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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

TREASURY LAWS AMENDMENT BILL 2025

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

| <i>Abbreviation</i> | <i>Definition</i> |
|----------------------------|---|
| ATO | Australian Taxation Office |
| Commissioner | Commissioner of Taxation |
| ITAA 1936 | <i>Income Tax Assessment Act 1936</i> |
| MYEFO | Mid-Year Economic and Fiscal Outlook |
| TAA 1953 | <i>Taxation Administration Act 1953</i> |
| TFN | Tax File Number |

Chapter 1: *Modernising trust administration systems*

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Outline of chapter

- 1.1 Schedule [#] to the Bill streamlines how trustees of closely held trusts report beneficiary TFNs to the Commissioner. Trustees must report beneficiary TFNs at the same time as the trust tax return is lodged for income years that the beneficiary is presently entitled to a share of income of the trust. This requirement replaces the obligation for trustees to report quarterly on TFNs quoted to them by a beneficiary. The amendments support pre-filling of beneficiary income tax returns, helping to ensure the right amount of tax is being paid by trustees and beneficiaries.

Context of amendments

- 1.2 The then Government announced in the March 2022-23 Budget a measure to improve and digitalise trust and beneficiary income reporting to reduce compliance burden on taxpayers by increasing pre-filling capabilities and improving the ATO's processes.
- 1.3 The ATO introduced several changes on 1 July 2024 to the annual tax return form for trustees, beneficiaries and their tax agents including:
- modifying capital gains tax labels in the Statement of Distribution;
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- introducing the trust income schedule for all trust beneficiaries; and
 - adding new data validations to the trust tax return in the practitioner lodgement service.
- 1.4 To implement the next phase of this work, the Government announced additional funding in the 2024-25 MYEFO for the ATO to modernise the income tax reporting systems for trusts to reduce compliance costs for trustees, beneficiaries and their agents.
- 1.5 A key focus of the 2024-25 MYEFO announcement was the enhancement of pre-filling capabilities which these amendments support by amending the ITAA 1936 to change how trustees are required to report beneficiary TFNs to the Commissioner.
- 1.6 Prior to these amendments, trustees were only required to provide information, such as names and addresses, to identify the beneficiaries that were presently entitled to trust income in the Statement of Distribution on the trust's tax return.
- 1.7 The Statement of Distribution provides the ATO with details of the beneficiary and the share of trust income that the beneficiary is presently entitled to.
- 1.8 The information that trustees were required to provide in the Statement of Distribution did not include a beneficiary's TFN even if it had been quoted to the trustee. The beneficiary's TFN was instead reported to the ATO on a separate TFN Report at the end of the quarter in which the beneficiary quoted their TFN to the trustee.
- 1.9 This arrangement made it difficult for the ATO to accurately match the trust income to the correct beneficiary for each income year that they were presently entitled to trust income, because without the TFN, the other identifying information alone may have been insufficient to accurately match the correct beneficiary.
- 1.10 These amendments require trustees to provide a presently entitled beneficiary's TFN to the Commissioner at the same time that the trust return is provided for an income year, if the beneficiary has quoted it to the trustee. This enhances the ATO's data matching and pre-filling capabilities for beneficiary returns.
- 1.11 The change to the TFN reporting requirements does not change existing TFN withholding rules for closely held trusts. It also ensures trustees are withholding from beneficiaries' entitlements in line with the existing withholding requirements where the beneficiary has chosen not to quote their TFN.
- 1.12 The existing withholding arrangements, combined with the enhanced pre-filling capabilities supported by the reporting of beneficiary TFNs in the trust's tax return, assist in ensuring the right amount of tax is being paid by trustees and beneficiaries on trust income.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

| New law | Current law |
|---|--|
| If a beneficiary of a closely held trust chooses to quote their TFN to a trustee before the trust tax return is lodged and the beneficiary is presently entitled to income of the trust in an income year, the trustee must report the beneficiary's TFN to the Commissioner by the earlier of the lodgement date and due date of the trust's tax return. | If a beneficiary of a closely held trust chooses to quote their TFN to a trustee, the trustee must report that beneficiary's TFN to the Commissioner within one month after the end of the quarter in which the beneficiary quoted their TFN. |
| <p>The Commissioner may give the trustee a notice of the beneficiary's correct TFN if the Commissioner is satisfied that:</p> <ul style="list-style-type: none"> the TFN quoted to the trustee has been cancelled, withdrawn since it was quoted, or is otherwise wrong; the beneficiary has a TFN; and it is reasonable to provide the TFN to the trustee. | <p>The Commissioner may give the trustee a notice of the beneficiary's correct TFN if the Commissioner is satisfied that the:</p> <ul style="list-style-type: none"> TFN quoted to the trustee has been cancelled, withdrawn since it was quoted, or is otherwise wrong; and beneficiary has a TFN. |
| <p>The Commissioner must give the trustee and beneficiary a notice if the Commissioner is:</p> <ul style="list-style-type: none"> satisfied that the TFN quoted to the trustee has been cancelled, withdrawn since it was quoted, or is for any other reason not the beneficiary's TFN; and not satisfied that the beneficiary has a TFN; or not satisfied that it is reasonable to provide the correct TFN. | <p>The Commissioner must give the trustee and beneficiary a notice if the Commissioner is satisfied that the:</p> <ul style="list-style-type: none"> TFN quoted to the trustee has been cancelled, withdrawn since it was quoted, or is for any other reason not the beneficiary's TFN; and beneficiary does not have a TFN. |

Detailed explanation of new law

Beneficiary TFN reporting

- 1.13 The amendments in this schedule change the way trustees of closely held trusts are required to report a beneficiary's TFN to the Commissioner when a beneficiary has quoted their TFN to the trustee.
- 1.14 The trustee must report a beneficiary's TFN in the approved form, which is expected to be the Statement of Distribution in the trust's tax return for an income year, if the beneficiary:
- is presently entitled to a share of the income of the trust for the income year; and
 - has quoted their TFN any time before the trustee lodges the trust's tax return.

