

BAMFORD COMPLIANCE CHECKLIST

This article provides a checklist of key items to help you determine the health of your Discretionary, Unit or Hybrid Trust deed.

Many modern trust deeds may provide flexibility with regard to the definition of "Trust Income" and trustee discretion when identifying items as either "capital" or "income" in nature. However, specific preservation of attributes for receipts, outgoings and allocations may need to be incorporated into your current streaming clauses along with allocations from gross income and recording of 'notional amounts' to provide some flexibility for the interpretation of law.

The following is a checklist to determine the health of your deed for income tax purposes post Bamford:

1. Does your deed define trust income differently to taxable income to avoid adverse consequences in gains or credits not forming part of taxable income and therefore remaining unallocated?
2. Does your deed allow the trustee a clear discretion to determine whether a receipt or outgoing is to be regarded as income or on capital account?
3. Does your deed allow streaming of different classes of income? That is, capital gains and franked dividends, which are expressly allowed under statute, and streaming of other types of income, relying on common law.
4. Is your in-specie distribution clause wide enough?
5. Does your deed specifically provide for separate accounts to be created and maintained for different classes of income and can you reclassify these if needed?
6. Are you able to stream outgoings and therefore create net amounts in the streaming accounts?
7. Do you have a default provision for outgoings?
8. Are you able to allocate the net amounts of any streamed accounts?
9. Does your deed define capital gains so as not to lose the concessions available?
10. Are you able to allocate from gross income in case your trust income is less than your taxable income?
11. Are there appropriate provisions on liabilities to taxation and payments by the trustee on behalf of the beneficiaries?

More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.

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Please note this article is for information purposes only and does not constitute legal advice.