



DISCRETIONARY TRUSTS - Changes to CGT Concessions

The small business CGT concessions announced by the Government in 2004 have been enacted and have retrospective effect (from 21 September 1999).

The changes address concerns relating to the application of the \$5 million net assets test as it applies to discretionary trusts, in particular:

- Tax exempt charities/entities receiving distributions; and
- Potential beneficiaries being deemed to control the trust.

Charities

Charities that are contemplated as beneficiaries of a discretionary trust will be deemed not to be able to control the trust by reason that they are entitled to receive distributions from that trust. This means that, in terms of the \$5 million net assets threshold test, charities are no longer considered to be connected entities and are excluded from the threshold test - thereby making it easier for discretionary trusts to pass the net asset threshold test.

Other Potential Beneficiaries

For other potential beneficiaries under a discretionary trust, the net asset threshold test has been modified to consider only those entities that actually receive distributions of at least 40% or more of the income or capital of the trust. This means that, in terms of the net assets test, consideration will need to be focused on the actual entities which receive distributions from discretionary trusts rather than potential beneficiaries.

What do these changes mean?

These changes will diminish the need for the use of the Small Business Discretionary Trust (SBDT) as the net asset test will be assessed on actual distributions rather than potential beneficiaries. The need to limit the potential beneficiaries under a discretionary trust will be reduced to qualify for the small business capital gains tax relief.

We do not believe that the ACIS SBDT will be adversely affected by these proposed amendments. Both the SBDT Deed and the discretionary trusts amended by us to become SBDT's remain an effective tool to ensure that trustees do not distribute more than 40% of the trust's income or capital to a beneficiary who would otherwise prevent the trust from meeting the \$5 million net asset test.

Please call if we can be of any assistance.