TABLED 29/04. TLAB2.
MR ROSS ELLIS. TRUSTEES CORPORATION

TFN WITHHOLDING FOR TRUSTS ASSOCIATION OF AUSTRALIA.

DEFINITION OF EXTENDED CLOSELY HELD TRUSTS

I speak to you from a practitioner's point of view with over 10 years experience in tax compliance in the Trustee Company industry being formerly with the largest member, Perpetual, and now with a mid-size member, Equity Trustees.

Whilst we believe the measures are fair and reasonable for a high wealth taxpayers and the ATO's recording and reporting mechanisms, on behalf of my industry, I wish to bring to your attention unintended side effects that we feel this measure will bring.

The proposed rule will define Extended Closely Held Trusts to now include Family Trusts, as well as the current position which includes Inter Vivos Trusts created via a deed, as well as Testamentary Trusts and Deceased Estates greater than 5 years old which are created via a will.

Trustee companies in particular deal with Testamentary Trusts. The typical Testamentary Trust set-up is what we call a Life Tenancy. This is when a husband passes away, he leaves the income of his investments to his widow and their children are entitled to the assets when she passes away.

From that scenario, the typical beneficiary profile of a Testamentary Trust is that of a senior/elderly spouse who will use this income as a means of income to supplement their Age Pension.

The Age Pension income test allows recipient to receive between $3,500 to $40,000 pa in additional income and still to receive a full or part pension. Centrelink actively contact trustees of Testamentary Trusts in order to maintain the income records for beneficiaries.

Such beneficiaries will usually qualify for the Senior Australian Tax Offset. That is, women over 63 and men over 65 with taxable income being less than $29000.

Those who qualify for the SATO are not required to lodge income tax returns. In fact, many elderly clients, in fact, do not have a Tax File Number as it is not a requirement to receive the Age Pension.

The proposals in question go against the grain of reducing the taxation compliance of our senior Australians. This proposal would force many elderly people to apply for Tax File Numbers or else lose half of their entitlement and then force then into an accountant's office to receive the amounts withheld. This new cost of this will no doubt be imposed onto the beneficiary.

POTENTIAL SOLUTION:

We propose that the meaning of Extended Closely Held Trusts be amended to exclude those trusts that are concessionally taxed. These trusts are listed in section 99A(2) of the Income Tax Assessment Act 1936. The theme of this section is that it highlights trust scenarios whereby the beneficiaries have not entered the trust scheme voluntarily. Such trusts shown are created by wills, personal injury payments, and death benefits, among others.

We feel that by relaxing the Extended Closely Held Trusts definition, beneficiaries that need not be targeted by this measure will not be burdened by the withholding of income, the burden of tax compliance and the burden of the costs of tax compliance.

TAXING & REPORTING METHODS

We also wish to bring to your attention potential issues for trustees and tax practitioners regarding the reporting and payments of TFN Withholding Tax.

The proposed method would force trusts where beneficiaries have not registered a TFN into the PAYG system and its related compliance requirements.

POTENTIAL SOLUTION:

We feel that there is already a method in place to cater for TFN Withholding collection and TFN Withholding reporting. This is through the trust income tax return itself. The trust income tax return currently provides details of which beneficiaries are notified of their taxable income. The beneficiary then includes this in their own personal return.

The best method for collecting of TFN Withholding Tax would be to issue a "slash" assessment when the TFN Withholding amount is shown in the beneficiary's income information in the return. This method will allow the ATO to collect the TFN Withholding Tax and allows tax practitioners to clearly follow any payments made of behalf of whom via the tax agent portal.

Once the return is lodged, the ATO can use this information in the pre-filling. The beneficiary cannot correctly lodge their own personal return until the trust return is lodged. Thus the beneficiary requesting a refund of TFN Withholding cannot happen until the trust return is lodged.

The preferred method for Trustees and their tax agents should be to use current methodologies to report and collect TFN Withholding Tax. This would not impose any addition burdens on established tax lodgement programs that conclude in May of the following financial year.

The proposed methods would deem the current trust return lodgement program useless as calculations and reporting would be required by September following the end of the financial year.

The biggest Trustee Company lodges approximately 2000 trust returns each year and the mid-tiers around 400 returns. The proposed methods would cause major and costly administrative burdens on trustees and their tax agents. Any additional costs will no doubt be passed onto the trusts & their beneficiaries which would be disadvantaged greatly.

