

## **BENDEL'S CASE - WHAT IS A LOAN?**

### **MKT Taxation Advisors**

#### **High Court confirms unpaid present entitlements are not Division 7A loans**

On 10 June 2026, the High Court delivered its decision in Commissioner of Taxation v Bendel, dismissing the Commissioner's appeal and rejecting the ATO's longstanding view that unpaid present entitlements (UPEs) owed to corporate beneficiaries may, without more, be treated as loans for Division 7A purposes.

The High Court held that a corporate beneficiary's UPE does not, of itself, constitute a "loan of money" and does not amount to the provision of "financial accommodation" under section 109D(3)(b) merely because the corporate beneficiary does not call for payment of that amount.

The decision overturns the Commissioner's longstanding administrative approach to UPEs and provides welcomed clarity for private groups that use trust and company structures. It also marks a significant development in an area that has been the subject of sustained uncertainty yet has been a compliance focus of the ATO for many years.

#### **What does this mean in practice?**

In practical terms, trustees may retain funds within a trust without automatically triggering Division 7A, and an unpaid UPE alone will not give rise to deemed dividend consequences for a corporate beneficiary, subject to applicable fiduciary and commercial constraints.

The ATO will issue a Decision Impact Statement to outline its views on the decision, which may be that the decision is specific to the facts of Bendel. Advisors and clients would then need to determine whether to continue with the status quo or challenge the ATO's long held view.



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Alternatively, the ATO may accept that the decision applies broadly, in which case the ATO will need to update its published guidance on UPEs, including revising or withdrawing administrative practices and Taxation Rulings that will now be inconsistent with the High Court's decision.

Taxpayers may also be able to amend prior returns or lodge objections where assessments were based solely on the Commissioner's former position on UPEs.

That said, the position may not end here. In addition to the recent Budget announcements relating to the taxation of trusts, legislative change remains possible, and we will continue to monitor developments closely.

For now, watch this space. There is likely more to come on this matter.

If you have you would like to know more or to discuss further, please contact your local Byfields Accountant.