

defining business.

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Editorial

special edition

Welcome to a special edition of defining business. As there have been numerous, and some well publicised, changes to taxation law over the last few months, it is timely to review the key issues that may affect your tax situation for the 2010 financial year and beyond.

As always we hope you find the edition informative. If you have any questions on the impact any of the news items may have to your personal situation, or you have any other issues that you wish to discuss, please contact your harris black team member before 30 June 2010 to enable any action to be taken to avoid unwanted tax consequences.

henry review

Formally known as Australia's Future Tax System review, the Henry review contains sweeping recommendations to reform Australia's taxation system. Despite the broad changes, the government's response indicates their focus on a few key areas such as the resource sector and superannuation, while postponing consideration of other recommendations to a later date.

The highlights are:

- A Resource Super Profits Tax that will tax non-renewable resource projects (at a rate of 40%) on their profits rather than just their production (taxpayers will be eligible for a credit for royalties paid to State and Territory Governments) - this will apply from 1 July 2012;
- A refundable tax offset (the Resource Exploration Rebate) at the company level, set at the prevailing company tax rate, for exploration expenditure in Australia incurred on or after 1 July 2011;
- reduction in company tax rate to 28% - small businesses will benefit from 2012-13, but it will be phased in for other companies (29% for 2013-14 and 28% from 2014-15);
- small businesses will be able to immediately write-off assets valued at under \$5,000 (currently \$1,000) and all other assets (except buildings) will be written off in a single depreciation pool at a rate of 30% - this will apply from 1 July 2012;
- contributions cap concession: workers aged 50 and over with super balances below \$500,000 will be able to make up to \$50,000 in annual, concessional superannuation contributions - to apply from 1 July 2012;
- Superannuation Guarantee age limit will be increased from 70 to 75 from 1 July 2013;

- Superannuation Guarantee rate will rise to 12% by 2019-20 (to be phased in); and
- Government will provide a \$500 annual superannuation contribution to individuals with an adjusted taxable income up to \$37,000.

While there has been a lot of publicity surrounding a few of the more controversial responses from the government, with both the budget to be released shortly and a federal election due within the next year, it will be the passing of legislation on these matters that will determine how much will find its way into our tax system.

If you have any questions about any aspect of the proposed reforms, please contact us.

trusts and bamford

In the past months there has also been significant changes in the law surrounding the taxation of trust distributions following the High Court's decision in *Bamford v Federal Commissioner of Taxation*.

For a number of years there has been uncertainty surrounding the tax treatment of income under trust deeds, and particularly where there are capital gains, working out the appropriate beneficiary to be taxed on those gains.

The court decision has provided some clarity on the following issues:

- The trust deed determines what is classified as income of the trust – the trust deed can effectively determine that the income of the trust is equal to the taxable income of the trust, thereby providing a match between accounting and tax income, and distributions made to beneficiaries.
- Where there is a mismatch between accounting and tax income, then each beneficiary is taxed in proportion to their share of the taxable income based on their share of the accounting income.

The key outcome of the case is to reinforce how important a document the trust deed is in determining how the trust operates. It is because of this power of the trust deed that it is important to ensure that the deed is up to date, and also operates in the manner that you wish it to.

Some key areas to consider in your trust deed:

- Is the definition of income in accordance with tax law or accounting principles?
- Can you stream different types of income to different beneficiaries? e.g. franked dividends, interest, capital gains etc.
- Who is the appointor/principal of the trust? This is the person with the power to change the trustee so all important in terms of controlling the trust.
- Does the appointor's will adequately deal with their power, or is it incorporated into the trust deed who assumes control upon death? This is necessary to avoid a power vacuum where nobody can change the trustee.

If your deed is more than 5 years old, or you are unsure about how your deed operates and whether your business outcomes are being met, please contact us prior to 30 June 2010 to discuss whether any action is required.

draft ruling TR 2009/D8 – present entitlement vs loan

On 16 December 2009, the ATO released draft ruling TR 2009/D8 which outlines the Commissioner's view on the circumstances where a private company with a present entitlement from an associated trust may be treated as having made a loan to that private trust.

Division 7A of the Income Tax Assessment Act 1936 will deem loans to shareholders or their associates as assessable dividends where those amounts are not repaid by the time of lodgement of the tax return, or there is no complying loan agreement in place in relation to that loan.

There are further rules where a trust distributes to a company but does not pay the funds to the company immediately, thereby creating a present entitlement owing to that company. If the trust then makes payments to shareholders of the company or their associates, then those payments will be treated as a loan by the company to those shareholders or associates, potentially triggering Division 7A.

The ATO's view outlined in the draft ruling is that in certain circumstances, a present entitlement owing to a company from a trust may amount to a loan. This then would result in a loan from the company to the trust, triggering Division 7A and deeming the present entitlement to be a dividend to be included in the trust's assessable income, rather than the shareholder or associate.

This change in policy by the ATO has resulted in a number of submissions to the ATO, amid calls for further amendments to the legislation to provide clarity on the operation of Division 7A where trusts and present entitlements are involved.

As this is a complex and quite technical change in the ATO's policy, if you have a trust that has distributed to a company and you have any concerns about the arrangements between the two, please contact us to discuss.

division 7A and private use assets

On 17 March 2010 Tax Laws Amendment (2010 Measures No. 2) Bill was introduced into parliament to make amendments to the rules contained in Division 7A relating to loans and payments to private company shareholders.

Broadly, these amendments relate to the private use of company assets by shareholders and their associates. The rules will deem the value of the private use to be a dividend to that shareholder or associate where there is no payment for the use.

There are exceptions to these rules for dwellings and other assets purchase by the company prior to 1 July 2009.

While the legislation has not passed through parliament as it is awaiting a Senate Standing Committee inquiry, it will be important to review if you have any assets within a company that are used or available for use by company shareholders or their associates for private purposes.

If you have any concerns that your situation may result in private use of company assets being deemed a dividend, please contact us prior to 30 June 2010 to discuss your options.

Important: This is not advice. Clients should not act solely on the basis of the material contained in **defining business**. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. **defining business** is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.