

South Dakota PTCs

Private Trust Companies (PTCs)

A PTC is a trust company established to provide trust services to a family group and cannot solicit trust business from the public.

South Dakota Regulation and Licensing

State Chartered PTCs are required to be licensed and supervised by the Division of Banking in South Dakota.

PTCs must have at least 3 Managers, one must be resident in South Dakota, capital of at least \$200,000, a fidelity bond of \$1MM, D&O Insurance of at least \$1MM, a pledge of \$100,000, and an examination every 3 years.

Advantages

The owners of PTCs can exercise control over the PTC, and trust administration, through voting rights held in the shares of the PTC as well as through board membership. However, it should be noted that family ownership and control over of the PTC can be problematic for tax and asset protection purposes.

In addition, PTCs afford greater privacy to family members since the PTC only acts for members of the family and not the public at large. PTCs offer greater flexibility in the trust administration as well as the types of assets which may be held in trust.

Typical Uses

A PTC can act as the trustee of trusts that holds a wide range of assets, including financial assets, private equity, operating companies, artworks, aircraft, yachts, etc.

Administration

Typically, PTCs are managed by a licensed commercial trust company under a Service Agreement, which establishes the roles and

responsibilities of the trust company and the owner(s) of the PTC.

LLCs vs Corporations

PTCs can be created as US LLCs, where in the case of single member LLCs, income is taxed to the member, and in the case of multiple members, the LLC is taxed as a partnership. LLCs can also be taxed as corporations. Alternatively, PTCs can be created as US corporations, which are subject to Federal corporate income tax, and dividends to shareholders are subject to further tax at the individual level.

US Taxation of PTCs

PTCs are subject to US Federal income tax on income from trustee and other services. The manner of taxation depends on the corporate form of the PTC, see below. South Dakota does not impose State income tax.

SEC Exemption

Licensed PTCs that provide investment advisory services to family members can be exempt from registering as Investment Advisors with the SEC if the PTC is wholly owned and controlled by the family members.

US Federal Income, Gift and Estate Tax

PTCs serving as trustees of family trusts should consider the US Federal income, gift and estate tax consequences to grantors and beneficiaries per IRS Notice 2008-63.

Purpose Trust

South Dakota authorizes non-charitable perpetual purpose trusts, established to own the shares of PTCs, which provides continuity for the PTC, and mitigates tax and creditor risks where family members own the PTC.

Notice

CISA is not a legal or tax advisor and this memo is not offered as legal or tax advice.