



Chat Legal Pty Ltd
ABN 64 621 391 553
letschat@chatlegal.com.au
PO Box 74, Underwood, QLD 4119
<https://chatlegal.com.au>

Let's chat

Are discretionary trusts dead? – June 2026

With:

Darius Hii – Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal

Information provided is general in nature; precise application depends on specific circumstances



Landholder duty issues

- Transferring shares in a company?
- Landholder duty applies if value of landholdings exceeds certain thresholds or increases above certain thresholds
- Grouping provisions apply such that 'subsidiaries' included in calculation
- Subsidiaries include discretionary trusts that include the landholder company as an eligible beneficiary
- E.g. if your trading company is a beneficiary of a landholding discretionary trust – consider whether landholder duty applies if you transfer shares in the company



Landholder duty solutions

- Limited discretionary beneficiary class – or is a variation possible
- Renunciation or disclaimer documents
- Obtaining stamp duty exemptions – e.g. family trust exemption (requiring a review of relevant trust deed)
- Reviewing whether landholder duty even applies – advising regarding valuations

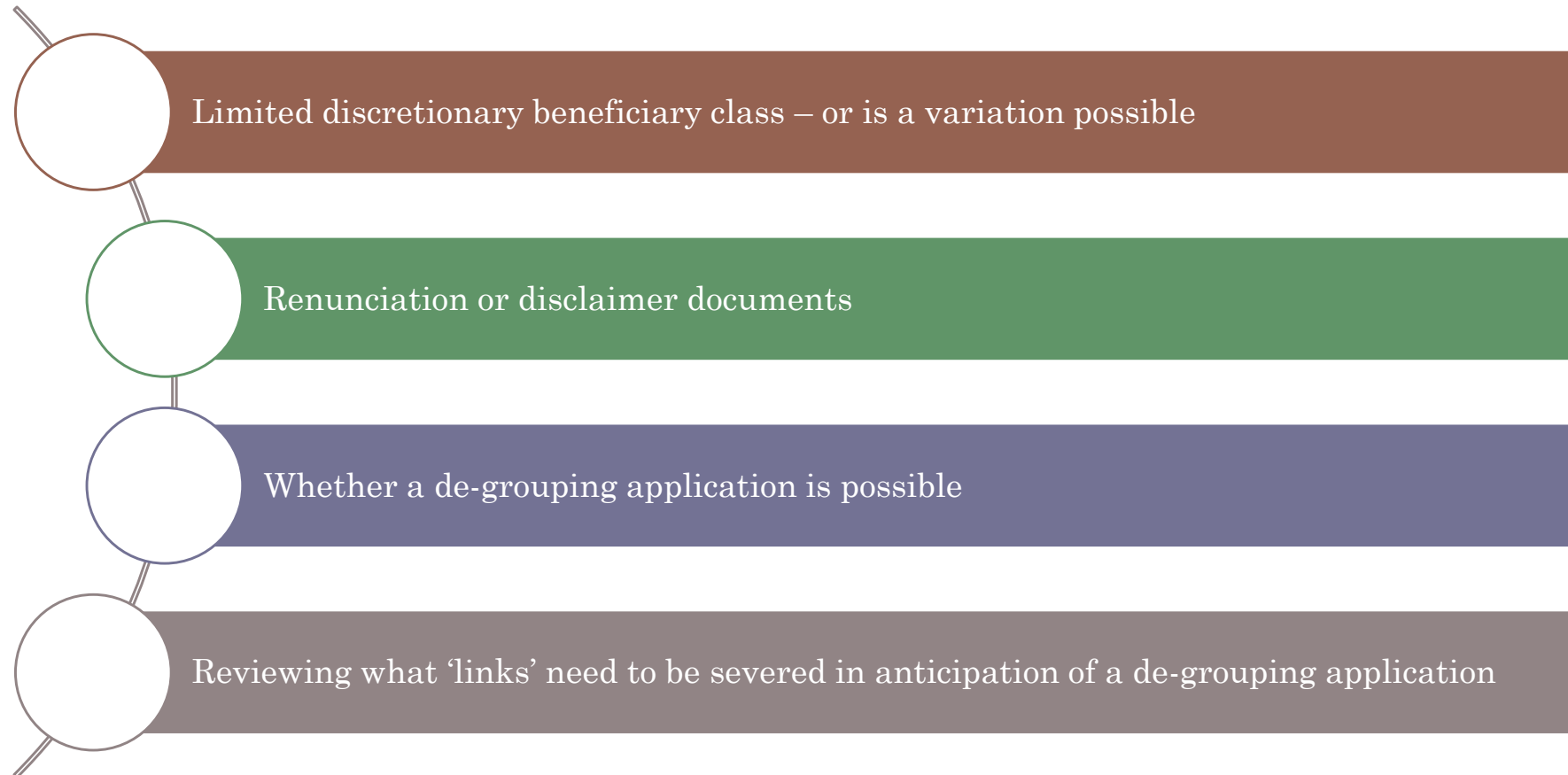


Payroll tax grouping issues

- Single payroll tax threshold (\$1.3 million for Queensland) for related entities
- Various grouping provisions regarding related corporations and mutual employees
- Grouping provisions also extend to entities that share a common controller/s
- Deeming provision that unless otherwise provided in the trust deed, any potential beneficiary holds a controlling interest in the discretionary trust
- E.g. If you are a beneficiary of a family member's discretionary trust – your businesses may be grouped



Payroll tax grouping solutions





Land tax issues and solutions

- QLD – Is your trust claiming a home exemption but distributing income to others (such as a bucket company)?
- QLD – Land tax surcharges apply to all land (not just residential)
- Other States – Are you aware of the increased land tax rates/reduced tax free thresholds?
