Taxpayers AUSTRALIA INC
Superannuation AUSTRALIA PTY LTD
(A wholly owned subsidiary of Taxpayers Australia Inc)

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
SBTR@treasury.gov.au

Via email

19 February 2010

Dear Sir/Madam,

TAX LAWS AMENDMENT (2010 MEASURES NO. 2) BILL 2010: TFN WITHHOLDING FOR CLOSELY HELD TRUSTS

Taxpayers Australia are pleased to provide a submission to Treasury in response to the Exposure Draft in relation to the proposed TFN withholding rules for closely held trusts.

The appended document sets out our views in response to the issues raised.

Should you wish to discuss any aspect of this submission, please contact either Andy Nguyen or myself on (03) 8851 4555.

Yours Faithfully,

Roger Timms
Head of Tax & Superannuation
Taxpayers Australia Inc

Office:
1405 Burke Road
Kew East
Victoria 3102

Telephone: (03) 8851 4555
Fax: (03) 9819 7720
email: info@taxpayer.com.au
Web: www.taxpayer.com.au

Post Office Box No.
PO Box 292
Kew East
Victoria 3102

Appendix: TFN withholding for closely held trusts

1. Executive Summary

In the main, Taxpayers Australia agrees with the policy intent of the TFN withholding regime for closely-held trusts. However, under amendments, we have reservations in relation to the compliance burden and the practical difficulties which may be placed on trustees and their tax advisers as proposed.

On this basis, our comments with respect to the application of the proposed amendments are follows:

2. Reporting Requirements

(i) Reporting of amounts withheld and to be distributed

Under the proposed amendments, the trustee is required to lodge with the Commissioner of Taxation (Commissioner) an annual report detailing the amounts withheld and the amounts that would have been withheld if the beneficiaries' TFN had not been provided.

This is to be made in an approved form and lodged within two months following the end of the income year or longer if allowed by the Commissioner. To the extent that the income year is 30 June, this means that the report is required to be lodged by 31 August.

In practice, there would be difficulties in the trustee meeting this deadline, as during this period, the financial accounts for the trust would be in the process of being prepared by the trust's accountant or tax adviser. Generally, the quantum of the distribution would not be known until the trust's tax return is lodged by the due date of 31 May of the following year.

In this regard, Taxpayers Australia is of the view that places significant pressure on trustees and their advisers to prepare financial statements in time to determine the quantum of any distributions to beneficiaries. This, particularly, where the ATO's compliance program is aimed to spread the workload for throughout the income year.

Our suggested improvement to this requirement is outlined in our recommendation below at item (iii).

(ii) Remittance of PAYG withholding amounts

Under the proposed rules, any amounts withheld from a beneficiary for not quoting their TFN is required to be paid by the trustee within 28 days of the month following the lodgment of the annual report. For an income year ended 30 June, the payment is required to be made by 28 September.

For the reasons noted above, given the difficulties in determining the quantum of the distributions, the best case scenario would be that an estimate of the tax liability be made (as opposed to a precise amount which would be referable to the beneficiary's own tax return).

Our suggested improvement to this requirement is outlined in our recommendation below at item (iii).

(iii) Recommendation to simplify the TFN reporting and payment

The intention of the TFN withholding rules is to allow tax to be paid by the trustee at the top marginal rate where a presently entitled beneficiary fails to quote their TFN to the trustee. This is to enable the Commissioner to match the distribution to the beneficiary's own personal tax return.

Presently, where tax returns are prepared for a trust, a statement of distribution in the return is required to be disclosed. This details the relevant entities to whom a distribution would be made to. That disclosure also requires the trust to detail the TFNs of the relevant beneficiaries to whom the distribution is made.

To simplify the compliance process for trustees and for the Commissioner to achieve the same aims as noted, Taxpayers Australia suggest that TFN reporting be made in once only when the trust tax return is lodged on 15 May for the prior 30 June. This will remove the need for an annual report.

Further, where a TFN has not been quoted prior to year end by the beneficiary, then an amount will need to be remitted on lodgment day (irrespective of whether a subsequent TFN is provided at year end).

We believe that approach will simplify the compliance process and provide the Commissioner with the information required for data matching purposes. Whilst this may pose a delay in the receipt of Government revenues, this at least will simplify the compliance process for trustees and their advisers.

3. Administration

(i) Provision of payment summaries

Under the proposed rules, the trustee is required to provide payment summaries to beneficiaries to notify of amounts which have been withheld. This is currently required to be performed within 14 days after the lodgment of the annual report. For a 30 June year end, this would mean that the payment summary would be required to be issued by 14 September of each year.

Failing to comply with this requirement constitutes a strict liability offence punishable by a fine not exceeding 20 penalty units.

As noted, most distributions amounts cannot be quantified by the trustee prior to year end due to the unavailability of precise financial accounts and tax reconciliation. In such cases, the distribution would be determined by way of minute or trustee declaration on a percentage basis with the distribution determined close to tax return lodgment date (ie. 31 May of each year).

In this regard, it would be difficult for a trustee to provide a payment summary to beneficiary who has not disclosed their TFN by 14 September.

On this basis, Taxpayers Australia considers that imposing a strict liability penalty for failure to provide a payment summary would be unfair to the trustee given the timeframe to determine the income of the trust available for distribution. At best, any amounts determined for the payment summary of the beneficiary would be an estimate and would not be of use to the beneficiary for the purposes of their tax return and for ATO data matching purposes.

Therefore, we suggest that to allow sufficient time to quantify amounts to be distributed beneficiaries, an extension of time is granted to the trustee to issue payment summaries to the beneficiaries to a more suitable date. A suggested date may be three months prior to the lodgment of the tax return (eg. 28 February of the following income year). In our view, a strict liability penalty for failure to issue a statement in such instances would be fair and reasonable.

This will allow time for the beneficiary to lodge their tax return before the due date of 31 March (which applies to individual taxpayers who lodge their return via a tax agent).

(ii) Reporting of TFNs quoted

Under the proposed amendments, TFNs are required to be reported by the trustee on a quarterly basis in an approved form. Reporting is only required to be made one month after of end of the quarter upon determining that there is a present entitlement to a beneficiary (either on an annual basis or where there is a deemed present entitlement).

In addition, we note that the provisions state that is required to be made at the end of the following "month", which appears quite arbitrary given that must lodgment dates give a specified number of days (eg. 28 days).

We consider that quarterly reporting makes it onerous to the trustee or their adviser. To simplify the process, we suggest that any TFN quoting be done once on an annual basis before the end of the income year. This would capture all beneficiaries who have quoted their TFN for the income year.

In practice, with closely held trusts, unless there are distributions to different beneficiaries every year – we would anticipate the quoting of a beneficiaries' TFN would be a once-off requirement and having a quarterly basis of reporting adds further complexity to the trustee's obligations.