

CHANGES PROPOSED TO THE TAXATION OF TRUSTS

On 4 March 2011 the Assistant Treasurer announced proposed changes to the taxation treatment of trusts for the 2010/11 year of income. These proposed legislative changes are to apply in respect of the 2010/11 and subsequent years of income. A discussion paper has now been released by the government.

The Assistant Treasurer made a number of specific announcements regarding the Government's policy and intentions with respect to income tax law, particularly the taxation of trusts and trust beneficiaries. Specifically, the Assistant Treasurer announced that the Government will be adopting two recommendations from the Board of Taxation in an effort *"to simplify the tax law for over 600,000 trusts"* by addressing *"two key areas of uncertainty for trusts"*, by seeking to amend the Income Tax Assessment Act 1936 (Cth) [ITAA36].

The Treasury discussion paper that accompanied the Assistant Treasurer's announcement contains two proposed changes, being:

- To change the meaning of "income of the trust" for the purposes of determining the allocation of tax liabilities to beneficiaries. This proposed amendment is likely to impact every trust that is making distributions for this income year.
- To clarify that trusts are able to stream dividends, franking credits and capital gains for tax purposes. This proposed amendment is likely to impact those trusts seeking to stream various classes of income for this income year.

The Treasury paper highlights two main uncertainties in relation to the meaning of the phrase "income of the trust".

The first uncertainty is in relation to the ability for trustee discretions to be applied to change the amount of the "income of the trust".

The second uncertainty relates to whether particular amounts that a trustee calls "income of the trust" (pursuant to the relevant trust deed) is actually able to be distributed to beneficiaries. For example, if a trust deed defines "income" for trust purposes to equal taxable income, a question arises as to whether the notional franking credit gross-up can actually be an amount that a beneficiary can be presently entitled to.

In light of the two issues above, the Treasury paper proposes to have a statutory definition of "income of the trust" that would override the trust deed definition.

The proposed changes to the definition of "income of the trust" may have significant implications and accordingly we recommend that your clients' trust deeds be reviewed before the 30th June 2011 distributions are made.

Please contact David Garry on 1300 880 963 to facilitate amendments to your clients' Deeds.