

UNPAID PRESENT ENTITLEMENTS IN FAMILY TRUST ACCOUNTS

Most trust deeds provide for the distribution of income to beneficiaries and that the amount allocated is taxed in the hands of the beneficiary.

Trust deed rules may provide for distributions to also be made to corporate bodies which are taxed at the 30% company tax rate.

The distribution in many cases has not been by way of a cash distribution but by way of establishing an entitlement to that distribution. This entitlement is known as its “present entitlement” (UPE).

The amount of the distribution is brought to account in the corporate records and is taxed at the company tax rate. However the funds are held by the trust as the corporate beneficiaries “unpaid present entitlement”.

ATO OPINION

“The Commissioner's view, expressed in TR 2010/3, is that a UPE is capable of amounting to the provision of financial accommodation by the private company beneficiary in favour of the trust, and may therefore be a loan for Division 7A purposes. The view expressed applies to all types of trusts, including discretionary trusts and unit trusts. The view expressed is particularly relevant in cases where the trust and the private company are part of the same family group.

As the Commissioner first expressed his view on 16 December 2009, the Commissioner will only apply this view to UPEs which come into existence on or after this date.”

[Taxation Ruling TR 2010/3: Income tax: Division 7A loans: trust entitlements](#) and [Law Administration Practice Statement PS LA 2010/4: Division 7A: trust entitlements](#) outline the Commissioner's view and administrative practice on the application of Division 7A, in particular, Section 109D of the *Income Tax Assessment Act 1936* to a UPE.

This document addresses certain supplementary issues relating to these rulings. As such, this should be read in conjunction with TR 2010/3 and PS LA 2010/4, and does not alter the Commissioner's view as set out in those publications.

All references to legislation are to provisions in the *Income Tax Assessment Act 1936* unless otherwise stated. All references to an entity's lodgement day are to the earlier of the entity's due date for lodgement of its tax return and the date that return was actually lodged.