

Private Client Services



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New tax obligations for trusts Expansion of the TFN withholding rules

Following an expansion of the tax file number (TFN) withholding rules, family and other closely held trusts must meet new reporting and tax withholding obligations from 1 July 2010.

To avoid withholding tax from distributions paid to beneficiaries, trustees must collect the TFNs of all beneficiaries that are entitled to any distribution of trust income (for the 2010-11 and following income years), including interim distributions, and report to the Australian Tax Office (ATO).

Where the TFN is not supplied, the trust must withhold tax of 46.5%, unless an exception applies, for example, in the case of minors. In this instance, pay as you go (PAYG) withholding registration will also be required. Penalties and liabilities may arise where the rules are not complied with.

Trustees must ensure that they comply with the new annual reporting obligations, and meet all compliance deadlines. Trustees are required to report TFNs quarterly to the ATO.

What does this mean for trustees?

Once the TFNs of all relevant beneficiaries have been reported to the ATO, no further action is required by trustees; however particular attention to the reporting and withholding requirements is necessary where:

1. A new beneficiary receives a distribution or becomes presently entitled for the first time
2. A beneficiary that is a minor turns 18 (they will need to obtain a TFN if they do not have one)

In addition, reporting of TFNs is not required for the following beneficiaries:

1. Minors (and other beneficiaries with a legal disability)
2. Tax exempt entities such as charities
3. Non-resident beneficiaries

Failure to comply with the reporting and withholding obligations may lead to significant tax penalties as well as potential disputes between trustees and beneficiaries. Trustees are also responsible for securely storing all TFNs.

The ATO has released details of transitional arrangements intended to facilitate a smooth transition to the TFN withholding system for closely held trusts. The concession will only apply for the first year of the new rules i.e., for 1 July 2010 to 30 June 2011.

For this transition year, trustees can report beneficiary TFNs to the ATO by providing the required information in their 2010 trust income tax return. Where the beneficiary is an individual (and not a company), the required fields include:

- TFN
- Full name
- Postal address
- Date of birth

It is important that the trust's 2010 income tax return is lodged on time , as late returns may not be accepted for the purposes of TFN reporting, and may also attract penalties.

TFNs for trust beneficiaries that did not receive a 2010 trust distribution will need to be separately quoted. The TFN should be quoted before any interim distribution is paid or before the trustee resolves to distribute the trust's income for the financial year, and must be reported for the relevant quarter in a separate TFN quotation report.

How can we help?

The impact of these developments will depend on your particular circumstances. Contact your Ernst & Young tax advisor or our Private Client Services team to help you understand the new TFN withholding rules and compliance obligations, and to consider how your trust and trust beneficiaries may be impacted.

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