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WHO SHOULD BE ASSESSED TO INTEREST ON BANK ACCOUNTS?

On 26 April 2017, the Commissioner released Taxation Determination TD 2017/11, which outlines that for income tax purposes, interest income on a bank account is assessable to the person or persons who "beneficially" own the money in the account.

This Determination replaced Taxation Ruling IT 2486 and a number of early Determinations such as TD 92/106, TD 92/182 and TD 93/148.

Specifically, with respect to joint accounts and children's saving account the Commissioner comments as follows:

Joint accounts

Interest income on a joint bank account is assessable to the account holders in proportion to their beneficial ownership of the money in the account.

Unless there is evidence to the contrary, it is presumed that joint account holders beneficially own the money in equal shares. Relevant evidence can include information regarding who contributed to the account, in what proportions contributions were made, the nature of the contributions, who drew on the account and who used the money (and accrued interest) as their own property. Evidence may also be provided that joint account holders hold money in the account on trust for other persons.

Children's savings accounts

Where a parent operates an account on behalf of a child, but the Commissioner is satisfied that the child beneficially owns the money in the account, the parent can nonetheless show the interest in a tax return lodged for a child. The lodgement of a trust tax return will not be necessary.

Where interest income on a bank account is assessable to a child under 18, that income (above $416) may be subject to higher rates of tax under the rules in Division 6AA of Part III of the 1936 Act that apply to the income of certain children.

The Determination then goes on to provide a number of examples which are reproduced below:

Examples

Example 1 - joint bank account - rebutting presumption of equal ownership

Barbara and Chelsey are each assessed to income tax on half of the interest not returned on their joint bank account. Barbara later establishes that Chelsey contributed all of the money to the account and usually treated all of the interest as her money. Barbara has only once drawn funds from the account.

Chelsey has beneficial ownership of the money in the account and is therefore assessable on all of the interest income. The Commissioner amends Chelsey's and Barbara's income tax assessments accordingly.

Example 2 - joint signatory - no beneficial ownership of account

Adrian's elderly aunt has a bank account in her name and Adrian is a joint signatory to that account. Adrian will only operate the account if his aunt is unable to do so due to ill health. All the funds in the account are hers and Adrian is not entitled to personally receive any money from the account.

Adrian does not have any beneficial ownership of the money in the account and is therefore not assessable on the interest income.

Example 3 - child savings account - child does not have beneficial ownership

Shaun, aged 10, has an account in his name. The account was opened by his mother who initially deposited $7,000 of her own money into it. Shaun's mother is a signatory to the account, and makes regular deposits and withdrawals to pay for Shaun's school and other expenses.

Shaun's mother spends the money in the account as if it belongs to her. She is considered to be the beneficial owner. Shaun's mother is assessable on the interest income earned from the account.

Example 4 - child savings account - parent operates as trustee

Raymond, aged 14, has accumulated $7,000 over the years from birthdays and other special occasions. Raymond's mother has placed the money into a bank account in his name, which she operates on his behalf. Raymond's mother does not use the money in the account for herself or others. Raymond earns $490 in interest during an income year.

Raymond has beneficial ownership of the money in the account and is therefore assessable on all of the interest income. The birthday gifts are not assessable income.

However, as Raymond is under 18 years of age, he will be subject to higher rates of tax under the rules in Division 6AA of Part III of the 1936 Act.

If Raymond shows the interest in his tax return for that income year, his mother will not need to lodge a trust tax return.

MKT Note

In this age of all banking details within Australia and often overseas being made readily available to the ATO, it is prudent to keep in mind the above principles. For example, we had a client who was a non-resident of Australia for income tax purposes, whose wife was a tax resident of Australia. He opened a number of accounts in his wife's name in Hong Kong for asset protection reasons given his occupation as an insolvency expert. The ATO in turn initially determined that all interest on these accounts (in excess of $450,000) was assessable to his wife. Fortunately, by providing the relevant supporting documentation a successful outcome was ultimately achieved.

Please contact Nigel Kingston for further information.

