



TRUSTS & UNPAID PRESENT ENTITLEMENTS

Over the last few months, there has been a lot of media attention on the ATO's crackdown on tax planning using trusts.

The latest target has been discretionary trusts with corporate beneficiaries. Specifically, the ATO has had concerns regarding trusts declaring distributions to corporate beneficiaries (i.e. companies) and leaving the amount unpaid (i.e. unpaid present entitlements).

The unpaid amount may remain in the trust and be used to purchase private assets which are used by the beneficiaries (e.g. a holiday house). Alternatively, the amount may be loaned by the trust to the beneficiaries.

The ATO were seeking to treat unpaid present entitlements as loans. Consequently, unless the loans satisfied certain requirements, the loans would be treated as deemed dividends for tax purposes.

The professional tax bodies were shocked by this suggested treatment. The general consensus was that the ATO's view represented a change in the interpretation and administrative practice of the ATO which is not consistent with the current treatment of unpaid present entitlements.

After extensive consultation with the Taxation Institute and other professional tax bodies, the ATO is reconsidering its position.

The outcome remains to be seen. However, the general perception is that this issue will be satisfactorily resolved with the ATO in the coming months.

However, even if the interpretation and administrative issues are resolved, the ATO may still seek a legislative change in this area to shut down the use of unpaid present entitlements to corporate beneficiaries.

TIP

If your company is entitled to distributions from a trust that has remained unpaid for any length of time, you should consider whether this structure is going to continue to be tax effective.

If you would like further information or require assistance in relation to the above please do not hesitate in contacting our office on 02 9555 1309.

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