

enews March 2011

TAXATION OF TRUSTS

The taxation of trusts is in a state of flux since the High Court's decision in Bamford, the Federal Courts decision in Clark's case and the Assistant Treasurer's recent announcement that the Government intends to amend the law so that we can "enjoy more certainty" in relation to the taxation of trusts.

Interestingly, the yet to be legislated changes will apply to this financial year. We have made a submission on the consultation paper released on 4 March 2011 and await with interest the draft legislation.

In the mean time we believe it is critical that three aspects of all trusts are considered before the end of this financial year. These are:

1. It is critical that trusts with capital gains have a definition of income. If a trust has no normal income capital gains will undoubtedly be taxed in the trustee's hands. Even if the trust does have normal income there is a risk that capital gains will still be taxed in the trustee's hands. The only way to overcome this is to have an income definition.
2. It is critical to have an income streaming clause if income streaming is intended.
3. It is critical to have a clause permitting the splitting up the expenses between the different classes of income if that is intended.

Given the uncertainty we believe income should be defined as taxable income less allowable deductions unless the trustee decides otherwise.

jmalegal | business lawyers

Cootamundra | 46 Cooper St, Cootamundra NSW 2590 | DX 5552 Cootamundra | T 02 6942 1655 | F 02 6942 3692
Canberra | 11/60 Marcus Clarke St, Canberra ACT 2601 | T 02 6243 3610 | F 02 6243 4848
Gundagai | 195 Sheridan St, Gundagai NSW 2722 | T 02 6944 1755 | F 02 6944 1850
Sydney | 3 Spring St, Sydney NSW 2000 | T 02 8249 4028 | F 02 8249 4872
www.jmalegal.com.au | Call 1800 618 869

Liability limited by a scheme approved under the Professional Standards Legislation

Disclaimer The information in this newsletter is general in nature and is not intended as legal advice.

You should not do or fail to do anything in reliance on information in it. We do not accept any responsibility for any loss that you suffer if you do.