Rick Palmer

Palmer Macauley

Family Trusts

Are they sooo last year?

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Family Trusts

- What are they?
- Should you have one?
- Changes in the wind
- Are they still relevant?
- Will they make my partner do the ironing?

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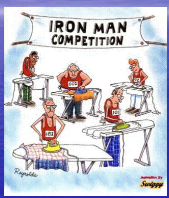
Ironing

- No



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What are they???

- **A Family Trust** is an *arrangement* by which one or more persons ('the *Settlors*') appoint *Trustees* to hold asset(s) *in Trust* for the people named as *Beneficiaries* in a *Trust Deed that establishes and governs the Trust.*

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Settlors

- The person or people who ESTABLISH the Trust
- In a Family Trust normally the husband and wife (or equivalent) or the sole parent
- Can be anyone, but will normally have love and affection for the beneficiaries

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Trustees

- The people who are appointed to RUN or MANAGE the Trust.
- In a Family Trust often the Settlor(s) plus an independent trustee
- Can be a company, called a Corporate Trustee

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Independent Trustees

- Lawyers
- Accountants
- Public Trust
- Friends
- Family members

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If you are asked to be one….

- DON'T SAY YES!!!!!

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Beneficiaries

- The person(s) or classes of people who are able to benefit from the assets held in trust for them
- Settlors, children, grandchildren
- Discretionary – up to the Trustees, not an entitlement

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Trust Deed

- The document that ESTABLISHES the Trust and GOVERNS what sort of things the Trustees can do and determines who can BENEFIT under the Trust

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Family Trusts-Why have one?

- Protection of assets from creditors
- Planned succession of assets like farms
- Protection of inherited property
- Protection in relationships
- Protection for children in relationships
- Protection from estate duties

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Government taxes, charges

- Crystal ball gazing as to what might happen!

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Do YOU need one?

- It depends….. (I'm a Libran!)
- On your family circumstances
- On your assets
- On your job and that of your partner
- On your attitude to possible future taxes
- Benefit has to outweigh costs

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Managing Trust

- Very important part. IRD are watching
- Hold Trust meetings at least annually
- RECORD minutes of meetings and decisions
- Keep good documentary records to show Trust not simply the couple under another name

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What is the downside?

- There is a cost to establish and maintain a Trust.
- You have to be rigorous in operating your trust properly
- There is an annual cost for gifting and annual meeting
- Things are slightly less flexible – in theory anyway

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What is the downside?

- You can't put all the Trust funds on the 2pm at Ellerslie

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The Trusts Bill

- Replacing the rather old Trustee Act 1956
- Currently in second reading
- Will affect most trusts in NZ
- Set out some trustee duties
- Extend the possible length of trusts
- Make some disclosure compulsory

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Trustee duties under new Act

- Certain mandatory duties
- Know the terms of the Trust
- Act in accordance with those terms
- Act honestly and in good faith
- Act for the benefit of beneficiaries
- Exercise power for proper purpose

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Trustee duties under new Act

- Some duties can be varied by the terms of the trust deed
- Duty not to benefit self
- Duty to avoid conflict of interest
- Duty to be impartial
- Duty to act for no reward
- Duty to act unanimously

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Duty to disclose

- Under new Act will be a duty to disclose
- Beneficiaries will be entitled to:
  - Know they are a beneficiary and the terms of the Trust
  - Be able to ask for information regarding the way the Trust is operated

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Summary

- Trusts can be a bit like insurance
- Question is are you high risk
- Do you have assets worth protecting
- Do the benefits outweigh the costs
- New Act coming in – The times they are a changin'
- Speak to your advisors

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Paul Visser

Westpac NZ

Anti Money Laundering

A brief overview on this new legislation.

Presented by Paul Visser – Westpac Commercial Manager Kerikeri

It's time.

Westpac New Zealand Limited
59 Kerikeri Road, Kerikeri
Northland 0230

AML – a brief history

- Anti Money Laundering and Countering Financing of Terrorism Act 2009.
- Became law in NZ in 2009 for the purpose of detecting and deterring money laundering and the financing of terrorism.
- Has impacted the financial services industry for a number of years now.
- Since 1 July 2018 also applies to Law firms and Accountants.
- From 1 January 2019 will also impact the Real Estate Industry
- What is it all about?

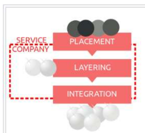
AML – how does it work

- Banks, casinos, legal firms, accountants and other professionals now have to complete 'due diligence' on their customers.
- So the above are not exploited by criminals to assist with (involuntarily) laundering money.
- Due diligence simply means that the identity of existing and new clients, their place of residence and source of wealth and funds have to be established following certain procedures and guidelines.
- This applies to individuals, companies and their Directors and Shareholders, and (Family) Trusts.

Money Laundering – what is it exactly

- Money laundering, or the creation of dirty money is defined as follows: '*Money laundering is the act of concealing the transformation of profits from illegal activities and corruption into ostensibly "legitimate" assets*'.
- The process involves the following steps:
  - placement: introducing cash into the financial system;
  - layering: carrying out often complex financial transactions to camouflage the illegal source of the cash and
  - integration: acquiring wealth generated from the transactions of the illicit funds.

