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PITCHER PARTNERS
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21 March 2011

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: SBTR@treasury.gov.au

Dear Sir/Madam

Improving the taxation of trust income

We welcome the opportunity to provide comments on the Discussion Paper issued by the Treasury on Improving the taxation of trust income ("the Discussion Paper").

Pitcher Partners comprises five independent firms operating in Adelaide, Brisbane, Melbourne, Perth and Sydney. Collectively we would be regarded as one of the largest accounting associations outside the Big Four. Our specialisation is servicing and advising smaller public companies, large family businesses, small to medium enterprises and high wealth individuals (which we refer to as the "middle market"). In making this submission therefore, we have focussed on the implications of the Discussion Paper for the middle market.

Submission points

Given the short time frame that has been allowed for submissions, we are not in a position to provide our final comments on the Discussion Paper. Accordingly, our submission represents our initial views on the Discussion Paper:

1. It is too near to the end of the current financial year to consider making fundamental changes to the definition of "income of the trust estate" - especially as it is uncertain that any amending legislation would actually become law prior to 30 June this year.
2. Changing the meaning of "income of the trust estate" without also making changes to the definition of the phrase "presently entitled" will not improve the taxation of trust income - if anything, it will just exacerbate the current problems.
3. In the interests of 'good, practical tax administration' the current provisions should continue to be applied in a manner consistent with prior years. That is, pending the update and rewrite of the trust provisions into the 1997 Tax Act, any short-term amendments should do no more than codify the administrative practices that the ATO withdrew (or intends to withdraw) with effect from 1 July 2010.

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4. In particular, we would support amendments to correct issues with the treatment of capital gains that are consistent with the treatment of such capital gains per Practice Statement PSLA 2005/1 (GA).
5. The treatment of capital gains under Practice Statement PSLA 2005/1 (GA) is similar to the option canvassed in Section 2.2.3 of the Discussion Paper - which would include capital gains in the 'distributable income' of a trust estate where the trust deed does not already do so. However, as outlined earlier, we do not support any amendment to the meaning of income of the trust estate. It is our preference that any amendment to allow the streaming of capital gains should be done outside of Division 6 (i.e. utilising Subdivision 115-C) in a similar manner to the way in which adjustments are made to franking credits (i.e. section 207-35).
6. We note that the treatment of capital gains under Practice Statement PSLA 2005/1 (GA) was optional - i.e. the beneficiaries and trustee of a trust were not bound to follow this Practice Statement. Given that many trustees have already made capital gains and may have dealt with the proceeds in accordance with the current law, it is our view that any legislative amendments to allow the streaming of capital gains must be optional.
7. The general anti-avoidance rule in Part IVA is more than sufficient to deal with the kind of tax avoidance exemplified by Example 2 in the Discussion Paper. Furthermore, in the absence of any guidance in the Discussion Paper as to the form that the specific anti-avoidance provision mentioned in Section 2.2.3 might take, we cannot support the introduction of such a provision this late in the year - it will simply create too much uncertainty in the middle market for bona fide 30 June 2011 distributions.
8. From a 'broad brush' perspective we are supportive of the measures outlined in the Discussion Paper to allow the steaming of capital gains and dividends to certain beneficiaries to the exclusion of other beneficiaries.
9. We have had the advantage of reading the Joint Accounting Bodies' submission and agree with the points made therein.

Please contact me, Alexis Kokkinos or Chris Birchall of this firm if you have any questions regarding this submission.

Yours sincerely



JOHN BRAZZALE
Executive Director