- NSW – No land tax threshold on properties owned by a discretionary trust – land tax of 1.6% applies
- Solution: We can assist with responding to Queensland land tax assessment where relevant



Trust law issues

- Settled law discretionary beneficiaries cannot force a distribution
- Owies* case – due care and consideration
- Are your client's trust distributions being made with due care and consideration?
- Is there a risk of internal family disputes arising?
- Are your clients being adequately advised regarding such issues?
- Is the drafted beneficiary class appropriate?

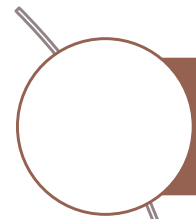


Trust law issues

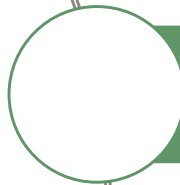
- Although cannot force a distribution – beneficiaries have a right to trust documents such as the trust deed
- Have trustee's been provided with adequate information to make relevant distributions
- Memo of directions/letter of wishes considered personal in name and not trust document
- Again, is the beneficiary class appropriate
- Is the succession of the trust considered and are appropriate persons named?



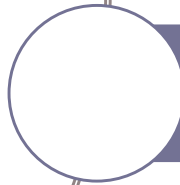
Succession issues



Example: Named beneficiary takes over appointor role if sole appointor incapacitated



Example: Successor Appointor takes control on incapacity of Appointor. The Appointor does not have the power to change the Successor Appointor



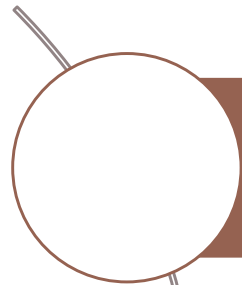
Example: If Primary Beneficiaries and Appointor incapacitated, then the 'President of the Law Society' may appoint the legal personal representative as the Appointor of the Trust



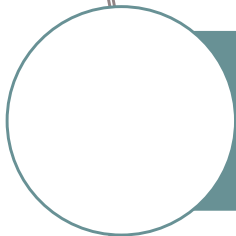
Example: Legal personal representative appointed if deceased – but not on loss of capacity (noting incapacity referred above means death or loss of capacity)



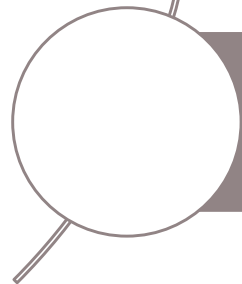
Succession issues



All prior examples compounded if there is an individual trustee as well and there is no automatic appointment of a replacement trustee



If corporate trustee – what happens if there are three or more children?



What happens if children are at different stages in life (one a minor and one over 18)?

