

The Trevisan Trust Story 1986 – 2007

Case 91 ATC 4423 (Australian Taxation Commissioner V Trevisan)

"THE COURT ORDERS THAT:

- 1. The appeal be allowed, and the decision of the Administrative Appeals Tribunal the subject of appeal be set aside;**
- 2. In lieu of the decision of the Administrative Appeals Tribunal, the objection be upheld and the assessment be remitted to the Commissioner to be dealt with in accordance with these reasons;**
- 3. The Commissioner pay the applicants' costs of the appeal."**

This was the final statement made on 29 April 1991, in the Federal Court of Australia where Judge J. Burchett was deliberating an appeal judgement on one of the most interesting and important tax cases involving self managed superannuation funds (SMSF) ever decided. Below is the link to the ATO case file.

<http://law.ato.gov.au/atolaw/view.htm?locid='JUD/91ATC4416'&PiT=99991231235958>.

On that day the judge found the appeal allowed, as against the Commissioner of Taxation and in favour of the taxpayer, this overturned a decision made in 1986 at the Administrative Appeals Tribunal. The Commissioner for the Australian Taxation Office did not proceed to challenge further and the 1991 appeal case served as a precedent until the Budget Night speech by the Treasurer, Peter Costello on 12th May 1998. In the 1998 budget speech the Treasurer announced that from that night, a SMSF using the Trevisan structure would be outlawed and new legislation introduced. The Superannuation Legislation Amendments Act No. 4 aimed to restrict the ability of a SMSF to invest more than 5% of the fund in a related unit trust, instead of 100% as with the old Trevisan trust.

This "dynamic duo" of trusts cut a hole through the obstacles of a SMSF gearing and gave the unit trust the ability to mortgage or charge assets connected to the SMSF by its unit holding in the unit trust. It was a quite simple and very effective asset protection and tax planning tool, which if used correctly conferred the lowest tax rates on businesses and all types of investments. It was equally effective for capital gains (at 10% maximum) as well as income tax at 15% maximum, and under current tax rules, (effective 1st July 2007) provides the lowest tax rate on income and capital gains of 0% . . . that's right, NIL TAX !

Given the great interest and current activities of self managed superannuation funds (SMSF) in the last few years it may surprise many SMSF participants that they have been around for over 50 years. The traditionally favourable tax treatment of superannuation benefits meant that there was always keen interest in pushing the boundary of superannuation planning activities into new areas. But, since superannuation funds were prohibited from borrowing or from mortgaging their assets, accountants, lawyers and tax planners were constantly looking for gaps in the legislation through which they could squeeze greater tax savings.

The Trevisan family who lived in Queensland and their accountants - Haines Norton on the Gold Coast set the scene for the case listed above in 1991 which remained a legal precedent until the new legislation took effect on 11th August 1999.

However, as the TV ads promise, "but wait, there's more", (but no steak knives!), and so it was for the Trevisan Trust story, when the new legislation was passed it included some "grand-fathering" provisions. That is, it took account of those business owners and investors who had already, quite legally, established a Trevisan Trust prior to 11th August 1999 and who were part way through a continuing business strategy. To this lucky group the Federal Government handed a "get out of jail" card which allowed them 10 years to finish their strategy without any penalty and then to continue to use the Trevisan Trust in perpetuity. The result of these transitional provisions enables the unit trust to continue to borrow and to mortgage its assets but after 30th June 2009 the trust profit it distributes to the superannuation fund cannot be re-invested back into the unit trust. The loss of this ability is a financial handicap but does not make continued use of the trust unworkable, indeed it continues to provide a great opportunity to enable unlimited amounts of potentially tax free superannuation benefits to be enjoyed. Since the 1st July 2007 changes to superannuation funds, the ability to fund large contributions has been closed off, but as they say, one door closes, another door opens. The Trevisan Trust still has the capacity to dramatically alter bottom line business or investment performance by a large margin compared to a company or other trust structures and allows business profits to be channeled directly into the superannuation fund. Provided careful business planning is instituted, a pre-1999 Trevisan Trust can provide an incomparable way to protect assets, maximise superannuation benefits, speed up the reduction of debt and legally reduce income tax and capital gains taxes.

Fintel Group Pty. Limited has been advising on Trevisan Trust structures in conjunction with shelf company operator A4Companies Pty. Limited since the Trevisan case in 1991 and has a limited number of clean "shelf trusts" which were designed to be transferred to new investors or business owners. More information is listed on the A4Companies web site at a4companies.com.au. Interested parties are invited to call us or email for further information at a4companies@bigpond.com.

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