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**TAXATION &
ACCOUNTING**

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DO YOU NEED TO AMEND YOUR TRUST DEED?

Some Trust Deeds may require amendment to allow for flexibility in the meaning of trust income as well as the determination and distribution of trust income to selected beneficiaries.

Most importantly Deeds that do not define trust income to equate to net income for tax purposes should be amended to enable the determination of distributable trust income for the 2013 year to equate as close as possible to the trust's net income for tax purposes. This will assist in the drafting of the Trustee Distribution Resolution, as well as the subsequent reporting obligations for the trustee in the 2013 tax return.

Deeds that do not allow the separate classification and streaming of capital gains and/or franked dividends require amendment to ensure that trustees can access the tax streaming rules. The creation of certain categories of income and the ability for trustees to apply receipts and payments to these various categories of income or capital would also be beneficial.

Furthermore, where a Deed dictates distribution or entitlement dates on a date before 30 June of each year, say 29 June or one day before the end of the accounting period, these Deeds will require amendment to ensure that entitlements do not arise as at these dates merely as a result of the Trustee not making an appropriate resolution before that date.

At [Firm Name] our view is that until the current Government review of the taxation of Trusts is complete, (which will in all likelihood require wholesale amendments to Trust Deeds) trustees should consider only those specific amendments noted above, and if their Deed's adequately deal with these areas, we believe you can hold off on undertaking amendments given the further changes that are expected to occur.

Of course [Firm Name] strongly recommend suitable legal and tax advice is sought in undertaking any amendments to a Trust Deed and we can assist you in that regard.

Accountant's Note

Trust Reviews and amendments must be completed before 30 June 2013 in order for the changes to be valid for the 2013 financial year. Ideally this should be considered together with the drafting of year end Trustee Resolutions from April/May 2013, and is best done in conjunction with your 2013 interim financials as part of your year-end review.

AM I A SHARE TRADER?

Australia has one of the highest levels of share ownership in the world and indeed many of our clients acquire shares as a means of supplementing their other income. The tax treatment though, of shares bought, sold and held can differ depending upon whether you are considered a share trader, an investor or a speculator.

A share trader is considered to be carrying on a business of share trading, which means the shares are trading stock, with the purchase of those shares being deductible and the sale of those shares being assessable as business income. An additional consequence is the ability to re-value shares on hand at the end of a financial year at the lower of cost or

their market value. In effect this allows share traders to reduce their share trading income by the amount of any unrealised losses they have within their trading portfolio. That is, you can get the tax benefit of the loss without having to sell the shares.

The ATO, as you would expect, take a strict view on whether a taxpayer who buys and sells shares does so as a share trader and applies the various guidelines developed over the years as to whether a taxpayer is carrying on a business or merely, holds shares for long term investment or shorter term profit speculation.

Factors such as:

- The repetition and regularity in the buying and selling of shares;
- The actual turnover for the year;
- Whether the taxpayer is operating to a plan, setting budgets and targets and keeping records;
- The capital employed and the source of that capital;
- The time spent, equipment used and research referred to in the share activities; and
- Whether the taxpayer has another full time occupation,

will be queried and considered by the ATO in determining whether you are, in fact, a share trader. We are aware of an increased focus from the ATO on share traders, especially given the turbulent nature of the share market in recent years.

AMENDMENTS TO REVENUE ASSET & TRADING STOCK ROLL-OVERS

In the 2011-12 Federal Budget, the Government announced a series of minor amendments to the income tax law to ensure the proper functioning of capital gains tax (CGT). The amendments ensure that the roll-over for the exchange of shares in one company for shares in another company operates properly so that if the original shares are held on revenue account at the time of the exchange, the profit or loss will be deferred. This change will have effect from 10 May 2011.

As part of the Mid-Year Economic and Fiscal Outlook, the Government announced further amendments to make it easier for unit trusts to restructure their affairs in cases where they interpose a company, so that taxpayers hold shares in the company rather than units in the trust. The Government will do this by allowing taxpayers who hold units in the trust as revenue assets or trading stock to defer the realisation of a profit or loss on their units until they dispose of the replacement shares. This measure will have effect from 7.30pm (AEST) on 10 May 2011.

In the 2012-13 Budget, the Government announced further changes to broaden the scope and ensure the efficient operation of the revenue asset and trading stock roll-overs for the exchange of:

- shares in one company for shares in another company
- units in a unit trust for shares in a company.

These changes will apply from 8 May 2012, however full details have yet to emerge.

CHRISTMAS MESSAGE

From all of the team here at GM Taxation and Accounting we wish you and yours a very Merry Christmas and a Prosperous New Year and thank you again for your support throughout 2012.