“I have it for asset protection” *wink*



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- One trust – multiple properties
- One trust – multiple classes of assets (i.e. investment shares, trading business, home)
- Trust distributing to individual beneficiary in excess of what they need
- Trust with individual trustee holding high risk asset
- Individual accumulates significant assets in their personal name
- Multiple trusts, same trustee

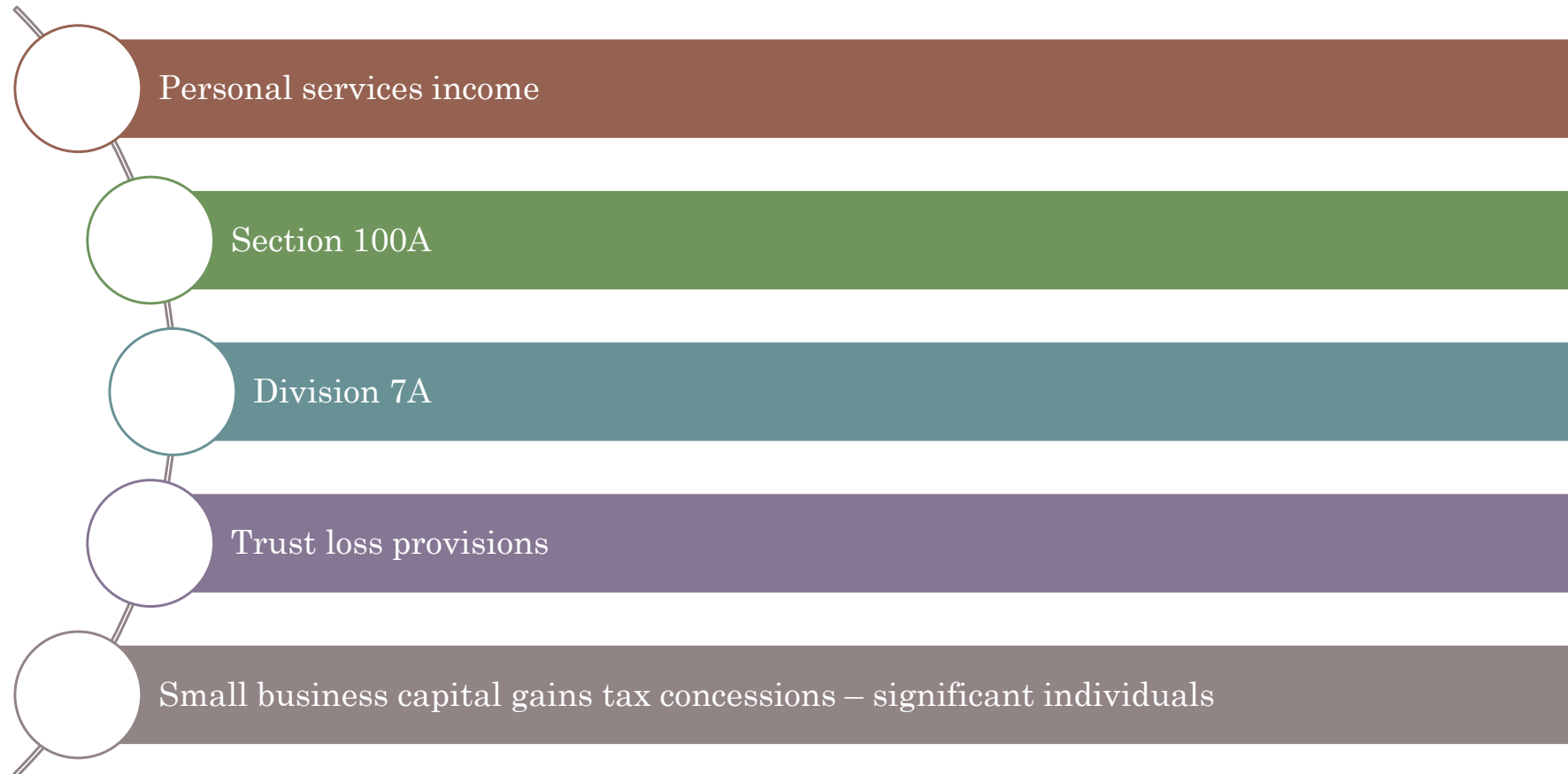


I have it for asset protection

- One trust per risky asset, each with a separate corporate trustee
- One trust can hold all low-risk assets
- Ensuring trust holding assets do not enter in to contracts holding litigation risk
- Ensuring excess income not distributed to high risk individual
- Trustee exercises due care and consideration each year and documents approach
- Important decisions appropriately documented

