Piper Alderman

High Court rules on taxation of trusts: Bamford

A landmark decision has been handed down by the High Court on 30 March regarding the taxation of trusts.

The decision in the Bamford case provides taxpayers with certainty in relation to tax outcomes of distributions of income by trusts.

Generally, the provisions dealing with the taxation of trusts provide that a beneficiary of a trust is to be taxed on the taxable income of the trust based on his or her share of the "net income of the trust estate".

As a result of the decision in Bamford, it is possible under the terms of the trust deed to determine income for the purposes of determining how beneficiaries are assessed, e.g. relevant income may include capital gains.

Furthermore, the amount on which a beneficiary is taxed is based on their proportionate share of the income of the trust, and not the actual amount they are entitled to.

Action points

- Clients should be aware of the need to review trust deeds in light of Bamford to ensure that the specific provisions in their trust deeds as to the distribution of income and the manner in which distributions are made are being complied with.
- The impact of the decision in Bamford on the tax consequences for the trust and its beneficiaries, and the income allocation provisions in the trust deed and indeed, the actual practice of income allocation, should be considered.
- Keep an eye out for the ATO's response to the decision as this may have a direct impact on taxpayers.

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