



Is an IDPS an entity within the meaning given by the GST Act? -

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Financial Services: Questions and Answers

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Is an IDPS an entity within the meaning given by the GST Act?

1. Whether or not an IDPS is an entity within the meaning given by the GST Act is dependent on an assessment of the surrounding facts of each case. However, the following general comments are provided in relation to a typical IDPS:
2. In its regulation of IDPS, ASIC does not prescribe the structure through which an IDPS is to be carried on. However, in relation to the conditions placed upon the operator of an IDPS, ASIC requires that:
 - the investments held by the operator, or appointed custodian, are to be held on trust for the relevant client or clients of the IDPS, and
 - all money received by the operator or its agent from clients or in which clients have an interest is paid into an account with an Australian ADI designated as a trust account.
3. With respect to the first dot point, the constitution/deed of an IDPS will typically recognise this requirement through a clause which effectively declares a separate trust over either:
 - each investment selected by a client, or
 - the client's portfolio of selected investments.
4. Accordingly, from a structural perspective, an IDPS can be viewed as a collection of individual trusts.
5. The GST Act includes a trust as an entity but, in acknowledgment that it is not a legal person, recognises that the trustee of a trust is also an entity. The GST Act makes it clear that a trustee can act in number of different capacities and that in each capacity it is a different entity.

6. While the terms 'trust' and 'trustee' are not defined in the GST Act, the Commissioner considers that a trust will necessarily exist where the following elements are evident in a particular relationship:

- there is an intention to create a trust
- there is beneficiary
- there is a trustee
- there is property capable of being held on trust, and
- there is a person obligation on the trustee annexed to particular property.

7. A trustee is relevantly defined by reference to the meaning given to it by section 6(1) of the Income Tax Assessment Act 1936 (ITAA 1936).

8. With regard to the trusts separately declared under the terms of a typical IDPS constitution/deed, the elements outlined above would necessarily be found. In terms of these elements, the operator of an IDPS, or the appointed custodian, would generally come within the scope of a trustee as per the accepted ITAA 1936 definition.

9. On this basis, each separately declared trust, through the operator, or appointed custodian, is likely to be an entity for the purposes of the GST Act.

10. However, a typical IDPS is also considered to be a managed investment scheme. Being a managed investment scheme implies that an IDPS (through the activities of its operator) obtains contributions from clients in exchange for clients acquiring an interest in benefits produced by the IDPS. Further implied is the notion that any of the client contributions are pooled to produce the benefits (financial or otherwise) and that the clients don't have day-to-day control over the operation of the IDPS (in producing the benefits).

11. As detailed in the response to question 13.1, ASIC's view is that the managed investment scheme benefits take the form of the expectation of cost savings or access to investments that are not otherwise available. While ASIC does not prescribe the nature of the structure through which a managed investment scheme is to be operated, generally such a scheme operates through some form of trust relationship. This is due, by and large, to the pooling characteristic, which is necessarily accommodated through the adoption of a trust relationship.

12. Typically, an IDPS constitution/deed will not include a clause that specifically declares a trust over all client contributions. However, as mentioned in the second dot point above, the operator is required to pay all client contributions into a trust account held with an Australian ADI. In a practical way, this requirement provides the operator of an IDPS with the means by which its managed investment scheme ambitions can be facilitated.

13. Consequently, in an overall practical sense, the relationship between an IDPS (in its managed investment scheme guise) and its operator, can be viewed as one that satisfies the fundamental elements of a trust so as to be recognised as an entity for the purposes of the GST Act. Where the facts of a particular case support this view, the Commissioner will recognise an IDPS (through its operator acting in a trustee capacity) as an entity for the purposes of the GST Act.

14. In form, an IDPS can be characterised as a collection of separately declared trusts, each of which is likely to be an entity for the purposes of the GST Act. However, in substance, these trusts co-exist with an overall trust relationship that practically facilitates the IDPS's managed investment scheme ambitions (that is also likely to be an entity for the purposes of the GST Act). Because of the nature of an IDPS, it is necessarily a blending of these two elements.