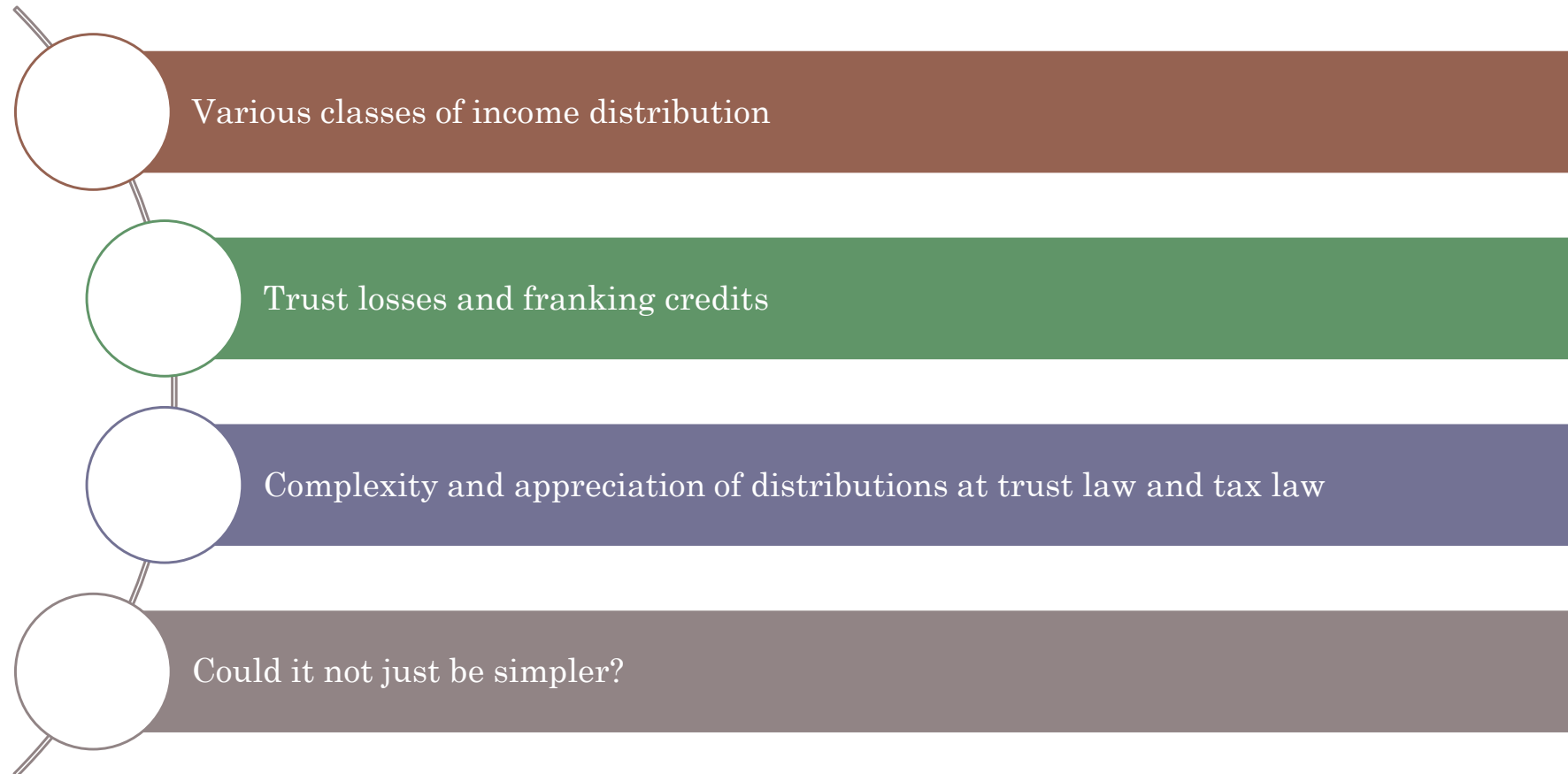


Tax issues



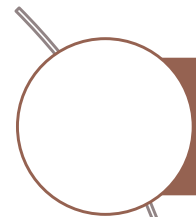


Distribution issues

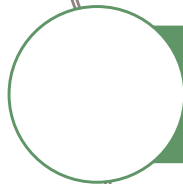




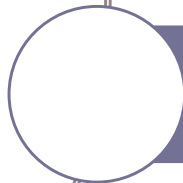
What if (?)



