

Small-to-medium sized businesses in trusts may be forced to restructure

The Federal Government & the Australian Taxation Office (ATO) continued to alienate themselves from the business sector last week with the Tax Office releasing its final ruling on discretionary trusts distributing surplus income to corporate beneficiaries.

This means that some trust distributions may be recorded as a deemed dividend for Div 7A purposes. Accordingly, these deemed dividends may be taxed at 46.5 % instead of the corporate tax rate of 30%.

From a business perspective where businesses are owned by a family trust (one of the most common ownership structures for SMEs in Australia), profits that have previously been reinvested for capital expenditure, expansion and debt reduction may now be taxed at the 46.5% penalty tax rate.

The ATO has adopted this approach despite objections from accountants representative bodies. The implications for the SME sector already struggling in a stimulus free trading period, for job opportunities within the sector and for a recovering economy are patently obvious. Further, it casts doubt over strategic planning for the SME sector where, advice on structuring for a SME given in November, 2009 will be vastly different to that given post last weeks ATO announcement.

Worse still, since the draft ruling in November, 2009, there have been numerous submissions to the ATO and articles written outlining all of the reasons the ATO position is wrong under the law. Accountants therefore suspect that at some stage this issue will be decided by the courts which, in the meantime, means that the SME sector continues to struggle under this period of uncertainty.

The logical outcome from the ATO position is that an already struggling SME sector may need to under go a costly restructuring process to enable it to meet changing capital expenditure needs, employ Australians and compete in the commercial market place.

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