Trusts and Company Beneficiaries

On 2 June, 2010 the Commissioner of Taxation released Taxation Ruling TR 2010/3 dealing with possible loans arising where a company beneficiary of the trust has not actually received the distribution of income to which it is presently entitled and which would constitute assessable income.

The significance of this is that if there is a "loan" from the company to the trust and shareholders of the company are also beneficiaries of the trust, there may be deemed dividends assessable to the shareholders equal to the amount of the unpaid present entitlement.

The ruling now interprets the law relating to shareholder loans so that an unpaid present entitlement due to a company beneficiary may be a form of financial accommodation which may constitute a loan. As this loan is made to the trust by the company, the loan is made to an associate of the shareholders of the company and may therefore constitute deemed dividends to the shareholders.

This will usually be the case where the trust uses the funds provided by the unpaid entitlement otherwise than for the exclusive benefit of the company.

It should be noted that this new interpretation will apply to unpaid present entitlement which arise after 16 December 2009. Existing unpaid entitlements will not be affected.

Due to the legally controversial nature of this ruling, it may be that clarification will be necessary through the courts. The Taxation Institute of Australia regards the legal reasoning of the ruling as flawed and it is contrary to the long-standing interpretation of the law.