Discretionary trust holds shares in one or more companies (those companies holding the investments)



Held as individual carries risk and wants a level of family succession and control



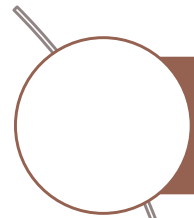
Discretionary trust distributes declared dividends from companies being individuals as those individuals require supplemental income



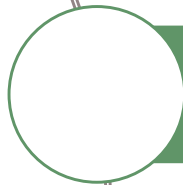
No complexity in distribution other than ensuring franking credits can be streamed (appropriate family trust election)



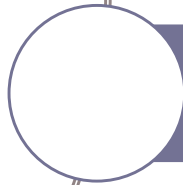
What if (?)



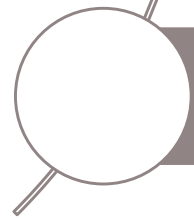
Shares in various investment companies protected from litigation risk of individuals



Need to ensure whether any loan accounts align with asset protection objectives



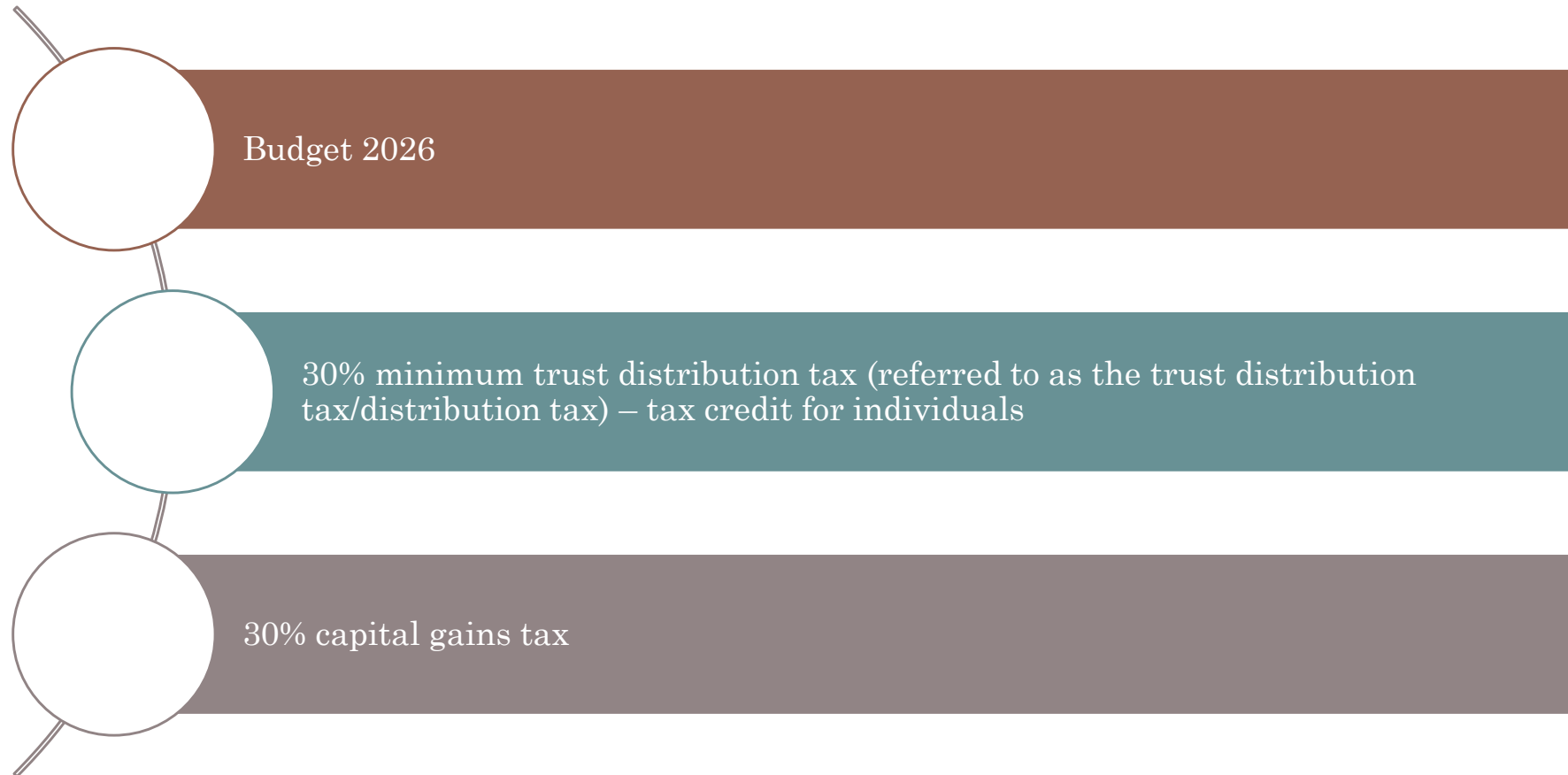
Does not really protect from a relationship breakdown if representing property of the marriage



