

## ATO releases draft ruling restricting use of beneficiary companies

The Commissioner has further highlighted his dislike of trusts in issuing draft ruling TR2009/D8 'Income Tax: Division 7A loan: Trust entitlements' on 16 December, 2009. It is expected that the draft ruling will be passed with minimal changes.

The ruling is set to negatively impact on a discretionary trusts ability to distribute income to a private company and some or the entire amount distributed is not actually paid to the company. This is commonly referred to as an unpaid present entitlement (UPE). Instead, the trust retains and uses those funds representing the UPE while the income is "parked" in the company having at this stage only been taxed at the corporate tax rate. Until recently it has been accepted by the ATO that a UPE does not represent a loan from a company to the trust for Division 7A purposes, provided that the amount has not been converted to a loan. The release of the ruling indicates otherwise and poses tax planning difficulties for distribution of trust profits for the year ending 30 June, 2010 and onwards.

*The ruling poses tax planning difficulties for distribution of trust profits.*

If the draft ruling is finalized unchanged, it will require UPE's post 16 December, 2009 to be paid to the company in full, or a written loan agreement to be entered into. The written loan agreement must meet minimum repayments, minimum benchmark interest rates, and be for a term not exceeding 7 years (for an unsecured loan). The loan agreement will result in assessable interest to the company and potentially deductible interest to the trust depending on what use the funds are applied to. The loan will need to be repaid or a loan agreement entered into before the lodgment (or required lodgment) of the company income tax return.

Consideration will need to be given to the distribution strategies for the year ending 30 June, 2010 and later years and beneficiaries of a trust distribution may need to be individual beneficiaries if the trust has insufficient cash flows to pay the UPE. If a trust has surplus cash, distributions to private companies may still be an effective option, however the company will then have cash to invest and any potential capital gains will be taxed in full as the 50% discount is not available.

Please contact our office for more information.

## Obscure Tax Rules

Minors, being persons under 18 years of age, are generally taxed at the highest marginal taxation rate on income exceeding \$416 per year.

Exceptions - Minors to whom this high marginal tax rate is not applied include:

- A person under 18 who is in a full time occupation
- An incapacitated child in respect of whom a carer allowance or disability support pension was paid For these minors, all of their income is taxed at ordinary tax rates

While it is not usually part of your conversation with your accountant, if your child is in a full time occupation, is disabled or has had a life threatening illness such as cancer, please tell us, as the taxation savings can be significant.

If you require any additional information, please contact Chris Betar.

A liability for Fringe Benefit Tax (FBT) arises where an employer's motor vehicle is used by an employee for private purpose or is available for private use of an employee.

Under sub-sections 8(2) and 47(6) of the FBT Assessment Act a liability will not arise where the private use of certain vehicles by employees during a particular year of tax is limited to certain work-related travel and non-work related use. Private use can be travel between home and work, travel that is incidental to travel in the course of duties of employment and use that is minor, infrequent and irregular (this would include the occasional use of the vehicle to remove domestic rubbish).

## FBT Exempt Car Benefits

Certain motor vehicles may be exempt from FBT; under the FBT Assessment Act these are vehicles other than those which are designed to carry a load of less than one tonne and fewer than 9 passengers. Alternatively, other vehicles that may qualify for the exemption include; Dual cabs, Single cab utes, Four wheel drives, and vans. For further information on the vehicles that may be eligible, please ask us.

## Changes to the Income Test

As of 1 July 2009, changes have been made to the way income is calculated when determining if you are eligible for certain tax offsets and some government benefits and obligations. As a result, these changes may affect the amount of tax you are liable to pay.

Three new income tests to be used:

- Adjusted Taxable Income
- Rebate Income
- Income for surcharge purposes

For a detailed overview of each of the changes as they apply to Adjusted Taxable Income (ATI), Rebate Income, Income for (Medicare Levy) Surcharge Purposes, Reportable Employer Super Contributions, Income test for Higher Education Loan Program (HELP) and Student Financial Supplement Scheme Repayments please contact our office.

## Research & Development Tax Credits

In December 2009, the Australian Government announced draft legislation for the new Research & Development Tax Credit System. The Government states that The Research & Development Tax Credit is a central element of the Rudd Government's long-term agenda to lift Australia's innovation capacity and performance, powering Ideas.

Under the new system, companies can claim a tax offset of at least 40 per cent of their expenditure on Research & Development activities, rising to 45 per cent for companies with a turnover of less than \$20 million.