COUNTDOWN IS ON TO NEW SUPERANNUATION LANDSCAPE

With the changes to superannuation due to take effect on 1 July 2017 there are several things that Trustee's will need to ensure occurs by 30 June 2017. The deadline for complying with these changes are now less than 3 weeks away so Trustees and Members need to ensure they seek appropriate advice and act to ensure action is taken especially in relation to the following two measures.

Requirement to comply with Transfer Balance Cap at 1 July 2017:

Under the new rules, all Australians start with a Transfer Balance Cap of $1.6 million at 1 July 2017. If members already have an Account Based pension at the start date, they will need to determine the total value of their Account Based pension interests and assess this against the transfer balance cap. If the balance is less than $1.6 million, they can use any remaining cap to transfer more capital into retirement phase in the future. If the value of their pension interests is greater than $1.6 million at the start date they will be required to address the excess, either by rolling back to accumulation phase or withdrawing the excess from superannuation, or a combination of both.

At 1 July 2017 Account Based pension balances in excess of the cap can be subject to an excess transfer balance tax. This will initially be the 15% tax that should have been paid on earnings had the money been in the accumulation phase, but based on notional rather than actual earnings. The penalties become more punitive if the issue is not rectified in good time.

Where SMSF trustees have Account Based pension phase assets greater than $1.6 million, they will effectively have two choices:

1. Commute the excess from pension back to accumulation phase, keeping the assets in the fund but now subject to a 15% tax rate on earnings; or
2. Withdraw the excess from superannuation and invest it outside of superannuation where earnings will be taxed at the individual's marginal tax rate (or alternative tax arrangement).

Trustees and members who wish to draw the excess out will need to do so by 30 June 2017.

For members who wish to make a commutation back to accumulation, the process can be a bit more complicated. The excess over $1.6m can only be calculated accurately after 30 June 2017 as a member's 30 June account balance is determined by asset values as at this date including any tax liability. This cannot usually be precisely calculated on the day of 30 June 2017. The actual required amount to affect the commutation can therefore not be determined on 30 June 2017.

The ATO has issued Practical Compliance Guideline PCG 2017/5 that provides guidance for members affected by the cap. It acknowledges the practical problem of knowing the precise 30 June pension balances prior to that date. Whilst there is a process that must be followed, as outlined in the ATO's guidance, the amount of the commutation to comply with the cap can be worked out after 30 June 2017, based on historical data. PCG 2017/5 paragraph 9 states as follows:

"The Commissioner will not apply compliance resources to review the commutation of a superannuation income stream a member has in an SMSF that is made before 1 July 2017 where the request and acceptance to commute:

A. are both made in writing. The agreement by the trustee may be documented as a trustee resolution

B. are made before 1 July 2017

C. specifies a methodology that allows the precise quantum of the amount commuted to be calculated (such amount may be ascertained at a later point in time)

D. specifies the superannuation income stream which will be subject to the commutation. Where the request may cover more than one superannuation income stream, the request and acceptance will need to specify the different superannuation income streams that may be covered and the order of priority in which the commutations will occur, and

E. do not conflict with a similar agreement to commute that the member has agreed to with a trustee of a different superannuation fund. Entering into an agreement with the trustee of one superannuation fund to which this Guideline applies in conjunction with the commutation of a specific amount from another superannuation fund does not in itself cause a conflict."

Example (Taken from PCG 2017/5)

"On 1 May 2017, Jim has the following three superannuation interests supporting superannuation income streams in his SMSF:

- *Superannuation income stream A - valued at $100,000*
- *Superannuation income stream B - valued at $1,200,000, and*
- *Superannuation income stream C - valued at $600,000.*

Jim requests the trustee of his SMSF in writing to commute amounts on 30 June 2017 in excess of $1.6 million based on the value of the interests supporting his superannuation income streams valued at 30 June 2017. The trustee of the SMSF accepts the request which is documented.

The amount of the commutation is worked out by the trustee of the SMSF and is reflected in the SMSF's financial accounts for the year ended 30 June 2017 by the due date of the SMSF's annual return for the year ended 30 June 2017.

