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VICCA NEWS

HOW WILL THE 30% MINIMUM TAX ON DISCRETIONARY TRUSTS WORK

Firstly, the start date: 1 July 2028 (requires Legislation to be passed by Parliament) and the devil will be in the detail. Secondly, the Federal Election will be due on or before May 2028. The incumbent Government has time to decide the finer details of how this Budget Reform will ultimately apply.

Key Points:

a) The trustee pays a 30% minimum tax on the trust's taxable income as a separate liability.
b) Beneficiaries continue to be assessed on trust income in their own Tax Returns at their marginal rates, but receive a non-refundable tax credit for the trustee-level tax.
c) If the Beneficiary's marginal rate exceeds 30%, they pay top-up tax. If it is below 30%, the excess credit is lost — it cannot generate a refund. This is a critical point.

Asset Protection Trusts: Shareholder trusts that sit at the top of Corporate Structures.

Individual Beneficiaries:

How it Works Now:

The trust earns a Shareholder Dividend of $100 from Dividends representing $70 cash and the $30 in Franking Credits. It passes the $70 cash and the $30 credit through to a Beneficiary. The Beneficiary includes $100 in their Tax Return ($70 cash + $30 credit), works out their tax, and uses the $30 credit to reduce what they owe the ATO. If they are on a low tax rate and do not owe $30 in tax, **they get the leftover back as a refund**. The Franking Credit is fully refundable — no money is wasted.

Proposed Operation:

The trustee pays a 30% minimum tax on the trust's taxable income as a separate liability. Individual Beneficiaries continue to be assessed on trust income in their own Tax Returns at their marginal rates, and they now receive a non-refundable tax credit for the trustee-level tax. If the Beneficiary's marginal rate exceeds 30%, they pay top-up tax. If it is below 30%, **the excess credit is lost — it cannot generate a refund**. This is a critical difference from the current system.

Corporate Beneficiaries:

Under the same scenario per above, where a family groups 'Asset Protection Trust' distributes trust income to a private company, under the new rules, the trust has already paid the 30% first, and the company now receives a distribution of the $70, but it receives **no credit at all** for that tax. The company then pays its own 25–30% tax on what it receives. So, the same income gets taxed twice. Effective Tax Rate thus far of 51%, that is prior to a distribution to an Individual Shareholder who is then subject to Top Up Tax, there will be up to 62.9%–69.7% tax paid on ultimate distribution to an individual.

Trading Trusts

Individual Beneficiaries:

The Taxing Regime is as per under Asset Protection Trusts.

The trustee pays a 30% minimum tax on the trust's taxable income as a separate liability. Individual Beneficiaries continue to be assessed on trust income in their own Tax Returns at their marginal rates, and they now receive a non-refundable tax credit for the trustee-level tax. If the Beneficiary's marginal rate exceeds 30%, they pay top-up tax. If it is below 30%, **the excess credit is lost — it cannot generate a refund**.

Company Beneficiary – Bucket Companies:

Where income flows through from a trading trust (to a Company Beneficiary (bucket company): the trust first pays 30%, and the bucket company **gets no credit at all** for that tax. The company then pays another 25–30% on the remaining 70%, producing an effective rate of 51% at the corporate level and up to 62.9–69.7% on ultimate distribution to an individual.

Company Beneficiaries receive NO credits at all — this is a deliberate anti-avoidance measure targeting bucket companies.

Operational Question to be Resolved:

When is the Tax Credit available: EXAMPLE 2029 Tax Return (i.e. 01/07/28 to 30/06/29)

i. Tax is paid say May 2030
ii. The Beneficiary's Tax Return is due October 2029 (i.e. because it was lodged late in the previous year)

How and when in a normal year is the Tax Credit available, only when paid? Is a credit carried forward if the Beneficiary Tax Return is lodged before the Trust Return? If the Beneficiary Tax Return is lodged before the Trust Tax Return is the credit offset available by way of an amended Beneficiary Tax Return? These are just a few thoughts on unresolved tax questions that will come from the industry.

Closing Comment on the proposed Taxation of Asset Protection Trust:

Shareholder Trusts that sit at the top of Corporate Structures, generally speaking where they merely pass income through to Individual Beneficiaries, the only change is the ability to generate a refund at an Individual level. This will directly affect some self-funded retirees who rely on the dividends to generate a Tax Refund.

At this stage until the rules are clarified, passing distributions to a Corporate Beneficiary, even to simply acquire a lifestyle asset, will create a new taxing point. Hence Trust distributions of any form to Corporate Beneficiaries post 1 July 2028 is fraught with danger.

Until then, subject to Bank Covenants, there may be situations where the stripping of dividends through Asset Protection Trusts to Corporate Beneficiaries or interposing a corporate entity between the trading company and the ultimate Shareholder Trust, may allow for Asset parking/protection and Tax deferment, however inconsistent Stamp Duty laws across States is an issue.

There is no one size fits all, each family group is different, and each has different needs, hence any restructure decision will be on a case-by-case basis.

There is time. PM Albanese's desire to go down in history with a successful third term may cause him to compromise between now and 1 July 2028. Time will tell.

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