

ATO set to launch crackdown on trusts

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Tax experts are furious at a planned crackdown by the Australian Taxation Office on a commonly-used trust structure and say the ATO's backflip on the issue will have widespread ramifications for taxpayers and their advisers.

The ATO is unhappy with the use of discretionary trusts with corporate beneficiaries. It is believed there are around 200,000 of these trusts in operation.

Peter Bembrick, tax partner at HLB Mann Judd, says the structure is often used by trust owners who wish to accumulate funds within a trust. Under the structure the ATO wishes to target, distributions from a trust are allocated to a corporate beneficiary, but not actually paid (this is known as an "unpaid present entitlement").

This allows the owners of the funds to reduce or defer income tax. The funds can then accumulate in the trust and be reinvested.

"Where this does work particularly well is where you are looking to reinvest the money," Bembrick says.

The ATO is growing increasingly concerned at the level of accumulated funds inside discretionary trusts, of which there are around 460,000 in use. It is believed half of these trusts have corporate beneficiaries.

The ATO is particularly worried about the use of "unpaid present entitlements" and appears to be moving towards a position where entitlements should be treated as a loan and taxed accordingly.

But Yasser El-Ansary, tax counsel at the Institute of Chartered Accountants, says the ATO's new stance represents a complete backflip from its previous position, which has been made clear in a number of tax rulings.

"There definitely is a strong case to say that ATO has previously been asked a specific question on this issue and the ATO has in effect, sanctioned the use of these structures."

Bembrick agrees. "A change would have very big ramifications and goes against a lot of the planning and structures that people have a place."

El-Ansary, who is part of the national tax liaison group that meets regularly with the ATO, is in Canberra today for a meeting on the issue with tax commissioner, Michael D'Ascenzo.

El-Ansary expects robust discussion and says his organisation remains concerned about the position of tax advisers, who could find themselves under fire from clients if the ATO does reverse its ruling.

"There is potentially a significant implication for advisers," he says. "Ultimately, what we are aiming for is a solution that is workable for the ATO and taxpayers and their advisers."

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