



# LightYear Docs Trust Distribution Resolution System

15 June 2021

# Invest in yourself and your Business



**SUCCESSION, ASSET PROTECTION  
AND ESTATE PLANNING ADVISER  
ACCREDITATION**

**19-21 July 2021**



**AUSTRALIAN  
DIGITAL TECHNOLOGY  
AWARDS 2021**

***This is about growth –  
personally and  
professionally and not  
getting left behind***

# Accounting and Tax Laws are different

- If a client receives a cash flow bonus from the government that is accounting income but not taxable income
- A pension member of a super fund receives a pension from a super fund, that is accounting income of the pension member. If they are under age 60 it is also taxable income – over age 60 it is neither assessable nor exempt income
- A client purchases a truck for \$120,000. Under AAS 4 it is to be written off over its effective life but under tax law the capital purchase is deductible when paid.
- A pre-payment of 12 months rent is expensed for accounts purposes but deductible when paid

# So how does this apply to Trusts – the issues

- A trust is not a company – High Court in *FCT v Bamford*
- A trustee is required to abide by the rules of the trust deed and also the relevant State Trustee Acts
- CHOOSE a jurisdiction – South Australia does not have a rule against perpetuities
- So the big issue for a Trustee is - who are the beneficiaries, what is income, are there categories of income and what is corpus of the Trust. Is the deed clear, vague or deficient.
- If deficient upgrade the deed – see later

# HIGH COURT OF AUSTRALIA

FRENCH CJ,  
GUMMOW, HAYNE, HEYDON AND CRENNAN JJ

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## **Matter No S310/2009**

COMMISSIONER OF TAXATION

APPELLANT

AND

PHILLIP BAMFORD & ORS

RESPONDENTS

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PHILLIP BAMFORD & ANOR

APPELLANTS

AND

COMMISSIONER OF TAXATION & ANOR

RESPONDENTS

*Commissioner of Taxation v Bamford*  
*Bamford v Commissioner of Taxation*

[2010] HCA 10

30 March 2010

S310/2009 & S311/2009

# The take aways - *first* trust law THEN tax law

- Trust law and what the deed says is paramount. In short the trust deed is its own law. If it is not in the deed there is a problem.
- But you can change the deed without resettlement based on High Court decision in *FCT v Commercial Nominees Australia* (2001) 47 ATR 220
- Review the deed and can an item be characterised as income, even though it may appear capital such as a capital profit on the sale of property
- So the income definition in the deed needs to be wide and open – particularly for a discretionary trust without that items may get locked into the trust
- Let's look at a couple of deeds to see the difference

# Track Distribution Requirements through Deed

- Determine the Income under the LightYear Docs Deed

'income' of the Trust means that amount as determined by the trustee, including accounting income, and if the trustee makes no such determination, 'income' means all profits or gains less expenses taken into account in calculating the net income of the Trust, and exempt income, as defined in Section 95(1) of the Act, notwithstanding that the whole or any part thereof may otherwise constitute capital of the Trust.

#### 4. Income of the trust fund

##### 4.1 Discretionary distribution

The trustee shall stand possessed of the income of the trust fund of a financial year which is available for distribution upon trust to pay, apply or set aside the same or any part or parts thereof to or for the benefit of the beneficiaries, or any one or more of them exclusive of the other or others who shall be living or which shall be in existence at the time of payment, application or setting aside of such income is made, in such shares or proportions and from such category or categories of income as the trustee in its discretion may determine. The trustee may refuse to disclose to any person the reason why the trustee exercised that discretion as the trustee did and may refuse to disclose to any person those materials referred to by the trustee in the exercise of that discretion.

# Track Distribution Requirements through Deed

- Pre Bamford Deeds are not built for today's environment

## 3. DISCRETIONS AS TO INCOME OF THE TRUST FUND

- 3.1 Subject to Clause 3.2, the net income of the Trust Fund shall be an amount equal to the net income as determined under Section 95 of the *Income Tax Assessment Act*, but reduced by any amount which would otherwise be included by application of Division 207 of the *Income Tax Assessment Act 1997*.
- 3.2 Notwithstanding Clause 3.1, the Trustee may, in any year or in any part of a year, determine the net income of the Trust Fund in accordance with ordinary income concepts.



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