May protect from children's marital issues, however



The elephant in the room?



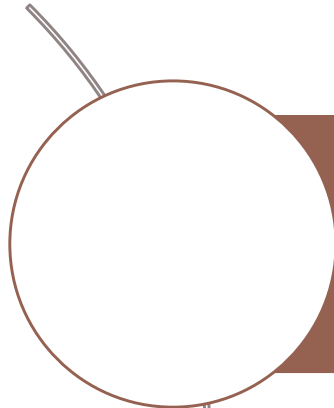


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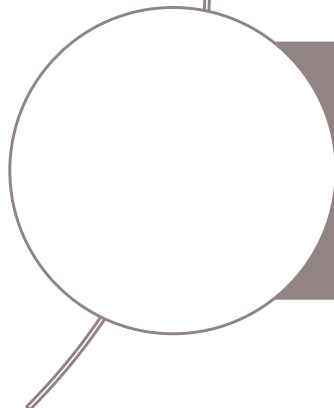
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What not to do



Don't go rushing into unnecessary restructures



Don't go thinking the world is going to end

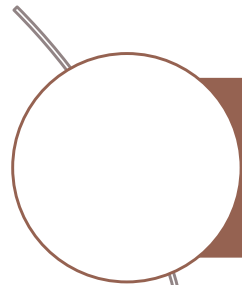


Things to consider

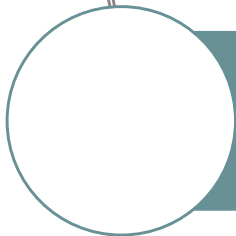
- CGT changes coming into effect from **1 July 2027**
- Any trust distribution tax coming into effect from **1 July 2028** – 2 financial years time
- Wait for draft legislation before making decisions and appreciate how Division 296 changed
- If some clients are better suited in a corporate structure – consider whether these Budget changes can push them in the right direction



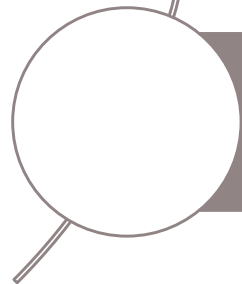
Practical impact of trust impact



Bucket companies dead (if no credit on trust distribution tax)



Refundable franking credits could be lost if flowed through a discretionary trust



Trust distribution tax only an issue for those taxpayers who are not already on the 30% tax rate



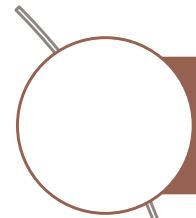
Crystal balling solutions



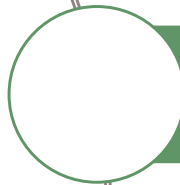
Why trust distribution tax needs some consideration



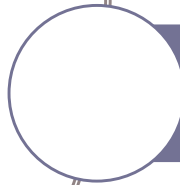
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What about distributions to loss trusts – what if there's a valid family trust elections?



What about distributions to charities?



Is it intended to kill bucket companies?

