

CHANGES TO THE TAXATION OF TRUSTS FOLLOWING BAMFORD

The High Court decision in the case of *Deputy Commissioner of Taxation v. Bamford*, in March 2010, highlighted inconsistencies in the way that the amounts on which a beneficiary under a trust is assessed for tax do not always match the amounts to which they are actually entitled by way of a distribution from the trust.

The decision also discussed the "proportionate" approach to taxation of trust income, and held that the amount to be included in a beneficiary's assessable income is the proportion of the income of the trust estate to which the beneficiary is "presently entitled", applied against the whole of the trust's taxable income. This means that the beneficiary could be taxed on a combination of income and capital gains.

The relevant law has now been changed. For trusts with a 2010/2011 income year starting on or after 1 July 2010, the changes apply from the start of the 2010/2011 income year. If the 2010/2011 income year started before 1 July 2010, the trustee could elect, by no later than 29 August 2011, to apply the changes for the 2010/2011 income year. Otherwise, the changes commence from 2011/2012 income year.

To a certain extent, whether or not the new rules apply depends on the terms of the trust deed. If the deed permits it, either expressly or by implication, the trustee can, in effect, allocate capital gains and franked distributions to particular beneficiaries. If a franked distribution is made to a particular beneficiary, that beneficiary can also claim the benefit of any franked credits paid.

If there are capital gains or franked distributions to which no beneficiary is specifically entitled, they will be allocated proportionally to beneficiaries based on their present entitlement to income from the trust.

The details of the changes can be found at www.ato.gov.au/content/00285130.htm

Trust law, and in particular the taxation provisions, can be complicated. Please contact us on 3849 6263 or by email at reception@oneillslawyers.com.au if we can be of any further assistance.