

TAX TALKS

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69 | UPE in the Maximum Net Asset Value Test

How do you treat a UPE in the maximum net asset value test? Do you include it? And if yes for which entity?

UPE in the Maximum Net Asset Value Test

When you calculate the net asset value to see whether you pass the maximum net asset value test in Subdiv 152-A, how do you treat a UPE? Do you include it in the net asset value?

TR 2015/4

The answer is in TR 2015/4. The title of this taxation ruling already gives a good idea what it is about:

*Income tax: CGT small business concessions:
unpaid present entitlements and the maximum net asset value test*

The ruling sets out the Commissioner's views on how to treat an unpaid present entitlement of a trust beneficiary when working out the maximum net asset value in section 152-15 ITAA97.

A UPE can be about an amount of income or capital.

Include Once

So do you include a UPE in the net asset value test? The answer is that you do. You include it once, and only once. But who includes it depends on the nature of the entitlement. And the way the funds are held that represent the UPE. Whether the funds are in a sub-trust or not.

The trust's deed usually governs whether the funds representing the UPE are in a sub-trust or not.

Sub-Trust

When the beneficiary has no absolute entitlement to the funds representing the UPE and these funds are in a separate trust, they sit in a so-called sub-trust.

Main Trust

The main trust doesn't include the UPE in its net asset value. The funds representing the UPE are not relevant assets of the main trust.

And the trustee of the main trust does not have any liability related to trust assets in respect of the UPE. Because the funds representing the UPE are not in the main trust but in the sub-trust.

Sub-Trust

The funds representing the UPE form part of the sub-trust's assets. So the sub-trust's net assets include these funds without any corresponding liability.

The sub-trust is an entity connected with the main trust within the meaning of section 328-125. And with that the funds are included in the main trust's net asset valuation as connected entity assets.

Beneficiary

The value of the UPE is not taken into account. The UPE is an asset that is disregarded under paragraph 152-20(2)(a).

No Sub-Trust

Where funds representing the UPE have not been set aside on sub-trust and the beneficiary has no absolute entitlement to these funds yet, the main trust includes the value of the funds in the trust's asset.

However, the main trust also recognises a corresponding liability to pay the amount of that entitlement.

And the beneficiary includes the UPE as an asset. The UPE is not disregarded under paragraph 152-20(2)(a).

Absolute Entitlement

The moment the beneficiary receives an absolute entitlement to one or more trust assets to pay out a previous UPE, the rules above don't apply anymore.

Main Trust

Instead, the main trust takes no amount into account in respect of the UPE. Any asset that the connected beneficiary has an absolute entitlement to receive is taken not to be a relevant asset of the trust. The funds representing the UPE don't belong to the main trust anymore, but the beneficiary.

And the trustee does not have any liability related to trust assets in respect of the UPE either. By giving the beneficiary an absolute entitlement, the trustee extinguished any liability.

Beneficiary

Provided that it is not disregarded under subsection 152-20(2), the value of any asset to which the connected beneficiary is absolutely entitled to receive is taken into account as an asset of that beneficiary.

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