



FIXED TRUSTS

The ATO only recognises certain trusts as “fixed trusts”. Whether a trust is “fixed” or not for tax purposes can be significant. For example, if your trust is not to be a fixed trust, this may have the following affects which you should discuss with your professional advisors:

1. you may not be able to take advantage of trust loss provisions. This may prevent the carrying forward of trust losses;
2. you may not be able to gain the full advantage of franking credits in the trust; and
3. it may not be possible to deduct borrowing costs incurred in buying units in the trust.

The benefit of using non-fixed trusts (and the primary reason that they are more commercially in-demand) lies in their inherent flexibility (e.g. with respect to income streaming etc.)

In order for a trust to be fixed for the ATO’s purposes, the unit holders must have a vested and indefeasible interest in the trust. They must have a fixed entitlement to a share of the income and capital of the trust. In order to satisfy the ATO’s requirements:

1. any issue or redemption of units must occur at a price based on the net asset value of all units determined in accordance with Australian accounting principles;
2. the income and the capital of the trust must be payable to unit holders in strict proportion to the number of units held without any discretionary element allowing those sums to be diverted elsewhere; and
3. it is recommended that these provisions cannot be amended using a power in the trust deed.

ACIS UNIT TRUST

Our Unit Trust now allows you to nominate whether the trust is to be fixed or not. If it is fixed, only Ordinary Units with the rights of Ordinary Units in the table below may ever be issued and provisions reflecting the above are included. If the trust is to be non-fixed, our unit trust contains the following classes of units:

CLASS	FULL TITLE	SUMMARY OF RIGHTS
ORD	Ordinary Units	vote, income, capital
A	A Class Units	vote, income, capital
B	B Class Units	vote, income, capital
C	C Class Units	no vote, income, capital
D	D Class Units	no vote, income, capital
E	E Class Units	no vote, income, capital
F	F Class Units	vote, no income, capital
G	G Class Units	no vote, income, no capital
H	H Class Units	no vote, income, no capital
I	I Class Units	no vote, income, no capital

J	J Class Units	vote, no income, no capital
K	K Class Units	no vote, no income, capital

Of course, if you require any further explanation of the trust loss provisions or any other issues relevant to fixed trusts, you should seek professional advice from your accountant or other professional advisor.