

FINALLY, THE GOVERNMENT WILL REVIEW TRUST TAXATION

The Assistant Treasurer, Bill Shorten, announced on 16 December that the government would move to review the tax regime applying to trusts, in an effort to resolve the long-standing problems associated with differences in the accounting income and taxable income of trusts.

Of course, the accounting profession has (for many years) been lobbying for the government to address these differences, in order to provide certainty to the many thousands of small businesses, and others, who use trusts as a tax-effective vehicle.

Following the publication of the Henry Review and the ruling of the High Court in the Bamford case, the decision has now been taken to attempt to resolve these difficult issues. Indeed, without a wide-ranging review and legislated fix to the problems of trust taxation, the uncertainty was set to continue.

However, while it appears that a proposal to fix some current problems facing primary producers will be fast-tracked, there may yet be some time before we can expect a report from Treasury in relation to general trust taxation measures. No specific changes or timetable have yet been announced.

It is proposed that Treasury will release a consultation paper in the first half of 2011 with the aid of the Tax Design Panel and the Board of Taxation. We expect that, following consultation with industry, a final report and draft legislation will be made available for consideration.

It appears also that the proposals being pursued will exclude any consideration of recent ATO rulings dealing with unpaid trust entitlements. The Assistant Treasurer has also confirmed that there is no current proposal to tax trusts like companies.

Until this process has been completed, there remains a great deal of uncertainty surrounding the taxation of trusts.

In the intervening period, we believe it is still prudent for trustees of discretionary trusts to review their trust deeds to determine if:

- the trust deed contains an adequate definition of income and if the trustee can determine at any time what definition the trustee will apply;
- the trust deed contains a discretion for the trustee to determine the nature of receipts and expenses and whether they are applied to the income account or to capital account;
- the trust deed contains a power for the trustee to distribute specific categories of income to particular beneficiaries; and
- provisions in the trust deed may create loans where unpaid present entitlements exist.

If you have any queries or require trust deed amendments, please call toll-free on 1800-773-477.