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Trust Streaming - 31 August Recording Deadline

As discussed in our May and June Tax Flashes the Government has amended the tax law for taxation of trust distributions to allow streaming of capital gains and franked dividends to which beneficiaries are specifically entitled. However, to gain these concessions there are particular recording and choice deadlines that the trustee must consider.

The Australia Tax Office (ATO) has recently issued an information sheet on its website to give guidance on the new rules for streaming of capital gains and franked dividends through trusts.

REPORTING ARRANGEMENTS FOR SPECIFIC ENTITLEMENT

One of the important matters that needs to be considered to ensure trustees can stream capital gains and franked dividends for the year ended 30 June 2011 is that the trustee must record the beneficiaries entitlement to the capital gain and/or franked dividend in the accounts or records of the trust by specific dates. For capital gains this is two months after the end of the income year (generally 31 August 2011).

For franked dividends the specific entitlement must be made by the end of the year of income (usually 30 June). However as these new rules only came into effect on 29 June 2011 the ATO has provided an extension until 31 August 2011 for recording specific entitlement to franked dividends for the 2010/2011 income year.

OTHER REQUIREMENTS MUST ALSO BE MET

There are other important requirements to be met to take advantage of the new streaming rules. Some of these requirements are listed below:

Streaming must be allowed by the trust deed

The trust deed must allow the trustee to stream the capital gain and/or franked dividends to specific beneficiaries. The trust deed should be reviewed to see whether streaming is allowed under the trust deed.

Present entitlement to income of the trust must be determined by 30 June

The 31 August recording requirement for specific entitlement for capital gains and franked dividends does not change or provide an extension for the date that the trust deed requires the trustee to make beneficiaries presently entitled to the income of the trust.

For example, if the trust deed requires the trustee to determine the present entitlement of the beneficiaries to the income of the trust by 30 June of the relevant year, the trustee still has to make that determination by 30 June (no change from previous years).

The 31 August recording date does not extend the 30 June date for determining present entitlement under the trust deed i.e. the trustee would still have to hold their meeting and resolve to distribute the trust law income (distributable income) of the trust by 30 June. The 31 August date is only for the recording of the specific entitlement. It does not affect the requirement of the trustee to determine the beneficiaries that are presently entitled to the income of the trust by 30 June.

Definition of income of the trust is important

In determining whether the trustee is required to determine who is presently entitled to the income of the trust, it is important to look at the definition of income of the trust in the trust deed. If it includes capital gains, the determination of the specific entitlement of the capital gains also has to be determined by the date specified in the trust deed (usually 30 June).

Review trust deed for rules for capital distributions

If the capital gain is not included in the income of the trust, the trust deed must be reviewed to see if there are any specific requirements for making a beneficiary specifically entitled to a capital distribution.

RECORDING IN ACCOUNTS OR RECORDS

The economic benefit the beneficiary has received or can reasonably be expected to receive, must be recorded in its character as referable to the capital gain or franked distribution in the accounts or records of the trust.

The ATO information sheet states accounts or records of the trust would include:

- the trust deed itself - e.g. if the trust deed conferred a fixed entitlement to capital gains and/or franked dividends to particular beneficiaries; and
- statements of resolution or distribution statements, including schedules or notes attached to, or intended to be read with them. Taxpayers and their practitioners need to review the trust deeds to ascertain when these resolutions or statements need to be made. In most generic deeds this would be by 30 June of the financial year in question.

A record merely for tax purposes is insufficient.

MANAGED INVESTMENT TRUSTS

Managed investment trusts (MITs) are specifically excluded from the new streaming rules for capital gains and franked dividends. However trustees of MITs can choose to apply the new rules if they wish.

However, if a trustee of a MIT wants the new rules to apply to the MIT for the 2011/12 income year they must make the choice within two months of the end of the 2010/11 income year (for 30 June balancers this is 31 August 2011). However, for early balancers the choice can be made by 29 August 2011.

ATO INFORMATION SHEET

To see the ATO information sheet click on this link to the ATO Website:

[Interim Changes to the Taxation of Trusts - ATO Website](#)

CONCLUSION

The rules for taxing trust distributions have always been extremely complex. While the new rules to allow effective streaming of capital gains and/or franked dividends are welcome they are also complex. This is compounded by the limited timeframes for the recording of the conferring of 'specific entitlement' of the streamed amounts to the beneficiaries.

If the capital gains and/or franked dividends are not successfully streamed, the tax payable and/or associated tax benefits may not apply to the intended beneficiaries and may instead apply to other beneficiaries or the trustee, in which case the tax rates may be higher and/or the tax benefits such as CGT discounts or franking offsets may be reduced or not available.

Given these complexities, it is important that where capital gains and/or franked dividends of trusts are to be streamed to specific beneficiaries for the 2010/2011 tax year, the trustee should contact their PKF adviser as soon as possible to assist you with these issues.

PKF has a Tax Blog, find out what our experts think of these changes: <http://blog.pkf.com.au/>

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