Monthly Information Newsletter – Tax & Super

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Trusts – are they still worth it?

The recent ATO crackdown on trusts will no doubt have some business owners (and even some advisors) asking themselves the question: Is this structure for business purposes still worth it?

To recap, trust distributions have been under the ATO microscope in recent years. The latest ATO crackdown was in February 2022 when it updated its guidance around trust distributions especially those made to adult children, corporate beneficiaries and entities that are carrying losses.

Depending on the structure of these arrangements, the ATO may potentially take an unfavourable view on what were previously understood to be legitimate distribution arrangements. The ATO is chiefly targeting arrangements under section 100A of the Tax Act; specifically, where trust distributions are made to a low-rate tax beneficiary, but the real benefit of the distribution is transferred or paid to another beneficiary usually with a higher tax rate. In this regard, the ATO's Taxpayer Alert (TA 2022/1) illustrates how section 100A can apply to the quite common scenario where a parent benefits from a trust distribution to their adult children.

Despite this new ATO interpretation and the wider crackdown on trusts in recent years, the choice of a trust as a business structure still has a range of benefits including:

- ***Asset protection –*** limited liability is possible if a corporate trustee is appointed. Usually, when a person owes money and cannot meet the repayment requirements, the creditor can access the person's personal assets to recoup the debt payable. However, if a trust is in place, there is no access to beneficiary assets.

- ***50% CGT discount –*** A family trust receives a 50% discount on capital gains tax for profits made from selling any assets the trust has held for more than 12 months. This contrasts with a company structure. Companies cannot access the 50% CGT discount.

- ***Tax planning –*** Income that sits in the family trust that is not distributed by year-end is taxed at the highest income tax rate. However, any trust income distributed to the beneficiaries is taxed at the income tax rate of the beneficiary who receives the distribution. The way to definitely get around the ATO's aforementioned section 100A crackdown is to ensure the distributed money actually goes to the nominated beneficiary and is enjoyed by the beneficiary rather than another taxpayer.

- ***Carry-forward losses –*** A trust does not distribute losses to beneficiaries. This means the beneficiaries will not be called upon to contribute money to the trust to meet any loss. Instead, losses from each year can be carried forward to the following year, subject to certain conditions being met.

If you have questions around your trust structure, or your business structure more generally, touch base with us.