The ATO will not review the commutation provided the commutation request specifies the superannuation income streams that will be subject to the agreement to commute and the order in which the superannuation income streams will be commuted in accordance with paragraph 9 of this Guideline."

Election to reset the cost base of assets:

The Transfer Balance Cap measure includes transitional CGT relief via a cost base reset. This relief is designed to ensure that only capital growth post the introduction of the transfer balance cap (i.e. from 1 July 2017) is taxed. There are four conditions to applying this relief:

1. The fund must be in pension phase:

The measure applies to any superannuation fund that is in pension phase (either in part or in full). This is regardless of whether any members will exceed their cap at 1 July 2017. This will include funds that have transition to retirement income streams (TRIS) that will cease to qualify for pension phase at 1 July 2017.

2. Assets must have been held prior to 9 November 2016:

The relief only applies to assets held prior to 9 November 2016. Any assets acquired after that date (even if before 1 July 2017) will not be eligible to the cost base reset.

3. Fund trustee must make an election to choose the relief

The relief is not automatic. An SMSF trustee must elect to choose the relief for each asset of the SMSF. The election is irrevocable and must be made before the SMSF trustee is required to lodge the SMSF's tax return for the 2016/17 year. The law currently requires that the election must be made on or before the day the SMSF's 2016/17 annual return is due to be lodged. Therefore, it is very important that SMSFs do not lodge late and miss this opportunity to take advantage of this CGT relief.

4. The fund must be affected by either the TRIS Reforms or Transfer Balance Cap.

The relief is only available to a fund if either part or all of the fund's current pension assets will lose their pensions exemption from 1 July 2017. Therefore only where Transition to Retirement Benefits are paid from a Fund or a commutation is made for a member to comply with the Transfer Balance Cap will Transitional CGT relief be available.

The fourth condition of these measures effectively means that fund's where TRIS's are drawn can automatically elect to use the cost base reset measures provided the other three conditions are satisfied.

Fund's where only Account Based pensions are drawn are only entitled to make the election to reset the cost base of assets if they make a commutation to get below the $1.6 million cap by 30 June 2017. Where members fail to comply with the new Transfer Balance Cap by 30 June 2017 (as outlined above) their SMSF will be unable to elect to use the cost base relief even if they subsequently make a commutation.

Fund's where neither member are affected by either the Transfer Balance Cap or TRIS changes cannot elect to reset the cost base of any assets.

Trustees and Members need to ensure that if they are affected by these changes they seek advice and act quickly to ensure that at 30 June 2017 their Superannuation Pensions are in order.

For any further information on the Superannuation changes and what trustees need to ensure is completed please contact Chris Schoeman or Justin McGovern.

2017 MKT Trustee Resolutions

As you may be aware, trustees are required to have made their 2017 resolutions to distribute trust income on or before 30 June 2017. It is recommended that the resolution is made in writing and is in a format that is compatible with the respective Trust Deed. A written record will provide better evidence of the resolution and avoid a later dispute with the ATO as to whether any distribution of income was effectively made by 30 June.

If the resolution is not made and signed by 30 June, the ATO may assess the trust income to the trustee at 49%.

To assist you in starting the process with your clients, we have made available a template letter to contact clients explaining the requirements. This presents a great opportunity for you to review your clients' 2017 income year in real time, implement tax planning strategies and effectively draft a Trust Resolution that gives your clients the most tax effective outcome.

To assist you in preparing the trustee resolutions for your client, we have made our 2017 Trustee Resolutions Templates available for purchase from our website. If you have any problem in downloading the work papers, please contact Nicola at our office.

