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FAMILY TRUSTS

Time to get some timely advice



If you have a family trust there are two recent major (very major) things that have happened that will affect the way they will be taxed in the future.

About this newsletter

Welcome to the Maroulis & Co client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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The first is the announcement in the Budget that trust income will now be taxed to the trust at a minimum rate of 30% regardless of how it is ultimately distributed to beneficiaries.

However, under the proposed measures, individual beneficiaries to whom that trust income is later distributed will get a credit for the tax paid by the trust to prevent double taxation. But a credit will not be available where this trust income is distributed to a corporate beneficiary.

These measures are due to start on 1 July 2028 but no doubt will be subject to tremendous scrutiny in the meantime before any final legislation is passed.

Nevertheless, it is never too early to start looking at things and making some plans.

The other major thing that happened that affects family trust was a decision of the High Court in *Bendel's* case. And that decision applies immediately.

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In that case the High Court ruled that where a corporate beneficiary of a trust is made entitled to trust income, but this income is not paid over to them, then the ATO cannot say that this is a taxable dividend paid back to the trust from the company.

Rather, in this case, where the income is "set aside" for the corporate beneficiary and retained by the trust (ie where an "unpaid present entitlement" arises) there will be no income tax consequences for the trust and the ATO cannot claim that a "deemed dividend" has arisen.

However, it seems that this decision is dependent on the corporate beneficiary not calling for this debt owed to it to be paid.

Also, in the light of this case, it may be that you are entitled to an amended assessment and a refund of tax if the ATO has now wrongly applied these "deemed dividend" rules in the past few years.

It should also be emphasised that the proposed Budget changes to taxing trust income will presumably make distribution of trust income to corporate beneficiaries no longer viable or tax effective (if the Budget measures proceed in their current form).

In any event, regardless of how the Budget reforms for trust income pan out, it is the time to come and speak to us about how your family trust operates so that you can be satisfied that all bases have been covered - and all possible impacts planned for (as far as possible).

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New Tax Legislation

When to Realise a Capital Gain



With the Budget changes now legislated, perhaps it's time to consider more closely how they may affect you, and what you can do about it – especially in relation to the CGT discount changes.

So, looking at the CGT discount first, if you already own an asset you won't be denied whether or not you sell before or after the key changeover date of 1 July 2027.

If you sell before that date, you will continue to get the full 50% CGT discount (provided you are and have been a resident of Australia for tax purposes) .

If you sell on or after that date, you will continue to get the full 50% CGT discount up to its market value on 1 July 2027 and for any gain that accrues thereafter

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you will be subject to the indexation method of calculating your gain (and the new minimum 30% tax rate).

In short you won't be really penalised if you own an asset now and sell before or after that key date you will still get the discount up to that date.

But then you will be subject lo the new indexation method of calculating any gain and, more importantly, the new minimum 30% tax rate.

And that is where you may get penalised.

Therefore, if you are looking at realising a gain on an asset (eg shares) in an income year when you have little or no other assessable income so that your capital gain will get taxed at less than the 30% marginal tax - then you may want to think of doing that before 1 July 2027... because after that the minimum 30% tax rate will be imposed on your "raw" capital gain.

It's a simple bit of planning but invaluable (assuming in the year ending 30 June 2027 you can order things in a way to reduce your normal taxable income).

So come and have discussion with us about this – before perhaps you lose the opportunity to do something advantageous.

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Foreign Residents cannot get a CGT exempt home

If you are a foreign resident for tax purposes when you sell your Australian home, you cannot claim the usual capital gains tax exemption on it. This applies no matter how long you lived in the home. It applies even if you were only a foreign resident for a short time before the sale.

And there is no apportionment. It is an all or nothing thing. And what's more your capital gain will not be entitled to a full CGT 50% discount (under the current rules). Rather, you will only get an apportionment for the time you were a resident.

And to make matters worse you will be taxed on the gain at higher foreign resident tax rates.

Oh, and because the home is real property in Australia, it will be easy for the ATO to chase things up and capture the sale transaction through its data matching processes and matching that with, say, your new foreign address.



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So, its important to get things right if you are going to become a foreign resident and you intend to sell your home. And don't forget, the time of the sale is when you make the contract of sale (ie exchange contracts) and not when you settle on the sale.

However, there are several important exceptions to this rule

The first, involve where a person has been a foreign resident for less than 6 years and they sell the home because of serious illness or a death in the immediately family (as such "life event" exceptions are strictly defined in the legislation).

There is also another important "life event" exception and that is where there is a marriage or relationship breakdown within 6 years of becoming a foreign resident and the CGT rollover for this relationship breakdown would be available.

But even in this case, the exception operates on a narrow basis.

It only applies if one of the spouse's interests in the home is transferred to the other spouse and, further, this transaction would be entitled to the CGT rollover under the relevant means set out in the legislation.

However, it must be stressed that this exception does not apply if there is a marriage or relationship breakdown and the former home is sold to a 3rd party as part of the settlement of matters. This is simply because the CGT rollover would not apply in this case, as it only applies to appropriate transfer of assets between the spouses – and not to third parties!

So, it's a big trap to be aware of – especially in circumstances where say a separating spouse leaves the country to start a new life without yet dealing with the former matrimonial home.

If you find yourself in this type of situation, please speak to us before you head overseas – so something can be arranged before you become a foreign resident. It may be too late otherwise.

Likewise, come and speak to us if you are ensure what your residency status will become – as this is the crucial variable

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High Court rules unpaid trust amounts are not loans

What this means for you

If your family trust gives a company a share of trust income but does not actually pay it across, the High Court has confirmed this is not automatically treated as a loan back to the trust. That matters, because being treated as a loan could trigger an unexpected tax bill under the rules known as Division 7A.

