PITCHER PARTNERS

Trust distribution considerations

National Tax Group

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Pitcher Partners Advisors Pty Ltd
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Pathway

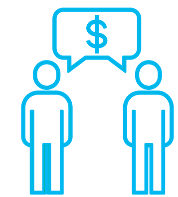
Pathway

Roles and responsibilities ***Year end processes*** ***Settlement***

Owies v JJ Nominees Pty Ltd [2022] VSCA 142

*‘one cannot ordinarily decide a question of fact in good faith and give it **real and genuine consideration** without conducting some investigation and in some cases that will entail making an inquiry of a person who is willing to provide information and is in the best position to do so. It is not a matter of natural justice but bona fide inquiry and genuine decision making’*

Pathway



Roles and responsibilities

Distribution decisions are ultimately a matter for the trustee

Advisors to provide assistance as and when required

Year end processes

Forecast financial and tax position

Understand beneficiary needs

Document final decisions

Settlement

Notify beneficiaries

Understand how entitlements are to be dealt with

Effecting trust distributions

Trust deed

What is required for an effective decision?

WATCHOUT
Notional income (franking credits, MVSR) can't form part of distributable income

Who	are intended recipients eligible beneficiaries?
What	is ***distributable income*** defined? • Does the trustee have power to alter how distributable income is calculated? • Does exercise of that power require approval of an appointor, guardian or protector?
When	is the decision on the allocation of distributable income required to be • Made by a certain date? • In writing? • Approved by an appointor, guardian or protector?
How	• Determine pay or apply • Does the deed provide for / prohibit streaming? • If capital gains are not included in distributable income, what are the requirements for distributing capital?

Tax considerations

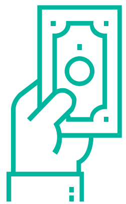
Tax considerations

Key year end considerations

Usual considerations include		
Trust loss provisions Income injection test, FTEs and IEEs	Flow through franking credits and the qualified person rules	Division 7A

Tax considerations

Trusts under the spotlight



SECTION 100A

COT V Guardian AIT Pty Ltd ATF Australian Investment Trust

[2023] FCAFC 3

BBlood Enterprises Pty Ltd v CoT

[2022] FCA 1112

PART IVA

Minerva Financial Group Pty Ltd v CoT

[2022] FCA 1092

COT V Guardian AIT Pty Ltd ATF Australian Investment Trust

[2023] FCAFC 3

Tax considerations

Section 100A – green zone scenarios

Broadly, two primary categories of green zone

Used by beneficiary, spouse and dependents

Funds paid to the beneficiary (within two years)

and

used to benefit the beneficiary, their spouse and their dependents.

Includes

- purchase goods or services,
- meet liabilities or expenses,
- invested for the beneficiary, spouse or dependents
- Can be flowed through as dividend or distribution

Retention by the trust

Distributed to certain beneficiaries only

and

Used for one of three listed purposes

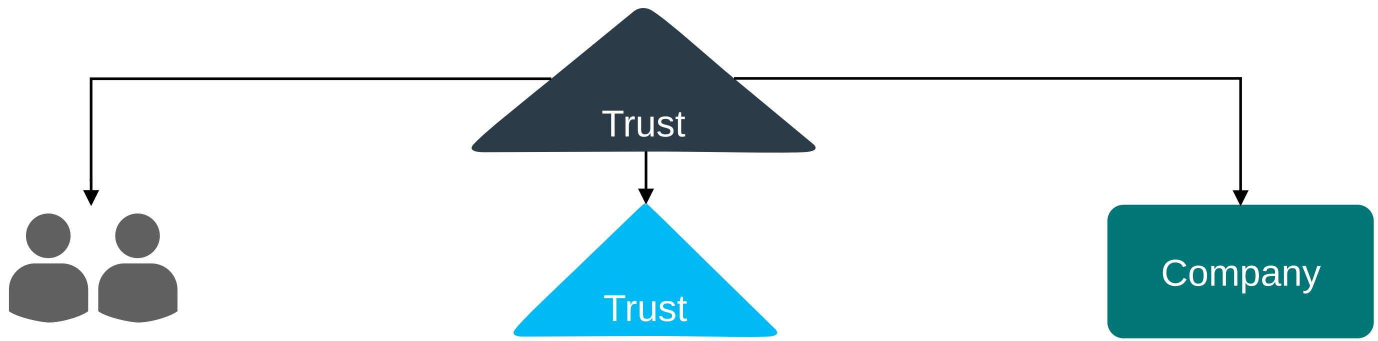
Note: UPE to company/trust must be on Division 7A terms

WATCHOUT

Beneficiary **must be notified** of entitlement and **income reported** in tax return (if required)

Tax considerations

Section 100A – trustee retention



Individual (or spouse) must control the trust or manage the trust's business

Member of the same family group (if FTE), else controlled by controller of trust and **UPE on section 109N complying terms**

Use of funds includes		
Working capital	Acquisition, maintenance or improvement of investment asset (incl. servicing of debt)	109N loan to entity within same family group **where borrower uses for one of above two purposes**

Tax considerations

Section 100A – red zones

SCENARIO 1	Present entitlement to individuals who gift or lend some or all their entitlement to another
SCENARIO 2	Arrangements where distributable income is returned to the trust by the beneficiary in the form of assessable income
SCENARIO 3	Beneficiary is issued units in the trust (or a related trust) with the amount owed for the units set-off against the beneficiary's entitlement (where market value differs or trustee exercises unilateral right)
SCENARIO 4	Arrangements where beneficiary's share of net (tax) income is significantly more than share of distributable income due to contrivance
SCENARIO 5	Arrangements involving a beneficiary with losses where economic benefit associated with distribution not utilised by beneficiary
SCENARIO 6	Arrangements subject to a Taxpayer Alert

Tax considerations

Section 100A

Arrangements will not be low risk if they involve			
Gifting	**Tax preferred beneficiaries**	**Circularity**	**Contrivance**
Gifting of entitlement (to trustee or other entity)	Non-resident shareholders	Dividend set off	Exploiting differences in book-to-tax
Forgiveness of entitlements	Loss companies (that don't receive the benefit of the distribution)	Circular trust distributions	

Tax considerations

Not in the green zone? What now?

Need to risk assess against the following principles

- Is a benefit provided to a person other than the beneficiary?
- Does the provision of that benefit involve complexity or contrivance?
- Could that benefit have been provided in a more direct manner?
- Does the arrangement result in significantly less tax being paid compared to if the benefit had been provided more directly?

It is imperative that you understand the risk rating that applies

Key takeaways

Key takeaways

Client responsibilities

ATO activities

Trusts under scrutiny

Success with anti-avoidance provisions

Consider restructuring options

Expect increased compliance costs

Q&A

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