Money Laundering – you get the picture



Placing "dirty" money in a service company, where it is layered with legitimate income and then integrated into the flow of money, is a common form of money laundering.

Money Laundering – some examples

- Structuring: often known as *smurfing*, this is a method of placement whereby cash is broken into smaller deposits of money, used to defeat suspicion of money laundering and to avoid anti-money laundering reporting requirements.
- Shell companies and trusts: Trusts and shell companies disguise the true owners of money. Trusts and corporate vehicles, depending on the jurisdiction, need not disclose their true owner or who has actual control.
- Cash-intensive businesses: In this method, a business typically expected to receive a large proportion of its revenue as cash uses its accounts to deposit criminally derived cash. Such enterprises often operate openly and in doing so generate cash revenue from incidental legitimate business in addition to the illicit cash – in such cases the business will usually claim all cash received as legitimate earnings.

Money Laundering – the dark side

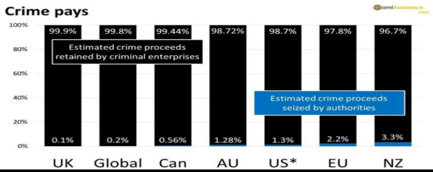
- The money laundering process typically disguises the original source of funds which are obtained illegally;
- Money obtained from certain crimes, such as extortion, insider trading, drug trafficking, and illegal gambling is "dirty" and needs to be "cleaned" to appear to have been derived from legal activities, so that banks and other financial institutions will deal with it without suspicion.
- The crack down on dirty money therefore deters illegal activities as the due diligence process now provides a clear trail to who is involved and how the money was obtained.

Money Laundering – a real Kerikeri example

- Local business has its main bank accounts with the BNZ;
- A transactional account was opened with Westpac for no obvious reason;
- Company Director made regular cash deposits into the Westpac account, all below the reporting threshold of $10,000 (placing);
- Once the funds were cleared, these were transferred into the BNZ account and mixed with legitimate business earnings (layering);
- Funds appear to be legitimate business earnings due to some creative bookkeeping (integration).
- Bank staff alerted this to the appropriate authorities, Director was questioned by police, account at Westpac was closed.

Money Laundering – some more stats:

- According to the Police Financial Intelligence Unit, an estimated $1.35 Billion of drug and fraud offending is laundered annually in New Zealand.
- However how successful has the new legislation been?



Alison Lemon

PKF Kerikeri

PKF Poutsma Lemon (Kerikeri) Limited
Building Stronger Futures

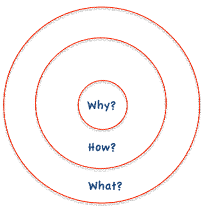
PKF

CAN I TRUST IN MY TRUST

By Alison Lemon

PKF

IT"S A QUESTION OF



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Beneficiaries

- Final and Discretionary - what's the difference?
- Equitable Owner of Trust Assets – they are the real deal
- Disclosure – like it or not
- Beneficiary Current Accounts – a trust/ee liability?

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Some Urban Myths about Trusts

- A Trust can't be attacked
- Trusts provide the best protection against creditor claims
- Trustees liability limited is to the assets of a Trust (if any) except in rare circumstances

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A Fundamental Duty For A Trustee

- Know the terms of the Trust

And

- Adhere to the terms of the Trust

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Another very important Trustee Duty – Prudent Investment

- It's not a matter of doing what a person considers to be prudent with their **own** money.
- Prudent investment means investing in a way that an ordinary person would do when investing money **held for the benefit** of other people

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Trustee's Decision Making

- The law presumes that Trustees agree unanimously on any decision they take
- The Trust Deed can allow for a majority decision, but all Trustees are still responsible for that decision.
- Would you still want to be a Trustee with that clause?

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Trustee Liability

- Trustees are personally liable for all debts incurred by the Trust
- IRD is particularly effective but don't discount others
- There is no such thing as a passive Trustee
- Trustee companies can be liquidated, even with limitation of liability clauses

Trustee's Rights

- A reminder : All Trustees are personally liable for debts incurred by their fellow trustees
- Trustees can recover the debts from the Trust provided there is a right of indemnity in the Trust Deed
- If the Trustee acts in breach of trust the right of indemnity can be lost

Choose your fellow Trustees Wisely

- A trust is a complex relationship of rights and obligations
- The Trustees are the legal owners of the trust property and the trustee may be insolvent if the trust is insolvent
- Trustee insolvency can raise complex issues regarding the recovery of Trust debts
- Acting as a Trustee is no barrier to bankruptcy or liquidation

Some TAX considerations not so well known

- NZ has a "Settlor" regime
- Most other tax jurisdictions have a "Trustee" regime

This can create tax issues so we always need to think about:

- Overseas Settlors
- Overseas Trustees
- Overseas Beneficiaries

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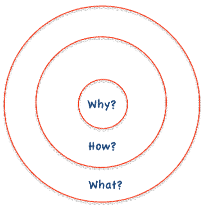

Thank you for joining us