Important EOFY actions

2019-20 has been an unusual year. This year, more than ever, we want to ensure that we help you reduce your tax exposure and minimise the risk of an audit by the regulators. This end of financial year update outlines the actions to take to do exactly that:

We want to help you achieve the best result for you and the trust. If there is any additional assistance we can provide, or if you would like us to review your situation, please call us on 03 9870 7247 or e-mail admin@stoneaccountants.com.au.

Stone Accountants & Advisors

In brief

Date	Changes and actions
Pre 30 June 2020	• Trustee resolutions need to be in place to be able to distribute trust income for the 2019-20 financial year to beneficiaries (at the latest). • Ensure Tax File Numbers have been received from beneficiaries (excluding minors, non-residents and tax-exempt entities) before appointing income to them.
31 July 2020	• TFN report due for any TFNs received from beneficiaries in the June 2020 quarter.
31 August 2020 (on or before)	• Send written notice of entitlement to distributions to any beneficiaries that are tax-exempt entities.
6 October 2020	• 2020-21 Federal Budget released

What's new

2020-21 Federal Budget delayed until October

The release of the 2020-21 Federal Budget has been postponed from its traditional date in May until 6 October 2020. We expect there will be a number of reforms and measures to tighten spending, recover revenue, and range of productivity measures. We will keep you advised of significant changes that might impact on you and your trust.

Family trust anti-avoidance measure

From 1 July 2019, new anti-avoidance measures prevent family trusts engaging in 'round robin' circular trust distributions with other closely held trusts.

The rules impose penalty rates of tax in situations where trust income is distributed to one or more other trusts and ends up being distributed back to the first trust. Previously, trusts that had made a family trust election were excluded from these rules but that is no longer the case.

Distributions to minors from testamentary trusts

The Government intends to limit the concessional tax rates available to minors receiving income from testamentary trusts to income derived from assets that are transferred from the deceased estate or the proceeds of the disposal or investment of those assets.

Currently, income received by minors from testamentary trusts is taxed at normal adult rates rather than the higher tax rates that generally apply to minors. The Government is concerned that some taxpayers are inappropriately obtaining the benefit of this lower tax rate by injecting assets unrelated to the deceased estate into the testamentary trust.

While the rules already contain integrity provisions aimed at limiting the scope for inappropriately boosting the income earning capacity of testamentary trusts, this measure clarifies that minors will be taxed at adult marginal tax rates only in respect of the income a testamentary trust generates from assets of the deceased estate (or the proceeds of the disposal or investment of these assets).

This change was introduced into Parliament but has not yet been enacted. If enacted, the measures will apply to assets acquired by or transferred to the trustee of the testamentary trust estate on or after 1 July 2019.

Trust split arrangements

A trust split usually involves a family trust. A common reason given for 'splitting' the trust is to allow different parts of the family group to have autonomous control of their own part of the trust fund.

A ruling issued in December 2019 confirms the Commissioner's view that the split will create a new trust (as the trustee has new personal obligations and new rights have been annexed to property) and trigger a capital gains tax event, which could potentially give rise to a taxable capital gain.

The ATO's approach applies to trust split arrangements entered into on or after 11 July 2018.

Distributions to non-resident beneficiaries

The ATO's recently released interpretation of the tax treatment of capital gains distributed by an Australian discretionary trust to non-resident beneficiaries will have a significant negative impact for some.

Two determinations released by the ATO deal with the complex and technical issues that arise when a resident discretionary trust makes a distribution of capital gains to non-resident beneficiaries. The ATO's view is that in some circumstances, non-resident beneficiaries can be taxed in Australia on gains relating to foreign assets, which would not have been taxed in Australia had they been made by the beneficiary directly.

The ATO's position will be counterintuitive for many as there is a CGT exemption for non-resident taxpayers for assets that are not classified as taxable Australian property (TAP). This exemption means that in some circumstances, capital gains and losses are disregarded for non-residents.

The ATO's view is that this exemption does not apply to distributions from discretionary trusts even though beneficiaries of a trust are generally treated for tax purposes as if they had made capital gains personally. What this means is that if a resident discretionary trust makes a capital gain, then the ATO expects that this will be taxed in Australia, even if the gain is distributed to a non-resident beneficiary, even if the gain does not relate to TAP and even if the gain has a foreign source. Given that non-resident beneficiaries will be taxed at non-resident tax rates and may not have access to the full CGT discount, it will be important for trustees to consider this carefully when deciding on distributions for trusts that have a mixture of resident and non-resident beneficiaries.

The ATO's determinations do not take into account the possible application of any double tax agreements. This is another issue that would need to be considered to reach a conclusion on how distributions are likely to be taxed in the hands of non-resident beneficiaries.

Deductions no longer available for vacant land

From 1 July 2019, new rules prevent some taxpayers from claiming a deduction for interest and other holding costs for property that they own. Previously, if you bought vacant land with the intent to build a rental property on it, you may have been able to claim tax deductions for expenses incurred in holding the land such as loan interest, council rates and other ongoing holding costs.

