

TRUST TAX COURT DECISION UNLEASHES ANOTHER BOMBHELL

The Institute of Public Accountants (IPA) suspects that another protracted trust law court case will cause the Government more grief and highlight the long overdue need to reform trust tax law.

“The unfinished business of reforming trust tax laws has come back to haunt the Government; it was not that long ago that the Government had to make some hasty complex changes to trust laws following the land mark Bamford case,” said IPA chief executive officer, Andrew Conway.

“It looks like the Government may be in the same position following a recent Full Federal Court Decision of Thomas v Commissioner of Taxation (2017) FCAFC57.

“In this particular case the taxpayer allocated dividend franking credit entitlements as it saw fit. The long established trust law principal is that franking credits must flow to beneficiaries in the same proportion as the dividend income and they cannot be specifically allocated to achieve an optimal tax outcome even if permitted by the trust deed.

“It seems the decision in the Full Federal Court has allowed a taxpayer franking credits to flow to beneficiaries not in a way the legislation was intended to operate, underscoring the odd outcomes that can still arise with trusts.

“The distribution of franking credits to beneficiaries independently of the related dividends goes against established principles.

“Franking credits should ordinarily flow to the shareholder who received the dividend but this seems to be different in this case.

“After many years of trust tax reform discussions and various court rulings there is still a considerable degree of uncertainty in our tax system when it comes to trusts and the need to reform remains, especially in light of the fact that many businesses use trusts as the vehicle to operate their business,” said Mr Conway.