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Do you need to amend your Trust Deed?

Some Trust Deeds may require amendment to allow for flexibility in the meaning of trust income as well as the determination and distribution of trust income to selected beneficiaries.

Most importantly Deeds that do not define trust income to equate to net income for tax purposes should be amended to enable the determination of distributable trust income for the 2013 year to equate as close as possible to the trust's net income for tax purposes. This will assist in the drafting of the Trustee Distribution Resolution, as well as the subsequent reporting obligations for the trustee in the 2013 tax return.

Deeds that do not allow the separate classification and streaming of capital gains and/or franked dividends require amendment to ensure that trustees can access the tax streaming rules. The creation of certain categories of income and the ability for trustees to apply receipts and payments to these various categories of income or capital would also be beneficial.

Furthermore, where a Deed dictates distribution or entitlement dates on a date before 30 June of each year, say 29 June or one day before the end of the accounting period, these Deeds will require amendment to ensure that entitlements do not arise as at these dates merely as a result of the Trustee not making an appropriate resolution before that date.

At MKT our view is that until the current Government review of the Taxation of Trusts is complete, (which will in all likelihood require wholesale amendments to Trust Deeds) trustees should consider only those specific amendments noted above, and if their Deed's adequately deal with these areas, we believe you can hold off on undertaking amendments given the further changes that are expected to occur.

Of course MKT strongly recommend suitable legal and tax advice is sought in undertaking any amendments to a Trust Deed and we can assist you in that regard.

MKT Note

Trust Reviews and amendments must be completed before 30 June 2013 in order for the changes to be valid for the 2013 financial year. Ideally this should be considered together with the drafting of year end Trustee Resolutions from April/May 2013, and is best done in conjunction with the preparation of your clients 2013 interim financials as part of your year-end review.

Please contact Sean Pearce or Peter Hong if you would like to discuss any of the issues raised above.

Am I a Share Trader?

Australia has one of the highest levels of share ownership in the world and indeed many of our clients acquire shares as a means of supplementing their other income. The tax treatment though, of shares bought, sold and held can differ depending upon whether a client is considered a share trader, an investor or a speculator.

A share trader is considered to be carrying on a business of share trading, which means the shares are trading stock, with the purchase of those shares being deductible and the sale of those shares being assessable as business income. An additional consequence is the ability to re-value shares on hand at the end of a financial year at the lower of cost or their market value. In effect this allows share traders to reduce their share trading income by the amount of any unrealised losses they have within their trading portfolio. That is, you can get the tax benefit of the loss without having to sell the shares

The ATO, as you would expect, take a strict view on whether a taxpayer who buys and sells shares does so as a share trader and applies the various guidelines developed over the years as to whether a taxpayer is carrying on a business or merely holds shares for long term investment or shorter term profit speculation. Factors such as:

- The repetition and regularity in the buying and selling of shares;
- The actual turnover for the year;
- Whether the taxpayer is operating to a plan, setting budgets and targets and keeping records;
- The capital employed and the source of that capital;
- The time spent, equipment used and research referred to in the share activities; and
- Whether the taxpayer has another full time occupation,

will be queried and considered by the ATO in determining whether you are, in fact, a share trader. We are aware of an increased focus from the ATO on share traders, especially given the turbulent nature of the share market in recent years.

If your clients are active in the share market and would like us to consider whether they qualify as a share trader or share speculator please contact Peter Hong

Amendments to Revenue Asset & Trading Stock Roll-Overs

In the 2011-12 Federal Budget, the Government announced a series of minor amendments to the income tax law to ensure the proper functioning of capital gains tax (CGT). The amendments ensure that the roll-over for the exchange of shares in one company for shares in another company operates properly so that if the original shares are held on revenue account at the time of the exchange, the profit or loss will be deferred. This change will have effect from 10 May 2011

As part of the Mid-Year Economic and Fiscal Outlook, the Government announced further amendments to make it easier for unit trusts to restructure their affairs in cases where they interpose a company, so that taxpayers hold shares in the company rather than units in the trust. The Government will do this by allowing taxpayers who hold units in the trust as revenue assets or trading stock to defer the realisation of a profit or loss on their units until they dispose of the replacement shares. This measure will have effect from 7.30pm (AEST) on 10 May 2011.

In the 2012-13 Budget, the Government announced further changes to broaden the scope and ensure the efficient operation of the revenue asset and trading stock roll-overs for the exchange of:

- shares in one company for shares in another company
- units in a unit trust for shares in a company.

These changes will apply from 8 May 2012, however full details have yet to emerge.

If your clients have swapped existing shares or units for shares in another company during the year, these changes may affect them so contact Nigel Kingston for further details.

MKT's Tax Training Services

MKT prides itself on the level of training and education it offers its clients and the accounting and finance profession in WA. Our senior tax professionals are regularly sought after by the Professional Bodies to present sessions to their members. For our Accountant, Financial Planning and Legal clients, MKT is able to develop and deliver in-house tax sessions to your staff focussing on the practical application of particular tax provisions in an easy to understand, highly practical format. With over 25 years practical tax experience, our Tax presenter, MKT Tax Director, Sean Pearce CPA CTA has a wealth of detailed knowledge across the breadth of Federal and State revenue laws.

For those who are unable to attend or have Sean present sessions face to face MKT also offers Webinars of their 90 minute Tax Workshops. Recent sessions have included:

- Contractors vs Employees
- The Key Conditions to access the CGT Small Business Concessions
- The Capital v Revenue Distinction - Sale of Land and other assets

Full details can be found at our Website or by contacting Sean Pearce.

MKT's 2012 Tax Workpapers Available - Free to PAN Members

To assist you with some of your more complicated 2012 Tax Returns, MKT have uploaded our 2012 Tax Workpapers for sale in the MKT Cart.

- 2012 MKT Consolidated Entity
- 2012 MKT Entity; and
- 2012 MKT Individual.

The workpapers have been developed over many years by our tax advisors and provide an easy to follow step by step process to assist you in documenting the tax return preparation process as well as enabling you to identify various risk issues that may need further review.

The MKT 2012 Workpapers include various checklists, templates and prompts to ensure your tax return preparation process is structured, transparent and considers the material risks that may affect your clients.

We are pleased to provide these workpapers to our Accountant's Network clients for a fee and complimentary to our Premium Accountant Network members as part of their ongoing subscription. Please follow the [LINK](#) to find out more, PAN members will be contacted with details of how they can access these Workpapers.

Any queries please contact Rebecca Drake.

Xmas Message

From all of the team here at MKT we wish you a very Merry Christmas and a Prosperous New Year and thank you again for your support throughout 2012.

Our office will be closed from 12pm 20 December 2012 and reopen on 02 January 2013.