillion so the assets held in trusts about three years prior to that had a value of A\$1.1 trillion more than Australia's entire GDP.

The business income derived from trusts has



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grown significantly, increasing from A\$22 billion in 1989/90 to \$368 billion in 2015/2016.

The use of trusts is almost as widespread in Australia as the use of limited liability companies. The Australian Tax Office recorded that 845,925 returns were filed for trusts in 2015/2016. This was only 95,241 less than the number of returns filed for companies. Expressed differently, the number of trusts was almost 90% of the number of companies.

Trusts have proven to be much more popular in Australia than partnerships. The number of partnerships peaked in 1993/1994 and has declined since then. The number of trusts overtook

the number of partnerships in 2002/2003 and by 2015/2016 there was more than twice the number of trusts (845,925) than partnerships (321,360).

Most are private trusts. In 2015/2016 the percentage was 98.7%. And, as in New Zealand, most (79%) are discretionary trusts.

Most of the huge income derived from trusts (A\$368 billion) comes from micro, small and medium-sized trusts while 58% in 2015/2016 did not derive any business income or net taxable income.

Trusts thrive on favourable tax regimes. Their increased popularity in Australia is said to have begun in the late 1970s. From a taxation perspective, trusts are said to be more tax effective than companies for holding assets that are likely to depreciate. They are also helpful for reducing tax by enabling people to engage in income-splitting.

Turning away from the Australian enthusiasm for trusts for a moment, it is worth making some general observations about trusts.

Some general observations about trusts: the concept is remarkable for its simplicity. There is no system of state registration and no need for any documentation to establish the existence of a trust. The current trend to require a degree of disclosure is modest.

The disclosure regime soon to be implemented in New Zealand has echoes elsewhere. Many countries require the compulsory disclosure of beneficial interests in trusts. Such registers are intended to prevent people from hiding wealth from government agencies – a principle that is innocent and beneficial for the community.

It is not conceivable that trusts would be so popular in Australia and elsewhere if the concept was fundamentally flawed.

Anthony Grant is an Auckland barrister specialising in trusts and estates ❖

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