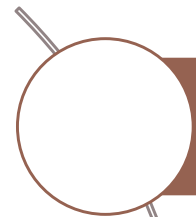


What about excepted trust income provisions – intended to protect income arising from certain circumstances such as death, superannuation, divorce, personal injury damages

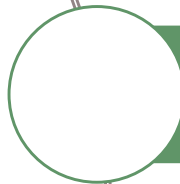
Why do we think there's proposed trust distribution tax



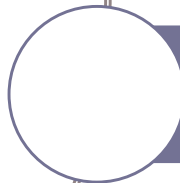
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Trusts distributing investment income to beneficiaries using the tax free threshold



Risk that bucket companies can be used as an intermediary to access refundable franking credits



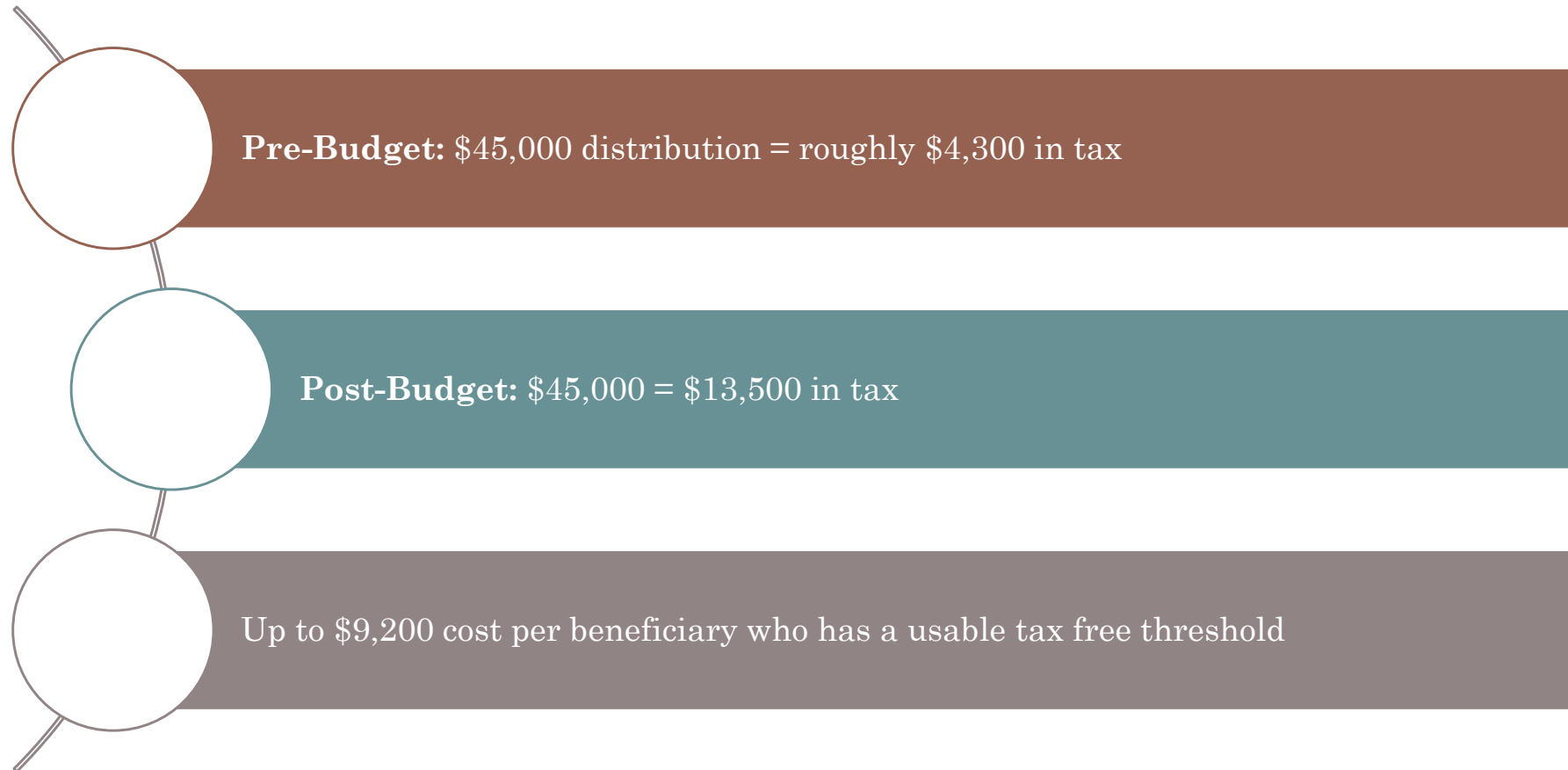
Contrast between those distributing physically to beneficiary compared to those who never intend to pass on distribution to individual?



Is this an acceptance that section 100A not usable in practice?

