

Private Client Services



“This is not a ‘crackdown’ on the use of trusts”

At a glance

- ▶ A welcome tax law reform process to address significant problems that can arise on the taxation of trust income
- ▶ Reforms are not expected to take effect until the 2014 tax year at the earliest
- ▶ No indication from the ATO how it will address issues for income years before the law is changed
- ▶ Care is needed if your trust has these particular issues
- ▶ How Ernst & Young can help

With this comforting statement from the Government in its [consultation paper](#) released on 21 November 2011, we enter the next phase of reform on the taxation of trusts in Australia.

The current state of play can be briefly summarised as follows:

- ▶ An increasing number of court decisions in the past 20 years have made clear that inappropriate tax outcomes (both favourable and adverse to the taxpayer) can arise under the current tax system for trusts
- ▶ In December 2010, the Government announced it would initiate a process to modernise the trust tax system and subsequently released its first discussion paper in April 2011
- ▶ An interim ‘fix’ to the legislation was made in June 2011, to clarify the tax treatment where a trust ‘streams’ capital gains or franked dividends to beneficiaries and to introduce anti-avoidance rules for distributions to charities and other tax exempt entities

This most recent Government discussion paper asks for input on ways to address other identified problems with the tax law as it applies to trusts. In the context of discretionary trusts, and other closely held trusts, examples of these issues include:

- ▶ The trustee is effectively taxed at ‘penalty’ rates where the trust has taxable income but no trust law income, or it fails to make beneficiaries entitled to the trust law income within the required timeframe
- ▶ Uncertainty about tax liabilities where a trust ‘streams’ different components of income, other than capital gains and franked dividends, to different beneficiaries

What happens next?

The trust tax reform process is expected to involve the following steps:

Action	Date
Initial consultation paper released	21 November 2011
Consultation forums	January - March 2012
Closing date for submissions	10 February 2012
Release of policy design paper	May 2012
Consultation round tables	May - June 2012
Release of exposure draft legislation	July 2012
Consultation round tables	July - August 2012
Possible second exposure draft legislation	Sept - Oct 2012
Introduction of legislation	November 2012
Target date for new regime to commence	1 July 2013

Action required

It can be seen from the proposed timetable that the existing tax law with all its identified deficiencies will continue to apply for some time. Disappointingly, the Australian Taxation Office is yet to provide guidance or administrative concessions in relation to these issues for years prior to the new law coming into effect. Therefore, trustees need to carefully manage these issues in the meantime. This can include for example, ensuring the trust deed contains the necessary powers or terms and using appropriately drafted trustee resolutions regarding the distribution of income.

How can we help?

Ernst & Young will be making submissions on the consultation paper and will be actively involved in the reform process.

For input into the consultation process or advice on how to manage these issues for your trust under the current law, please contact your Ernst & Young advisor, or one of the Private Client Services contacts listed below.

For more information please contact:

Adelaide

Craig Whiteman
craig.whiteman@au.ey.com
+ 61 8 8417 1770

Canberra

Maria Jadric
maria.jadric@au.ey.com
+61 2 6267 3951

Perth

Grant Burgess
grant.burgess@au.ey.com
+61 8 9429 2298

Brisbane

Ian Burgess
ian.burgess@au.ey.com
+61 7 3243 3711

Melbourne

Dianne Cuka
dianne.cuka@au.ey.com
+61 3 8650 7555

Sydney

Peter White
peter.white@au.ey.com
+61 2 8295 6269

Ernst & Young

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 152,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit www.ey.com.

About Ernst & Young's Tax Services

Your business will only achieve its true potential if you build it on strong foundations and grow it in a sustainable way. At Ernst & Young, we believe that managing your tax obligations responsibly and proactively can make a critical difference. So our 25,000 talented tax professionals in over 135 countries give you technical knowledge, business experience, consistent methodologies and an unwavering commitment to quality service – wherever you are and whatever tax services you need. It's how Ernst & Young makes a difference.

For more information, please visit www.ey.com/au.

© 2011 Ernst & Young Australia

All rights reserved

SCORE NO AU00001265

This communication provides general information which is current as at the time of production. The information contained in this communication does not constitute advice and should not be relied on as such. Professional advice should be sought prior to any action being taken in reliance on any of the information. Ernst & Young disclaims all responsibility and liability (including, without limitation, for any direct or indirect or consequential costs, loss or damage or loss of profits) arising from anything done or omitted to be done by any party in reliance, whether wholly or partially, on any of the information. Any party that relies on the information does so at its own risk.

Liability limited by a scheme approved under Professional Standards Legislation.