[Schedule xx, item 1, subsection 202DP(1) of the ITAA 1936]

- 1.15 Beneficiaries only need to quote their TFN to the trustee once, if they choose to quote. After it has been quoted, the trustee is required to report the TFN to the Commissioner in the trust's tax return for all future income years that the beneficiary is presently entitled to a share of income of the trust unless the Commissioner notifies the trustee that the beneficiary's TFN is incorrect.
- 1.16 Reporting the beneficiary's TFN in the trust tax return where the beneficiary has quoted their TFN will allow the ATO to accurately identify the beneficiary and ensure the share of income the beneficiary is presently entitled to is included in their income tax return through the ATO's data matching and pre-filling processes.
- 1.17 However, a trustee is not required to report a trustee beneficiary's TFN where the trustee has already reported it when making a trustee beneficiary statement under Division 6D of Part III of the ITAA 1936. Division 6D prescribes when and how trustee beneficiary TFNs are reported to the Commissioner.

[Schedule xx, item 1, paragraph 202DP(1)(c) of the ITAA 1936]

- 1.18 The trustee is required to report the beneficiary's TFN by the earlier of the lodgement date and the due date of the trust's tax return or by any other date that the Commissioner allows the trustee to report the TFN to the ATO.

[Schedule x, item 1, subsection 202DP(2) of the ITAA 1936]

Commissioner's notifications

- 1.19 The amendments also clarify the Commissioner's notification requirements when a TFN quoted to the trustee and reported to the Commissioner is incorrect.

Commissioner may notify trustee of a beneficiary's correct TFN

- 1.20 After the beneficiary's TFN has been reported to the Commissioner, the Commissioner may identify the TFN that has been quoted to the trustee has been cancelled or withdrawn since it was quoted or is otherwise wrong.
- 1.21 In these instances, the Commissioner may provide the beneficiary's correct TFN to the trustee if the Commissioner has identified the TFN and they consider it reasonable to do. This will be determined on a case-by-case basis having regard to the circumstances known to the Commissioner at the time.
[Schedule xx, item 2, subsection 202DR(1) of the ITAA 1936]
- 1.22 If the Commissioner provides the beneficiary's correct TFN to the trustee, the beneficiary is taken to have quoted their correct TFN on the same day as the beneficiary originally quoted the incorrect TFN to the trustee.
- 1.23 This assists the trustee to report the beneficiary's TFN where the beneficiary is presently entitled to a share of income of the trust in future income years.
[Schedule xx, item 2, subsection 202DR(2) of the ITAA 1936]

Commissioner must notify trustee and beneficiary of a beneficiary's incorrect TFN

- 1.24 The Commissioner must provide written notice to the trustee and beneficiary if the Commissioner is not satisfied:
- the beneficiary has provided the correct TFN to the trustee because the other identifying information does not match the Commissioner's records; or
 - the beneficiary has a TFN; or
 - that it is reasonable to notify the trustee of the beneficiary's correct TFN under subsection 202DR(1) of the ITAA 1936.
- [Schedule xx, items 3 and 4, subsection 202DR(4) and paragraph 202DR(4)(b) of the ITAA 1936]*
- 1.25 The beneficiary is taken not to have quoted their TFN to the trustee, and the trustee is required to withhold from the beneficiary's distributions and present entitlements under sections 12-175 and 12-180 in Schedule 1 to the TAA 1953 from the later of:
- the day the notice is given to the trustee by the Commissioner; or

- if the notice specifies a day, then the day in the notice.

Commencement, application, and transitional provisions

- 1.26 Schedule [#] to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.
[Schedule #, Clause 2]
- 1.27 The amendments to section 202DP of the ITAA 1936 apply for income years beginning on or after 1 July 2026.
- 1.28 The quarterly beneficiary TFN reporting requirements in force immediately before the commencement of the schedule continue to apply for quarters in a year of income of the trust where the year of income begins before 1 July 2026. This ensures continuity of reporting of TFNs to the Commissioner in the period prior to the application of the amendments and after this time.
- 1.29 The amendments to section 202DR of the ITAA 1936 apply to the giving of notices to a trustee on or after the later of the commencement of this schedule and the first year of income of the trust that starts on or after 1 July 2026.
- 1.30 Any notices that the Commissioner has issued under section 202DR of the ITAA 1936 before the commencement of this schedule remain in effect to ensure that any corrected TFNs provided by the Commissioner continue to be taken to be quoted by the beneficiary to the trustee and any notices of an incorrect TFN continue to require the trustee to withhold as required.
[Schedule xx, item 5]