The ATO Resolutions Checklist

The ATO has helpfully provided its Resolution Checklist on their website. The key points in that checklist are:

1. The Resolution must be made by the earlier of the date the Trust Deed requires or 30 June;
2. The Resolution must be recorded in writing if the Deed requires, however if the Deed is silent the ATO recommend that it is writing "to avoid a later dispute."
3. Where Streaming of capital gains and franked dividends is allowed in the Deed, the Resolution must be in writing;
4. The ATO does not accept distributions of notional amounts (such as franking credits) in line with its "preliminary" views in TR 2012/D1;
5. The ATO does not accept that income other than capital gains and franked dividends can be streamed to specific beneficiaries, such as rent, interest, foreign income etc.

Review of existing Trust Deed

Of course, the first step in the process is to ensure that your clients' Trust Deed enables you to make the distributions you wish and in that regard we are able to review your Deed, arrange for any variations that are required, and then tailor a trustee resolution to suit your client's Deed. What is required by you is to then determine and insert the actual distributions of trust income, capital or streamed capital gains and franked dividends for each beneficiary.

MKT are able to undertake the Trust Deed review and preparation of a tailored Trust Resolution for that Deed from $750 (plus GST). PAN members receive a 10% discount off this fee. Where amendments are required to the Deed, we will obtain a quote from our solicitor to prepare the Deed of Variation for your approval.

If you would like MKT to review the Deeds of any of your Trust clients please forward a copy of the Deed, together with all amendments and variations to Peter Hong of this office as soon as possible, advising whether the Trustee will require the power to stream either capital gains or franked dividends in this year's Trust distribution.

If you have any queries or require any assistance with reviewing Trust Deeds or preparing 2017 Trust Resolutions please contact Peter Hong or Sean Pearce.

GST on International Supplies of Goods and Services

There are two significant changes for non-residents doing business in Australia or supplying goods or services online to Australian consumers.

From 1 July 2017 (pending passage of Bill before parliament), low value goods (ie. goods with a value equal to or less than A$1,000) will be subject to GST. Where these are currently exempt from GST, the new rules will impose GST on all physical goods sold to consumers and imported into Australia. This means that GST will apply to all cross-border supplies of digital products and other services imported by Australian consumers.

This includes:

- services such as architectural or legal services;
- digital products such as streaming or downloading of movies, music, apps, games and e-books

This will require the supplier of these products or services to collect the GST from consumers, otherwise, they will be left footing the GST liability. It also poses a huge administrative issue as suppliers not currently registered for GST in Australia will now need to be registered in order to remit these amounts.

Additionally, from 1 July 2017, non-resident entities may need to register for goods and services tax (GST) in Australia if both of the following apply:

- It is carrying on an enterprise; and
- Its GST turnover from sales that are "***connected with Australia***" and made in the course of its enterprise, meets or exceeds the registration turnover threshold of A$75,000 (or A$150,000, for a non-profit body).

Essentially, a sale of something other than goods or property is ***connected with Australia*** if any of the following apply:

- the purchaser is an Australian consumer;
- the thing is done in Australia;
- an entity makes the sale through an enterprise that it runs in Australia; and
- the sale is of a right or option to purchase something that would be connected with Australia.

There is also going to be three types of GST registration available in Australia to non-residents. These are:

1. Simplified registration – for non-residents who are eligible and want to electronically register, report and pay quickly and easily (this is proposed to be online and ready by 26/6/17);
2. Full registration with an Australian business number (ABN) – for entities that make supplies connected with Australia, issue tax invoices, and are entitled to claim GST credits (current system);

3. Full registration without an ABN – for non-residents with an enterprise outside Australia that are not entitled to an ABN, do not make supplies connected with Australia, and are entitled to claim GST credits.

The Government has been declaring that it wants to target international sales to Australian consumers to level the playing field for Australian businesses. The changes discussed above seem to achieve this, at least in theory. However, the "proof will be in the pudding" when these measures are enacted from 1 July 2017 as to how these changes will be administered and enforced.

If you would like to more details of the above please contact Mimi Ngo.

MKT Webinars

Our latest webinars – WA State Taxes and Getting Funds and Assets out of a Company are available to download now from our website.

A reminder that PAN Member PD vouchers can be used to download our webinars. Please contact Nicola for the voucher codes or log in to the PAN Secure Zone on our website.