

### It's Tax Time Again

Another tax year has come and gone which means it is that time of year again to start putting together the information for your income tax returns.

Once you have gathered your information, please do not hesitate to give bTa a call to organise an appointment so we can attend to the preparation of your income tax return.

Alternatively, please do not hesitate to call bTa if you require assistance in putting together your information.

The bTa difference – providing your point of view.

The BTA Team

### Reminder of Lodgement Dates

21 July 2011 June 2011 monthly activity statement  
28 July 2011 June 2011 quarter superannuation guarantee contributions  
14 August 2011 PAYG payment summary report  
21 August 2011 July 2011 monthly activity statement  
25 August 2011 June 2011 quarter activity statement  
31 August 2011 TFN report for closely held trusts  
21 September 2011 August 2011 monthly activity statement

### GIC and SIC rates for quarter ended 30 September 2011

The ATO has advised that the General Interest Charge (GIC) and Shortfall Interest Charge (SIC) rates for the period 1 July 2011 to 30 September 2011 are as follows:

- GIC rate –12.00%
- SIC rate –8.00%

### Changes to the taxation of trust income (as a result from the Bamford Case)

On 16 December 2010, the Assistant Treasurer announced that the government would conduct a public consultation as the first step towards updating the trust income tax provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936* (Division 6) and rewriting them into the *Income Tax Assessment Act 1997*.

The Assistant Treasurer also announced that he would seek advice from the Board of Taxation (Board) on whether any issues about the operation of the trust income tax provisions needed to be addressed for the 2010-11 tax year.

On 4 March 2011, the government released a discussion paper that canvassed options to implement recommendations made by the Board to:

- better align the concept of 'income of the trust estate' with 'net income of the trust estate'
- enable streaming of capital gains and franked distributions.

Concerns were raised regarding the challenge of successfully implementing the proposal to better align the concept of 'income of the trust estate' with 'net income of the trust estate' for the 2010-11 income year.

---

The government decided to defer consideration of the income alignment proposal until the broader update and rewrite of Division 6. However, it was aware that if the alignment problem was not addressed, opportunities for tax manipulation would continue to exist until the rewrite became law.

To address these opportunities, the government announced that it would introduce specific anti-avoidance rules to target use of exempt entities to inappropriately reduce the tax payable on the taxable income of a trust.

On 29 June 2011 *Tax Laws Amendment (2011 Measures No. 5) Act 2011* received royal assent. This Act enables streaming of franked dividends and capital gains for tax purposes, as well as introducing targeted anti-avoidance rules.

### **Administrative arrangements**

The Commissioner recognises that the passage of this legislation so close to the end of the income year to which it will first apply gives trustees and practitioners little time to familiarise themselves with its content and to determine how it might affect the circumstances of a particular trust for that income year (that is, the 2010-11 income year).

Therefore, following representations from practitioners, and in recognition of the practical difficulties faced by them and by trustees as a result of the timing of the new law, the Commissioner will put in place the following administrative arrangements for the application of the new law to the 2010-11 income year.

### **Specific entitlement to franked distributions**

In order for a beneficiary to be specifically entitled to a franked distribution of a trust, the beneficiary's entitlement to the franked distribution must be recorded in the accounts or records of the trust no later than the end of the income year.

However, as regards the timing of recording such an entitlement for the 2010-11 income year, the Commissioner has agreed to adopt a

similar approach to that set out in Income Tax Rulings IT 328 and 329 in respect of 'present entitlement' to trust income.

That is, for trusts with a 30 June balance date the Commissioner will accept that a relevant record made in respect of a franked distribution by 31 August 2011 meets the requirements of the new law for the 2010-11 income year in any case where ITs 328 and 329 would permit the trustee to take steps within that same period to make beneficiaries presently entitled to trust income for the purpose of Division 6.

As the new law will permit relevant records to be made for capital gains no later than two months after the end of the relevant income year, there is no need for this arrangement to be extended to a beneficiary's specific entitlement to capital gains.

It should be noted that the arrangement outlined above concerning a beneficiary's specific entitlement to franked distributions will apply only for the 2010-11 income year. Further, the Commissioner intends withdrawing ITs 328 and 329 for the 2011-12 and later income years.

### **Compliance action**

The ATO will not select cases for review or audit in respect of the 2010-11 income year for the sole purpose of determining whether the purported streaming of capital gains or franked distributions by a trustee is effective.

This instruction will not apply where there has been a deliberate attempt to exploit weaknesses or deficiencies in the law. In those cases we will apply the law as we understand it to operate.

### **What does this mean for family trusts?**

With the changes that the Bamford case has brought, a review of the trust deed may need to be undertaken to see whether the trust deed complies with these new trust rules.

Please do not hesitate to contact us for further information on how these changes will apply to you.