



Is it a class of units or a **SEPARATE TRUST?**

Whether an investment in a class of units in one trust constitutes investment in a separate trust is a complex question and was a key issue in a recent case. In this article, Langton Clarke and Kristy McCluskey emphasise that the circumstances of each case need to be individually assessed and the importance of obtaining legal advice when setting up a fund with multiple classes of interests.



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Some lessons

In the *Aussiegolfa* case, the court said whether a specific class of units gives rise to a separate trust is assessed by reference to the general concepts of a trust and depends on the facts and circumstances of each case.

The decision sets out several factors a court may consider when determining whether a class of units is attributable to a separate trust, including:

- Whether the trustee and unitholders had an intention to create a separate trust.
- The relevant fund's constitution.
- The relevant terms of issue.
- Any disclosure documents

(including supplementary disclosure documents).

- Whether there is a single entity acting as responsible entity, investment manager and custodian of the fund and class.
- Whether a class confers a right to a share of the income derived from the relevant property.

Please [click here](#) for a more detailed discussion about this case.

How can we help?

If you are setting up a fund with multiple classes of interests, we can help with any questions and advise the best options for you.



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