

## Changing rules for trusts

A lot of family businesses use discretionary trust structures. These have been popular because they provide both a level of risk management, separating the business from your personal assets, and are also quite tax efficient. A discretionary trust allows the trustee to appoint the income of the trust (this is typically the profit of the business) to any of its beneficiaries in the proportions that it determines from year to year.

The entitlement of the beneficiary is not fixed, rather it is a decision of the trustee each year. Normally the trustee is either the key person in the business or a company controlled by this person. In a typical family situation, Mum and Dad may be the trustees or directors of the trustee company. Using this structure business owners have the flexibility to distribute income in the most tax efficient way. None of this has changed.

A common technique employed by a lot of trusts was to appoint some of the income **to a related company**. Normally, this was done where the other beneficiaries had received income for the year that would take them past the 30 cent in the dollar tax rate and by appointing this excess income to a company the family could limit its immediate tax cost at 30 cents in the dollar.

It was also common for trusts to appoint this income to the company but perhaps **not pay all or any of this income over to the company**. It created a debtor creditor relationship between the company and trust which is **called an unpaid present entitlement**. This simply means that the company is entitled to the money but it was not paid at the time.

Apart from limiting the amount of tax payable the main **reason** for employing this technique was because often the **profits of the business had not fully realised into cash**. Most businesses find that some of their profits can be tied up in stock, debtors, or other working capital. The profit has been made; it is just not cash in the bank at the end of the financial year. And, practically, you can't pay out profits that haven't turned into cash. Sounds sensible to most of us but the Tax Office don't see it that way.

Last year the Tax Office announced that where there is an unpaid present entitlement between a trust and a company beneficiary that continues past the financial year, they will treat this as a loan from the company back to the trust. The implication of this is that it could trigger Division 7A of the Tax Act and **cause the amount to be a deemed dividend**. In most cases you want to avoid this situation. Income appointed by a trust to a company after 16 December 2009 is affected by these new rules (and could affect your 2010 income tax return).

Many small businesses have used this strategy as a way of managing their tax and cash flow position and dealing with the differences between their accounting profits and available cash. There are still a number of options available to you in how you manage this situation.

*If you operate your business through a trust and have used a related company as a beneficiary, call us to discuss what needs to change and review your tax strategy and position.*

*We look forward to being of Service – helping you towards  
Prosperity & Peace of Mind*

Please do not hesitate to contact us if you would like to review & discuss your current property & tax situation, your asset protection strategy, structuring your next investment property, planning to legally minimise your tax position or just to prepare your next tax return.

We look forward to being of service. We also look forward to your referrals.

To improve our service we welcome all constructive comments on this newsletter and other materials.

For help contact **Shukri Barbara** at Property Tax Specialists at [Shukri@propertytaxspecialists.com.au](mailto:Shukri@propertytaxspecialists.com.au)

---

### **Help available**

To make the compilation & reporting task for tax returns easier, clients of **Property Tax Specialists** received checklists and templates to facilitate the process ... **saving them time and money** ... the 'write' way is having clear **documentation**. ATO way means time/money wastage with possible audit investigation.

If you need help contact Shukri Barbara at Property Tax Specialists at [Shukri@propertytaxspecialists.com.au](mailto:Shukri@propertytaxspecialists.com.au)

---

### **Disclaimer**

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

Acknowledgement - parts of this newsletter have been taken from KnowledgeShop Pty Ltd client newsletters. Barbara & co – Property Tax Specialists is a member of the Knowledge Shop and Hayes Knight Network

---

Kind Regards  
Shukri Barbara

---

Property Tax Specialists – [Prosperity & Peace of Mind](#)  
Barbara & Co cpa

phone 02 9411 8133  
fax 02 9412 2833  
mobile 0410 588 305  
post: P.O.Box 665 Chatswood NSW 2057  
office  
Level 5

suite 509, 71-73 Archer Street  
Chatswood NSW 2067  
website [www.propertytaxspecialists.com.au](http://www.propertytaxspecialists.com.au) <<http://www.propertytaxspecialists.com.au>>

---

"Liability is limited by a Scheme approved under Professional Standards Legislation"

---