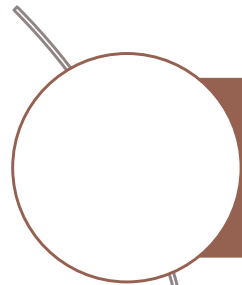


The tax cost

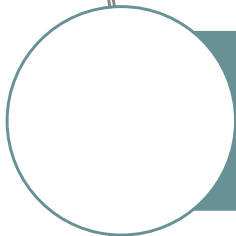




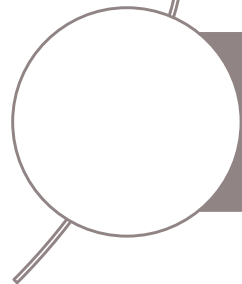
Are discretionary trusts dead?



Intended beneficiary does not make \$45,000 and the trust cannot pay a wage to the intended beneficiary to supplement



If you use a bucket company (if applicable and subject to draft legislation)



You don't care for the asset protection / family succession benefits of a discretionary trust

Are testamentary trusts still useful?



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- Yes – if you care for the protection benefits
- Yes – if either spouse is a top marginal tax earner (as there is a minimum 15% tax difference)
- Yes – if you hold substantial personal assets (as the value of investment may still provide you with tax planning opportunities – even at 30%)
- Prediction:** Excepted trust income holds strong (for minors) but adult beneficiaries subject to the trust distribution tax



Don't want the drama?

- No kids and don't want kids?
- Don't want the drama of a trust?
- Not a high-risk individual but potentially a high-income earner?
- Happy to accumulate investment income at a lower tax rate than your top marginal rate?
- **Consider:** Company with individual shareholder/s (whether single class of multiple classes of shares) and ensure appropriate care in ensuring cost base with any injection of capital

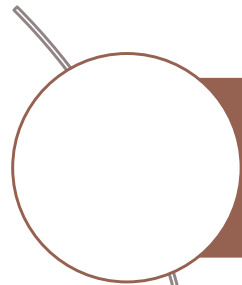


Upcoming topics we will address

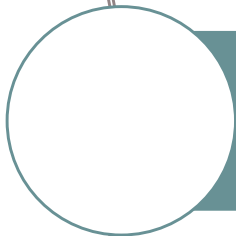
- What is asset protection
- Restructuring businesses operated through discretionary trusts and how we can help with obtaining a stamp duty exemption
- Restructuring companies to include preference shares
- Waiting for the additional potential rollover relief
- Note:** Restructures should be only undertaken either after draft legislation is know – or if the client really should be operating through a company structure



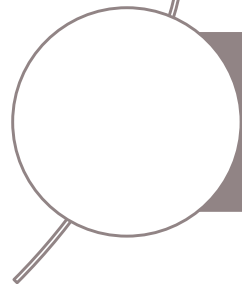
Just a note



AML obligations means we will adopt additional safe-guards to ensure we comply with the law – see specific services that will apply to us



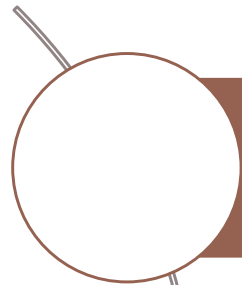
For AML related matters (see next slide) – we appreciate meeting your client prior to proceeding/invoicing for any work; as well as your assistance to review relevant company statements/trust deeds



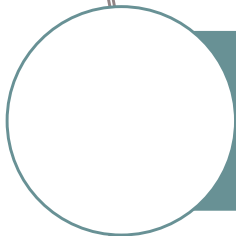
Chat Legal discretionary trust store closed from 1 July onwards. We are happy to establish bespoke discretionary trust after having provided appropriate advice. Thank you for the opportunity to assist those of you to date.



Designated services



Assisting in the planning or execution of a transaction to sell, buy or transfer a body corporate or legal arrangement – *e.g. share or unit transfers; we will consider this to include business restructures to be prudent*



Assisting in organising, planning, or executing a transaction for equity or debt financing relating to a body corporate or legal arrangement – *e.g. we consider this to include loan agreements (even those gift and loan back arrangements)*



Assisting in the planning or execution of the creation or restructuring a body corporate or legal arrangement – *e.g. anything changes to a company or trust (including changes to trustee, beneficiary or appointor)*

Contact details

Darius Hii

Tax and estate planning lawyer; Chartered Tax Advisor; and Director at
Chat Legal Pty Ltd

darius@chatlegal.com.au

0403923374