

## **The ATO provides clarity on the tax consequences of trust disclaimers**

The ATO released a Decision Impact Statement following the matter of FCT v Carter (2022 HCA 10 ('Carter's case')), in which the High Court provided clarity on the tax consequences of situations involving legally valid trust disclaimers.

The High Court's decision in Carter's case settled practical question as to how trust income is to be taxed when relevant trust entitlements are validly disclaimed by a beneficiary sometime after year end. Importantly, the Court's decision does not adversely impact people who are beneficiaries of a trust and wish to retain their trust entitlements.

The ATO funded the taxpayer's costs in this matter as the uncertainty of how the tax law operated when a beneficiary disclaims an entitlement was significant to tax administration.

In particular, the ATO was concerned that:

- A beneficiary could intentionally avoid the incidence of tax by disclaiming an entitlement after year end and that, in certain cases, a late disclaimer could have been part of a scheme with the effect that the underlying income was never taxed to anyone; and
- The actions of such a beneficiary could have adverse implications for others with an interest in the trust, without them knowing or having a say in this.

The ATO reminds taxpayers that it is important for beneficiaries to be aware of their trust entitlements as well as the steps they can take to call for payment of their entitlement, and for trustees and beneficiaries to be aware of the taxation consequences which flow from trust entitlements.

The ATO encourages trustees and taxpayers with trusts in their family groups to consider the tax implications from proposed entitlements before the end of a financial year, and to give themselves time to seek advice, if necessary, so that the tax implications are understood by both the trustee and the beneficiaries before the proposed entitlements are made.

The ATO also encourages beneficiaries of trusts to exercise particular caution before disclaiming an entitlement from a trust. Further, if they have a tax obligation arising from an entitlement and the entitlement is not subsequently distributed to them, the ATO encourages beneficiaries to seek advice as to how to compel the trust to distribute that amount.

This is consistent with the reality that trustees have broad obligations to act in the interests of their beneficiaries and cannot act to deliberately manufacture unfair outcomes for them.

### **Providing employees with vaccine incentives or pets can lead to FBT obligations**

The ATO is urging employers that have provided their employees with fringe benefits to consider their fringe benefits tax (FBT) obligations – including registering, reporting, lodging and paying FBT

The ATO expects many employers to have an FBT obligation for the first time due to benefits provided during COVID-19.

A fringe benefit is a 'payment' to an employee, but in a different form to salary or wages.

The ATO uses a range of ATO and third-party data sources to identify FBT non-compliance and penalties may be imposed for incorrect or late FBT returns.

FBT returns for the 2022 FBT year were due by 23 May 2022 for employers lodging their own returns or those lodging by paper. Employers lodging through a registered tax professional have until 27 June 2022 to lodge.

Employers that are registered for FBT but don't need to lodge an FBT return for the year, will need to advise the ATO via a notice of non-lodgment form.

Employers who need additional time to lodge are encouraged to speak with their registered tax professional or call the ATO.