The background

Many family trusts distribute income to a related company, often called a "bucket company", but leave the money sitting in the trust rather than paying it over. When income is owed to a beneficiary but not yet paid, it is called an unpaid present entitlement, or UPE.

For about 15 years the ATO took the view that if the company did not call for its money, the unpaid amount worked like a loan from the company back to the trust. On that view, the arrangement could be taxed as if a dividend had been paid, unless the trust put a formal loan agreement in place and made regular repayments.

The Bendel case put that view to the test. A trust controlled by Mr Bendel set income aside for a related company year after year. The company never asked to be paid, and the funds stayed in the group. The ATO assessed the unpaid amounts as loans and taxed them.

What the High Court decided

On 10 June 2026 the High Court ruled in favour of the taxpayer, by a five to two majority. It found that simply leaving an entitlement unpaid is not a loan.

The key point is that a loan needs an obligation to repay money that was advanced. Here, the company had not advanced anything. It had simply chosen not to call for what it was owed. Doing nothing, the Court said, is not the same as making a loan or providing finance. The unpaid amount remained the company's entitlement, but it did not become a debt the trust had to repay until the company actually asked for payment.

In short, the long-standing ATO position has been overturned.

The ATO's response

The ATO has said it welcomes the clarity and is considering what the decision means. It will release further guidance for affected taxpayers as soon as it can.

Where this leaves you

This is a helpful outcome, but it does not mean unpaid entitlements can be ignored. The result turned on the specific wording of the trust deed and the fact that the company never called for payment. Other tax rules can still apply, and how the decision affects your trust will depend on your own arrangements.

There is also a longer-term question mark. The Government has proposed taxing trust income at a minimum rate from 1 July 2028, which could reduce the appeal of distributing income to companies in any case.

If your trust uses a bucket company, please speak to us so we can review where you stand.

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Borrowing in your SMSF: *what is changing*



Self-managed super funds are generally not allowed to borrow money. A limited recourse borrowing arrangement, or LRBA, is one of the few exceptions. It lets a fund borrow to buy a single asset, with the lender's rights limited to that asset alone. If the loan goes bad, the lender can take the asset but cannot touch the rest of the fund. That protection is what makes the arrangement attractive to many trustees.

How an LRBA works

Under an LRBA, the borrowed money is used to buy one asset, which is held in a separate holding trust until the loan is repaid. The fund makes the repayments and, once the loan is paid off, takes full ownership of the asset.

The law allows a fund to borrow for a single acquirable asset, or for a parcel of identical assets that have the same market value. A common example is a parcel of shares. The fund can use an LRBA to buy shares, but they must all be in the same company. A bundle of different shares does not qualify, because that would be more than one asset.

What is changing

A new law will soon restrict what an SMSF can borrow to buy. Once it takes effect, a fund will no longer be able to use an LRBA to acquire residential property.

This is a significant change. Residential property has been one of the most popular uses of LRBAs, with many funds borrowing to buy a house or unit as a long-term investment. That door is closing for new arrangements.

What you can still borrow for

LRBAs are not being abolished. A fund will still be able to use one to buy business real property, broadly meaning land and buildings used wholly and exclusively in a business. This might include a commercial premise. A fund will also still be able to borrow to buy a parcel of identical shares or other listed securities, provided they are all the same. Units in a managed fund remain available too, again as long as the units are identical, being the same class in the same fund. So the change is targeted. It removes residential property from the list, while leaving genuine business premises, shares and managed fund investments available.

When the change starts

The restriction applies from 10 August 2026.

Importantly, arrangements already in place are protected. If your fund entered into a borrowing arrangement before the start date, it is not affected. Refinancing an existing loan is also allowed. And if your fund has signed a contract to acquire an asset before the start date, that arrangement is not impacted even if settlement happens afterwards.

What this means for you

If you are considering using an LRBA to buy residential property, timing matters. Once the change commences, that option is gone for new arrangements. If a commercial property or share investment is part of your plan borrowing will remain being available.

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The new 30% minimum tax on capital gains: what it means for self-funded retirees



The Government has legislated major changes to capital gains tax (CGT). From 1 July 2027, the 50% CGT discount for individuals, trusts and partnerships will be replaced. In its place comes cost base indexation and a new 30% minimum tax rate on capital gains.

How the 30% minimum tax works

Under the current rules, you pay tax on only half your capital gain on assets held for more than 12 months, with that half taxed at your marginal rate.

The new rules work differently. The 50% discount is removed but your cost base is lifted for inflation. So you only pay tax on the real gain. Then a floor applies to the rate of tax. Even if your marginal rate is below 30%, your real capital gain is taxed at a minimum of 30%.

The measure applies to assets held for at least 12 months. It also brings pre-1985 assets into the net for gains accruing after 1 July 2027. Your family home stays exempt. Super funds are not affected and keep their existing discount.

Why it matters for self-funded retirees

The minimum tax is aimed at people who sell assets in low-income years. Retirement is the obvious example. Many self-funded retirees have little taxable income. They often plan to sell shares or property in retirement, when their marginal rate is low. The new rules take much of the value out of that plan. A retiree with a marginal rate of 16% would still pay 30% on a real gain. That is close to double the tax on the same sale today.

Age pensioners are exempt

There is an important carve-out. The Treasurer has confirmed that recipients of certain government payments, including the Age Pension and JobSeeker, will be exempt from the 30% minimum tax. Pensioners would keep being taxed at their marginal rate.

A word of caution on the pension

The Age Pension is means tested. To qualify you must pass both an income test and an assets test. You must also meet the age and residency rules.

If the pension is part of your plan, a few points help. Know the assets test thresholds and where you sit against them. Remember your home does not count as an asset. Watch the gifting rules, as you cannot simply give assets away to qualify. And think carefully about the timing of any large sale.

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