

# TROOD PRATT & CO

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## client alert

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### Trust Income and Bamford: Tax Office View

The Tax Office has released a Decision Impact Statement outlining the Commissioner's view on the High Court's decision on a case which dealt with key elements of the tax law by which the liability of trustees and beneficiaries to tax is determined.

The case is broadly known as the *Bamford* decision and concerned the assessment of the (tax) net income of the Bamford Trust. In particular, the case examined the meaning of the phrases 'income of the trust estate' and 'that share'.

This long-awaited Decision Impact Statement sets out a number of general propositions, as understood by the Tax Office, which have emerged from the High Court's decision. It covers the Tax Office's administrative treatment of tax returns for the 2009/10 and earlier income years. It also identifies a number of issues in relation to tax laws dealing with trust income which the Tax Office considers to remain unresolved.

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### Div 7A Loans and Trust Entitlements

The Tax Office has released a Taxation Ruling, which sets out the Commissioner's views on when a private company with an unpaid present entitlement (UPE) from an associated trust is considered to have made a loan to the trust for the purposes of the deemed dividend provisions.

Broadly, the ruling provides that the company will be considered to have made a loan under the provisions to the trust if the UPE has been satisfied and the company agrees to loan the amount to the trust, or if the company does not call for payment of a subsisting UPE and thereby agrees that it can be used for trust purposes.

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### Commissioner's Discretion to Disregard Deemed Dividend Provisions

The Tax Office has also released a Draft Taxation Ruling in which it outlines the requirements to be satisfied before the Commissioner can make a decision to disregard a deemed unfranked dividend from arising when a private company lends, pays or forgives an amount to a shareholder or associate of the shareholder (unless adequate arrangements are in place). The draft ruling also sets out the requirements to be satisfied before the Commissioner may allow the dividend to be franked if the deemed dividend provisions operate.

The draft states that the Commissioner may exercise this discretion where:

- the provisions apply to deem a private company to have paid a dividend to a particular entity, or where an amount is included in the assessable income of a particular entity in relation to a private company; and
- that result arises because of an honest mistake or inadvertent omission by the recipient of the dividend, the private company or any other entity that contributed to the result.

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### Vacant Land not Input Taxed as 'Residential Premises'

In a recent case, the Full Federal Court unanimously dismissed a taxpayer's appeal against an assessment of GST in respect of the sale of two separate blocks of vacant land in 2004 and 2005. The Full Court held that vacant land is not land capable of being occupied as a residence or for residential accommodation within the GST definition of 'residential premises'.

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## SMSFs and Instalment Warrants: Rules to be Tightened

The Government proposes to amend the superannuation law to reduce the prudential risks for superannuation funds investing in limited recourse borrowing arrangements (eg instalment warrant arrangements).

The Government hopes to achieve this by repealing the provision in the superannuation legislation which allows a trustee of a regulated superannuation fund to borrow money using limited instalment warrants, and replacing it with two new provisions.

These new provisions seek to ensure that:

- the recourse of the lender (or any other person) against a superannuation fund trustee for default on the borrowing is limited to rights relating to the acquirable asset;
- the asset within the arrangement can only be replaced in prescribed circumstances that arise from owning the original asset; and
- the borrowing is referable and identifiable only over a single asset (excluding money) or a collection of assets which are identical and are treated as a single asset.

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## Superannuation Co-contribution: Proposed Changes

The Government has also introduced a Bill seeking to modify the operation of the Government superannuation co-contribution scheme. In brief, the Bill will:

- freeze the indexation of the co-contribution income thresholds for the 2010/11 and 2011/12 income years. That is, the lower and higher income thresholds will remain at \$31,920 and \$61,920 (the current thresholds for the 2009/10 income year), respectively, for the two years; and
- permanently set the current matching rate at 100% and the maximum co-contribution that is payable on an individual's eligible superannuation contributions at \$1,000.

The amendments are proposed to apply to the 2009/10 and later income years.

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## Henry Tax Recommendations to Watch Out For

The long-awaited Henry tax report has been publicly released with the Government's initial response. There are a number of recommendations made by the Government which, if implemented, will impact many taxpayers. Below is a snapshot of some of the main reforms put forward by the Government:

- reducing the company tax rate to 28%;
- allowing small businesses to immediately write-off assets valued at under \$5,000 (\$1,000 under the present law);
- increasing the superannuation guarantee rate from 9% to 12%, phasing in from 1 July 2013.
- providing a contribution of up to \$500 for workers with incomes up to \$37,000 from 1 July 2012.

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## Various Rates and Thresholds for 2010/11

The Tax Office has released the following rates and thresholds for the 2010/11 income year:

- car depreciation limit and luxury car tax threshold — \$57,466;
- fuel efficient car limit — \$75,375;
- CGT improvement threshold — \$126,619.

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## GIC and SIC Rates Released

The Tax Office has advised that the general interest charge and shortfall interest charge rates for the first quarter of the 2010/11 financial year (ie 1 July 2010 – 30 September 2010) are as follows:

Rate	Annual (%)	Daily (%)
GIC	11.80	0.03232877
SIC	7.80	0.02136986

The Tax Office has also released the interest rate for overpayments, early payments and delays in refund for the first quarter of the 2010/11 income year. The applicable interest rate is 4.80%.

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.