

# BEANCOUNTER'S BULLETIN

## Baumgartner Partners Quarterly Newsletter

3rd Quarter  
2010/11



### Introduction

Welcome to this quarter's edition of Beancounter's Bulletin. We hope that you find the contents informative and useful and as usual we welcome any suggestions for future editions.

Please refer to our website for regular updates on new and relevant information that may affect you.

### The current state of play in relation to trusts - Graeme Richardson (Consultant)

For more than a generation, the Australian Taxation Office has displayed a dislike for trusts.

In March 2011 however, the Australian Labour Government released a discussion paper towards ensuring "that businesses and individuals who use trusts to facilitate a variety of business and personal activities, can continue to do so with confidence in the tax outcomes that apply to their circumstances".

This is the first positive support for trusts exhibited at policy level for years, and may mark a new era for trusts.

#### FEDERAL GOVERNMENT ANNOUNCEMENT

The Government's discussion paper announced that:

- The Income Tax Assessment Act will be changed to ensure capital gains and franked dividend distributions, including the attached franking credits, can be streamed to particular beneficiaries for the 2010/2011 tax year. The Commissioner of Taxation had previously moved against the streaming of both trust income and capital gains distributions from the 1 July 2010.
- The key concept of net income for trust accounting purposes will be more closely aligned with the trust's net income for income tax purposes, with the intent of reducing anomalies.
- Using a public consultation process, steps will be taken to update the trust income tax provisions.

The terms of trust deeds will need to enable the streaming of trust distributions, for any streaming to be valid.

#### THE COMMISSIONER MAINTAINS HIS POSITION ON UPE'S

The Commissioner of Taxation is maintaining his attack on unpaid trust income distributions to

corporate beneficiaries (UPE's), effectively after 1 July 2009, in relation to the collection of "top up marginal tax" on dividends potentially needing to be paid by corporate beneficiaries, to enable the pay down of deemed loans by the corporate beneficiaries to the distributing trust.

#### TRUSTEE'S TIME FOR ACTION IS NOW

The time for trustees of trusts to review UPE amounts owing to corporate beneficiaries has arrived. Trustees need to ensure available action is taken before the actual earlier of, or due date for, lodgement of the company's 30 June 2010 income tax return arrives, to ensure these UPE balances are not treated as deemed unfranked dividends.

#### ALTERNATIVE ACTIONS AVAILABLE

Concessionary announcements by the Commissioner included 7 and 10 year interest only loan arrangements, with the principal payable by a balloon payment at the end of that term, to enable trust income distributions to corporate beneficiaries from the 1 July 2009 to be paid out in due course.

Such concessionary arrangements are not, however, specifically covered by the income tax legislation. Consequently, there is a legal view that it would be safer to pay down these UPE amounts under specific Division 7A compliant loan agreements, whereby, the principal and interest is repayable over 7 years, if the loan is unsecured, or 25 years, if the loan is fully secured.

Alternatively, the UPE balance could be fully paid out; but this would crystallise a very early "top up marginal tax" payment.

#### CONCLUSION

If you need to discuss these changes and any actions required, please contact your client partner or your client relationship manager.

## A good reason for retaining all your annual superannuation statements David Burrows (Partner)

Do you still have all of your superannuation statements dating back to when you commenced work? If so, don't throw them away as they could be of significant advantage to your dependents, due to an often overlooked deduction available to superannuation entities.

Under Section 295-485 of the 1997 Income Tax Assessment Act, superannuation entities are entitled to a tax deduction equivalent to the superannuation contributions on which contributions tax has been paid during the life of a deceased member. This is the case as long as the trustee of the fund adds an anti-detriment amount to the account balance of the deceased member. The anti-detriment amount represents a refund of the 15% contributions tax levied against the deceased member's superannuation entitlements during their lifetime.

To illustrate this benefit, we use the following example:

Shelley's employer contributes \$50,000 to Shelley's superannuation fund. Tax @ 15% is applied to the contribution and therefore Shelley's after tax account balance is \$42,500. Shelley dies following the contribution and the trustee of her fund decides to make an anti-detriment payment. The anti-detriment payment of \$7,500 (equating to a refund of the contributions tax previously paid) is added to her account balance of \$42,500 and therefore the trustee of the fund is able to make a payment of \$50,000 to Shelley's husband.

This example is obviously a simple one and focuses on just one year, but imagine if all contributions dating back to 1988 were considered, especially where salary sacrificing has been used as a strategy. The result could be that the anti-detriment amount is quite significant.

So why are your superannuation statements important in all of this? The method of calculating the anti-detriment that will often give the best result is the audit method, and these statements will be required to utilise that method. Formula based methods that do not require a full history of contributions are available to fund trustees, but these may not give as good a result.

So if you have retained all of your superannuation statements since you commenced work, make sure you let Baumgartner Partners or your fund trustee know, so the optimal result may be determined for your dependents upon your death.

Please do not hesitate to contact David Burrows to discuss this topic in further detail.

### ACCOUNTANT JOKE OF THE QUARTER

Three engineers and three accountants are travelling by train to a conference. At the station, the three accountants each buy tickets and watch as the three engineers buy only a single ticket." How are three people going to travel on only one ticket?" asks an accountant. "Watch and you'll see," answers an engineer.

They all board the train. The accountants take their respective seats but all three engineers cram into a restroom and close the door behind them. Shortly after the train has departed, the conductor comes around collecting tickets. He knocks on the restroom door and says, "ticket, please." The door opens just a crack and a single arm emerges with a ticket in hand. The conductor takes it and moves on.

The accountants see this and agree it is quite a clever idea. So after the conference, the accountants decide to copy the engineers on the return trip and save some money (being clever with money, and all!)

When they get to the station they buy a single ticket for the return trip. To their astonishment, the engineers don't buy a ticket at all. "How are you going to travel without a ticket?" says one perplexed accountant. "Watch and you'll see," answers an engineer. When they board the train the three accountants cram into a restroom and the three engineers cram into another one nearby. The train departs. Shortly afterward, one of the engineers leaves his restroom and walks over to the restroom where the accountants are hiding. He knocks on the door and says, "ticket, please."

### AROUND THE TRAPS

Happy New Year to all. We hope you had a relaxing Christmas break and had the opportunity to catch up with friends and family.

We would like to congratulate Kerri Forrest (nee Lockhart) on her recent marriage to Anthony. The happy couple honeymooned in Bali.

We would like to welcome Arun who joins our superannuation team, and also congratulate him on his recent marriage in India to Manju.

We also would like to welcome Nick, Tim, and Tina who also join our superannuation team.

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