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Globe Accounting Pty Ltd

Certified Practising Accountants

If you operate a discretionary trust and distribute some of the income of the trust to a related company then a draft tax ruling issued in the week before Xmas may create some additional headaches for 2010.

In a spirit of Xmas goodwill and cheer the Tax Commissioner released Draft Ruling TR2009/D8. This ruling says that where a trust has appointed income to a company beneficiary but has not actually paid the company the appointed amount, then these distributions made after 16 December 2009 will be deemed to be a loan from the company back to the trust. The effect of this, in most cases, is that the loan will be captured under Division 7A of the Tax Act. This is the section that says where a company makes a loan to a shareholder or an associate of a shareholder, that loan will be deemed to be an unfranked dividend unless the company and the shareholder has entered into a complying loan agreement and interest and principal is being paid on the loan.

The Tax Office has been concerned for some time about trusts distributing income to a company but not physically paying the company the income distributed

Historically, unpaid present entitlements have not been caught by Division 7A. The ATO had previously taken the position that an unpaid present entitlement did not create a loan relationship between the parties to which Division 7A would apply. This interpretation has now changed. The ruling is both retrospective and prospective. The key date however is 16 December 2009 It is important to note that this is a draft ruling. It does not yet have the effect of law.

If the Commissioner continues in this view and it becomes final ruling, then trusts who have used corporate beneficiaries to limit tax payable on distributions, but where distributions have not been paid will need to change strategy. Otherwise, they will trigger an additional tax liability.

Help! I've put too much into my super fund

One of the great things about superannuation is the concessional tax rates. Concessional contributions, which come from pre tax income, are taxed at 15%.

The concessional contributions cap for the current financial year is $25,000 for those under 50 and $50,000 for those 50 or over on 30 June 2009. The non-concessional contributions threshold is $150,000 (which can be averaged across three years - allowing you to exceed the cap in one year and reduce your contributions in others giving you a total of $450,000 over three years).

Excess contributions are not uncommon and many taxpayers inadvertently breach their contribution limits. The problem is that if you breach the concessional contributions cap, the tax on the contributions over the cap is an additional 31.5% on top of the initial 15% paid by the super fund. And, it's very difficult to do anything about it once you have put the cash into the superannuation account.

The important thing is to be aware of what your contributions caps are, the total amounts that have been contributed, and what's contained in your trust deed.

Those most likely to breach the cap are those with multiple employers and those who have entered into salary sacrifice arrangements in past years and have not reviewed the amounts being paid into their superannuation fund. This includes those utilising the transition to retirement strategy.

28 Palmerin Street
Warwick Q 4370
Ph: (07) 4661 4900
Fax: (07) 4661 4911
info@globeaccounting.com.au

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