
Trustee Corporations Association of Australia

**Submission to the
Senate Economics Committee**

**INQUIRY INTO TAX LAWS AMENDMENT
(2010 MEASURES NO. 2) BILL 2010**

April 2010

Introduction

The Trustee Corporations Association is the peak representative body for the trustee corporations industry in Australia. It represents 16 organisations, comprising all 8 regional Public Trustees and the great majority of the 10 private statutory trustee companies (see Attachment).

Traditional services provided by trustee corporations include:

- estate planning.
- preparing wills, trust instruments, powers of attorney etc.
- acting as executor or administrator of deceased estates.
- acting as trustee for various types of trusts.
- acting as attorney under powers of attorney.
- managing the estates of individuals who lack capacity to manage their affairs.

Each year our members:

- administer about 10,000 deceased estates.
- write about 70,000 wills and powers of attorney.
- manage assets under agency arrangements or Court orders for about 45,000 people.
- manage about 2,000 charitable trusts and 15,000 other personal trusts.
- prepare over 40,000 tax returns.

We appreciate the opportunity to make a submission to the Committee's Inquiry into the *Tax Laws Amendment (2010 Measures No. 2) Bill 2010*.

Our comments are limited to Schedule 2, which deals with extending the tax file number (TFN) withholding arrangements to closely held trusts, including family trusts.

In summary, we are very concerned that the proposed arrangements will entail considerable administrative burden and in some areas will be very difficult, if not impossible, to comply with within the suggested time frames.

We firmly believe that a more reasonable approach would be to utilise the Statement of Distribution section of the existing Form T (trust tax return), with some minor amendments.

Rationale for the proposed amendments

In the Consultation Paper released in October last year, Minister Sherry noted:

“Extending the TFN withholding arrangements will help ensure that beneficiaries of trusts include their share of the trust’s taxable income in their assessable income when completing their tax returns.

The measure will also help to improve the efficiency and effectiveness of the Tax Office’s income matching system as a means of ensuring that closely held trusts and their beneficiaries comply with the taxation law.”

The proposed legislation will apply the TFN withholding rules to a group of trusts labelled "extended closely held trusts".

This includes most *inter vivos* trusts, including family trusts that have made a 'family trust election', and importantly, deceased estates continuing beyond 5 years from the death of the testator.

Whilst we do not contest the underlying purpose of the proposal, we believe that bringing deceased estates and testamentary trusts into this bracket will create a costly administrative burden that will adversely affect thousands of beneficiaries.

Increased costs in managing the trusts will naturally lead to a decrease in the income available for beneficiaries.

A very significant part of the taxation work undertaken by trustee companies involves preparing income tax returns for testamentary trusts whereby a life interest receives income, with capital being retained in the trust until such time as the life interest dies and the assets then pass to third parties.

A high percentage of those beneficiaries utilise the Senior Australian Tax Offset so that they are not required to lodge an annual income tax return; if they do, it is purely to receive a refund of franking credits.

In many cases, those beneficiaries are not required to hold a TFN.

For many of the potentially affected beneficiaries, the trust distributions represent their main source of income.

It is also worth noting that Centrelink has processes in place to monitor distributions made from such trusts as to the effect on any welfare payments.

We firmly believe that trusts listed in s99A(2) of the *Income Tax Assessment Act 1936* should be exempt from the proposed arrangements:

The legislation would seem to be targeted at the income flows of high income earners who voluntarily direct income flow through a trust network.

The particular trusts listed in s99A(2) are trusts where the beneficiary does not voluntarily enter the trust scheme, and we believe it to be unfair to burden those beneficiaries with taxation compliance that they possibly cannot afford or do not wish to enter into.

Further, measures put in place over the years have lessened the taxation compliance requirements of a large proportion of our ageing population. The proposed measures run counter to this trend.

Compliance problems

Present entitlement

Under proposed s12-175 of *TAA 1953*, the trustee must withhold if the beneficiary has not quoted the TFN at or before the time they became presently entitled.

This is impractical in many cases.

For example, the executor of an intestate estate may take in excess of 5 years to "prove" beneficiaries. Residue will be established and beneficiaries will become presently entitled at the same time as they are identified.

TFNs cannot be provided at or before present entitlement.

