

High Court rules unpaid trust amounts are not loans

What this means for you

If your family trust gives a company a share of trust income but does not actually pay it across, the High Court has confirmed this is not automatically treated as a loan back to the trust. That matters, because being treated as a loan could trigger an unexpected tax bill under the rules known as Division 7A.

The background

Many family trusts distribute income to a related company, often called a “bucket company”, but leave the money sitting in the trust rather than paying it over. When income is owed to a beneficiary but not yet paid, it is called an unpaid present entitlement, or UPE.

For about 15 years the ATO took the view that if the company did not call for its money, the unpaid amount worked like a loan from the company back to the trust. On that view, the arrangement could be taxed as if a dividend had been paid, unless the trust put a formal loan agreement in place and made regular repayments.

The Bendel case put that view to the test. A trust controlled by Mr Bendel set income aside for a related company year after year. The company never asked to be paid, and the funds stayed in the group. The ATO assessed the unpaid amounts as loans and taxed them.

What the High Court decided

On 10 June 2026 the High Court ruled in favour of the taxpayer, by a five to two majority. It found that simply leaving an entitlement unpaid is not a loan.

The key point is that a loan needs an obligation to repay money that was advanced. Here, the company had not advanced anything. It had simply chosen not to call for what it was owed. Doing nothing, the Court said, is not the same as making a loan or providing finance. The unpaid amount remained the company’s entitlement, but it did not become a debt the trust had to repay until the company actually asked for payment.

In short, the long-standing ATO position has been overturned.

The ATO’s response

The ATO has said it welcomes the clarity and is considering what the decision means. It will release further guidance for affected taxpayers as soon as it can.

Where this leaves you

This is a helpful outcome, but it does not mean unpaid entitlements can be ignored. The result turned on the specific wording of the trust deed and the fact that the company never called for payment. Other tax rules can still apply, and how the decision affects your trust will depend on your own arrangements.

There is also a longer-term question mark. The Government has proposed taxing trust income at a minimum rate from 1 July 2028, which could reduce the appeal of distributing income to companies in any case.

If your trust uses a bucket company, please speak to us so we can review where you stand.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.