Mum & Dad developers (individuals, closely held trusts, SMSFs and unit trusts or partnerships where any interests are held by individuals, discretionary trusts or SMSFs) are the focus of these changes. Since the new laws apply retrospectively to losses or outgoings incurred on or after 1 July 2019 regardless of whether the land was first held prior to this date, and with no grandfathering in place, the amendments not only impact those intending to develop vacant land but those who have acquired land to develop.

The rules seek to ensure that deductions cannot be claimed during periods where a residential dwelling is being constructed or substantially renovated until the work has been completed, an occupancy certificate is issued and the property is either rented out or genuinely available for rent.

Where holding costs cannot be claimed as a deduction, then they will generally be added to the cost base of the property for CGT purposes. This means that they can potentially reduce a capital gain made when you dispose of the property in the future. However, holding costs cannot be added to the cost base of a property unless it was acquired after 20 August 1991 and these costs cannot increase or create a capital loss on sale of a property.

Trust housekeeping

Lodgement deferrals

The ATO has automatically deferred 2018-19 trust tax returns lodged through a tax agent until 5 June 2020. This deferral excludes large/medium taxpayers.

TFN reporting

Has your trust lodged TFN reports for all beneficiaries?

Trustees of closely held trusts have some additional reporting obligations outside the lodgement of the trust tax return each year. The Australian Taxation Office (ATO) is currently reviewing trustees to ensure their compliance with these obligations, particularly the requirement to lodge TFN reports for beneficiaries.

Where TFN provided

Where beneficiaries have quoted their TFN to the trustee, trustees are required to lodge a TFN report for each beneficiary. The TFN report must be lodged by the end of the month following the end of the quarter in which a beneficiary quoted their TFN. For example, if the trustee receives a beneficiary's TFN in April, they must lodge a TFN report by the end of July.

Where TFN not provided

Where a TFN has not been provided by a beneficiary, the trustee is required to withhold tax at a rate of 47% and pay this to the ATO. The trustee must also lodge an annual report of all amounts withheld.

Failure to comply with the TFN reporting and withholding requirements may incur penalties.

Trust distributions

Timing of resolutions

Trustees (or directors of a trustee company) need to consider and decide on the distributions they plan to make by 30 June 2020 at the latest (the trust deed may actually require this to be done earlier). Decisions made by the trustees should be documented in writing, preferably by 30 June 2020.

If valid resolutions are not in place by 30 June 2020, the risk is that the taxable income of the trust will be assessed in the hands of a default beneficiary (if the trust deed provides for this) or the trustee (in which case the highest marginal rate of tax would normally apply).

Low income tax offset and minors reminder

The low income offset has not been available to minors who only receive 'unearned' income (e.g. distributions from a discretionary trust) since the 2013 income year. Minors who only receive 'unearned' income will normally be subject to penalty rates of tax on income that exceeds $416.

Normal marginal tax rates can potentially still apply to minors who receive distributions from a deceased estate or testamentary trust.

Streaming of franked dividends and capital gains

Trustees are only able to stream franked dividends (and the franking credits that are attached to those dividends) to a particular beneficiary for tax purposes if the beneficiary's entitlement to the franked dividends is recorded in writing by 30 June 2020. For streaming of capital gains to be effective for tax purposes, the beneficiary's entitlement must be recorded in writing by 30 June if the capital gains form part of trust income for the year or 31 August if the capital gains do not form part of trust income.

We can assist you with this process if you do wish to stream franked dividends or capital gains to specific beneficiaries.

Tax exempt entities

If a trustee resolves to distribute income to a tax-exempt entity, the trustee will be assessed on that income at the top marginal tax rate unless:

- The trustee actually pays the entire distribution within 2 months of the end of the income year; or
- The trustee notifies the entity in writing of its entitlement within 2 months of the end of the income year.

Also, anti-avoidance rules tax the trustee on a portion of the income distributed to a tax-exempt entity where there is a mismatch between the net financial benefit to be received by the entity and the tax treatment of the distribution.

What we need from you

This is a general list of what to have ready when we next meet with you:

- Accounts data file (MYOB, Quickbooks, access to Xero)
- Debtors & creditors reconciliation
- 30 June bank statements on all relevant loan documents
- Documents on new assets bought or sold, including the date you entered the contract and the date the asset was first used or installed ready for use
- Payroll reconciliation
- Superannuation reconciliation
- 30 June statements on any investment or operating accounts

And, if we are preparing your individual income tax return:

- Income Statement
- Tax statements of managed investment funds
- Interest income from banks and building societies
- Dividend statements for dividends received
- For share sales or purchases, the purchase and sale contract notes
- For real estate sales or purchases, the solicitor's correspondence for the purchase and sale
- Rental property statements from real estate agent and details of other expenditure incurred
- Work related expenses
- Self-education expenses
- Travel expenses
- Donations to charities
- Health insurance and rebate entitlement
- Family Tax Benefits received
- Commonwealth assistance notices
- Medical Expenses (if they relate to disability aids, attendant care or aged care services)
- IAS statements or details of PAYG Instalments paid
- Details of any transactions involving cryptocurrency (e.g., Bitcoin)
- Details of any income derived from participating in the sharing economy (e.g., Uber driving, rent from Airbnb, jobs completed through Airtasker etc.,)