Even if there is a gap between establishing beneficiaries and present entitlement, many beneficiaries may be pensioners and may not have time to apply and obtain TFNs from the ATO.

It is impossible to identify by end September all beneficiaries who are presently entitled.

Present entitlement can only be ascertained at the time of completing the tax return.

There may be numerous deceased estates in various stages of completion and age. As present entitlement is a taxation concept, it can only be considered properly, and by tax agents, at the time of completing the tax return.

Present entitlement may be established in one year and payment to the beneficiary may be made in another financial year. All of this will make it impossible for trustees with thousands of trusts and beneficiaries to determine assessable amounts prior to completion of tax returns.

Reporting

The process of reporting beneficiary TFNs to the ATO for the first quarter of the new regime ending 30 September 2010 would be a major job in itself, especially at a time when trustee companies will already have significant compliance deadlines.

Registering for the PAYG withholding regime those trusts whose beneficiaries have not met the TFN disclosure requirements would also involve a significant amount of work.

We welcome the removal of the quarterly calculation and remittance requirement as a practical step.

However, providing the annual withholding report to the ATO by end September, and issuing to beneficiaries, who have had tax withheld, PAYG payment summaries within the following 14 days, would be very difficult to achieve.

Due to the year-end calculations that need to be made by fund managers, the 30 June managed fund income components can take up to September or October to issue. As such, calculating the tax to be withheld and remitted may not be able to be finalised within these deadlines.

As the "assessable amount" (ie: a beneficiary's share of income less deductions - on which withholding is to be applied and which includes payments made on behalf of the beneficiary) can only be calculated at the time of preparing the return, it would probably be difficult to make any system calculations.

If tax returns are to be prepared and assessable amounts reported by end September, it defeats the objective of the lodgment program which allows tax agents to complete tax returns by end May the following year.

While end September reporting may not be a problem for trustees with one or two family trusts (which the Government may have had in mind when it developed this proposal), for professional trustee corporations with many thousands of trusts and estates and an even greater number of beneficiaries, it becomes impossible to comply.

Also, trust beneficiaries are likely to lodge their personal return only after the trust return is lodged, in any event.

An alternative approach

An alternative approach to that proposed in the Bill would be to utilise the Statement of Distribution section of the existing Form T (trust tax return), with some minor amendments.

This section allows a trustee to report the income distributed to beneficiaries for a financial year, and includes an area for the provision of the beneficiary's TFN.

Completion of the TFN area of that form could be made mandatory ie: the beneficiary's TFN to be provided or the reason for not doing so being given, being one of the allowed exemptions.

Where a beneficiary has received a distribution and neither their TFN has been provided nor one of the valid exemptions noted, on lodgment of the return a "slash assessment" would issue, similar to those issued for beneficiaries assessed under s98 of *ITAA 1936* where the trustee is obligated to meet the tax due.

The assessment would identify a beneficiary whose TFN has not been provided, the income on which the TFN withholding has been applied and the resultant tax liability.

The assessment would issue under the trust TFN but with a slash number identifier to distinguish that it is a discrete liability separate from other tax liabilities assessed to the trustee.

Aligning the TFN withholding with the standard tax return lodgment cycle would eliminate the additional administrative effort required in trying to assimilate closely held trusts into the PAYG withholding regime.

Working within the lodgment time frames provided for the trust tax returns would allow an accurate, orderly assessment in respect of those beneficiaries who have not met the TFN disclosure requirements and the payment of any tax due.

The figures reported could then be used by the ATO in its data-matching processes.

If the above alternative approach is not adopted, the time frame for annual reports and payments should be aligned with the lodgment of the tax return or lodgment program.

As a minimum, all deceased estates which do not have testamentary trusts should be exempt from the proposed new TFN arrangements.

Attachment

TCA Members

- ANZ Trustees Ltd
- Australian Executor Trustees Ltd
- Equity Trustees Ltd
- National Australia Trustees Ltd
- New South Wales Trustee and Guardian
- Perpetual Ltd
- Public Trustee for the ACT
- Public Trustee for the Northern Territory
- The Public Trustee of Queensland
- Public Trustee South Australia
- The Public Trustee Tasmania
- Public Trustee Western Australia
- Sandhurst Trustees Ltd
- State Trustees Ltd
- Tasmanian Perpetual Trustees Ltd
- Trust Company Ltd