The Research & Development Tax Credit will allow small innovative firms to get an immediate contribution towards their Research & Development spend even if they are not yet turning a profit.

This legislation is due to start on 1 July 2010 and we are happy to assist any companies that spend money on Research & Development activities to claim these credits.

Should you require further information on the new Research & Development Tax Credit System, or require assistance in completing the current year's R&D Tax Offset claim forms, please do not hesitate to contact Chris Betar.

*Companies can claim a tax offset of at least 40% on Research & Development.*

## Changes to Family, Tax Benefits

As of 1 July 2008, there have been changes to the way that government benefits and obligations are administered by the Australian Tax Office (ATO) and other government organizations.

### Family Tax Benefit

While the family tax benefit could previously be claimed through your income tax return, changes have been made by the Australian Government where the family tax benefit will now be paid as a separate payment through the Family Assistance Office (FAO).

### Child Care Benefit

The Child Care benefit is no longer claimable through your income tax return. However, it can be claimed by lodging a claim form at any Family Assistance Office or by using their online services.

The following tax offsets continue to be claimed through your Income Tax Return and your eligibility is dependent upon whether or not you receive the Family Tax Benefit (FTB):

- Education tax refund
- Dependent spouse offset

Please note that as a general rule, tax offsets can only reduce the amount of tax you pay down to zero. That is, if your tax offsets are greater than your tax payable, you generally do not get a refund on the excess amount. They also cannot be used to reduce any Medicare levy you need to pay. However, any excess educational expenses can be carried forward to future income tax years.

This is a very brief summary of the changes. For detailed information please contact our office.

## The Cooper Review

The Cooper Review has been mentioned recently throughout the news, so what exactly is the Cooper Review and how will it impact you?

The Cooper Review is one of the most comprehensive reviews ever done of the Superannuation system. It was announced by the Rudd Government on 29 May 2009 and is due to report its findings by 30 June 2010.

The review will tackle four main areas:

### 1. Governance

This will examine the legal and regulatory framework of the superannuation system including the issues of trustee knowledge, skills, training and diversification of investments. Most importantly we will be watching for a recommendation regarding the ability of superfund's to use debt and leverage. As a general rule, superannuation funds are not allowed to borrow money, however, in 2007 the Howard Government, hoping to clear up issues regarding investments in Installment Warrants, said the same structured installments over shares could be used to invest in other assets, so long as the borrowings were done on a non-recourse basis.

Additionally, the review will focus its attention on the eligibility of funds to invest in certain assets, in particular collectables, wine, artwork and in-house assets.

### 2. Efficiency

This will aim to ensure the most efficient operation of the superannuation system and include recommendations relating to removing unnecessary complexities from the system. In addition, it will look into ensuring that superannuation operates in the most cost effective manner and in the best interests of members.

### 3. Structure

The review will focus on promoting effective competition in the superannuation system that leads to downward pressure on system costs, examining current add-on features of the superannuation system; and, examining other structural legacy features of the system.

### 4. Operation

This will focus on maximising returns to members, through minimising costs and ensuring members receive maximum returns and value for money through soundly regulated default products. The review is however excluded from looking at contribution levels and taxation which will be covered by the Australia's Future Tax System, review. Whatever the outcome of the review, it is likely that the whole Superannuation system will undergo further changes. We will continue to monitor the progress of the Cooper Review and will update all our clients as further information becomes available.

## Reimbursement of Expenses — Salary Sacrifice

A salary sacrifice arrangement is an arrangement between an employee and employer, whereby the employee agrees to forgo part of their entitlement to salary or wages in return for benefits of a similar value.

Before entering into a salary sacrifice arrangement, the following three criteria must be met:

1. the arrangement is entered into before you perform the work
2. An agreement is in place between the employee and employer, and
3. there should be no access to the sacrificed salary.

An employee can sacrifice any type of benefit, the most common being fringe benefits ie. cars, property, and expense payments (health insurance premiums).

An expense payment fringe benefit arises where you incur the expense and your employer either reimburses you for the expense or pays a third party for the expense on your behalf.

If an employee either mistakenly or falsely claims a reimbursement of an expense they did not incur, the payment from the employer is not a reimbursement of a fringe benefit expense and should be returned to the employer. The amount can be used as a payment to reimburse future expenses, or will be cashed out and treated as a payment of salary which is taxed to you as normal income.

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