PROPOSED EXCLUSIONS FROM EXTENDED CLOSELY HELD TRUSTS

99A(2)
This section does not apply in relation to a trust estate in relation to a year of income, being a trust estate:

(a) that resulted from:

(i) a **will, a codicil or an order of a court that varied** or modified the provisions of a will or a codicil; or

(ii) an **intestacy or an order of a court that varied** or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;

(b) that consists of the property of a person who has become bankrupt, being property that has vested in The Official Receiver in Bankruptcy, or in a registered trustee, under the Bankruptcy Act 1966;

(c) that is administered under Part XI of the Bankruptcy Act 1966; or

(d) that consists of property of a kind referred to in paragraph **102AG(2)(c);**

102AG(2) [Excepted trust income]

(c) is derived by the trustee of the trust estate from the investment of any property transferred to the trustee for the benefit of the beneficiary:

(i) by way of, or in satisfaction of a claim for, **damages in respect of:**

(A) loss by the beneficiary of **parental support**; or

(B) **personal injury** to the beneficiary, any disease suffered by the beneficiary or any impairment of the beneficiary's physical or mental condition;

(ii) pursuant to any law relating to **worker's compensation;**

(iii) pursuant to any law relating to the payment of compensation in respect of **criminal injuries;**

(iv) directly as the result of the death of a person and under the terms of a policy of **life insurance;**

(v) directly as the result of the **death** of a person and out of a provident, **benefit, superannuation** or retirement fund;

(vi) directly as the result of the death of a person by an **employer of the deceased** person;

(vii) out of a public fund established and maintained exclusively for the relief of **persons in necessitous circumstances**; or

(viii) as the result of **a family breakdown** (see section 102AGA);

63 Statement of distribution (continued)

Beneficiary 1	Beneficiary 2	Beneficiary 3
Name in full of beneficiary and TFN or postal address:	Name in full of beneficiary and TFN or postal address:	Name in full of beneficiary and TFN or postal address:
TFN	TFN	TFN
Date of birth Day Month Year	Date of birth Day Month Year	Date of birth Day Month Year

Income to which no beneficiary is presently entitled and in which no beneficiary has an indefeasible vested interest, and the trustee's share of credit for tax deducted.

		Beneficiary 1	Beneficiary 2	Beneficiary 3	No beneficiary	Totals of each row
Assessment calculation code	V					
Credit for tax withheld – foreign resident withholding	L	.00	.00	.00	.00	.00
Credit for tax withheld – managed investment trust fund payments	O	.00	.00	.00	.00	.00
Australian franking credits from a New Zealand company	N	.00	.00	.00	.00	.00
Share of income – Primary production	A	.00 / LOSS	.00 / LOSS	.00 / LOSS	.00 / LOSS	.00
Share of income – Non-primary production	B	.00 / LOSS	.00 / LOSS	.00 / LOSS	.00 / LOSS	.00
Credit for tax withheld where ABN not quoted	C	.00	.00	.00	.00	.00
Franking credit	D					
TFN amounts withheld	E					
Net capital gain	F	.00	.00	.00	.00	.00
Attributed foreign income	G	.00	.00	.00	.00	.00
Other assessable foreign source income	H	.00 / LOSS	.00 / LOSS	.00 / LOSS	.00 / LOSS	.00
Foreign income tax offsets	I					
Share of National rental affordability scheme tax offset	R					

Entrepreneurs tax offset information

		Beneficiary 1	Beneficiary 2	Beneficiary 3	No beneficiary	Totals of each row
Share of net small business entity income	M	.00	.00	.00 (+)	.00 F	.00

Non-resident beneficiary additional information

		Beneficiary 1	Beneficiary 2	Beneficiary 3	Totals of each row
s98(3) assessable amount	J	.00	.00	.00 TFN.	.00
s98(4) assessable amount	K	.00	.00	.00	.00

TB statement information (complete only for trustee beneficiaries of a closely held trust)

For each trustee beneficiary, indicate whether you will be making a TB statement:

To make a correct TB statement you must also quote the TFN for a resident trustee beneficiary in the Beneficiary 1, 2 or 3 section.

		Beneficiary 1	Beneficiary 2	Beneficiary 3	Totals of each row
TB statement?		Print Y for yes or N for no.	Print Y for yes or N for no.	Print Y for yes or N for no.	
Tax preferred amounts	P	.00	.00	.00	.00
Untaxed part of share of net income	Q	.00	.00	.00	.00