

Release of the ATO Compliance Program for 2010/2011

The Australian Tax Office (ATO) has recently released its Compliance Program for the forthcoming year. This document outlines areas the ATO intends to focus on in the next 12 months. Of particular relevance for family groups is the following:

- An increased focus on wealthy Australians and their controlled private groups. This is a continued expansion of their already significant focus on this market
- Continuation of the risk assessment of **all** companies with turnovers between \$100 million and \$250 million
- Targeted focus on the deemed dividends provisions (Division 7A), where money is accessed from private groups
- Targeted focus on trusts, particularly the completeness and accuracy of reporting by trustees

Significant changes for private groups in the last year

The focus of the ATO on private groups is particularly important given the release of a new draft ruling and legislation which will have significant ramifications for how such groups are taxed. Two particular changes will expand situations where a deemed dividend may apply:

Unpaid present entitlements (UPEs)

In essence, an UPE exists where a trustee exercises its discretion with respect to the distribution of income in favour of a particular beneficiary without actually paying that presently entitled amount to the beneficiary. The presently entitled beneficiary would nevertheless be subject to tax on the applicable tax amount. Where the beneficiary is a private company it was commonly considered that the UPE monies still available to the trust, did not constitute a loan back from the private company to the trust for Division 7A purposes. This view has now NOT been accepted by the Commissioner in most circumstances involving closely held entities. Hence going forwards such UPEs may be a deemed dividend.

Provision of assets

Under new legislation the circumstances where a relevant benefit is provided to a shareholder (or their associate) has been expanded to include the use of company assets, such as holiday houses, cars and other items, at less than market value. Hence again the use of such private assets may have a deemed dividend implication for the shareholder.

Given the complexities of these new provisions and the continued high level of focus on wealthy taxpayers we recommend you discuss your circumstances with your advisers.

For more information contact

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