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Department of the Senate
Senate Economics Legislation Committee

Inquiry: **Tax Laws Amendment (2010 Measures No. 2) Bill 2010**

Background

I refer to your inquiry on the above Bill and would like to make a submission on Schedule 2 titled "Extending the tax file number withholding arrangements to closely held trusts, including family trusts".

As a tax agent I am greatly concerned with the proposed measures in Schedule 2 as they seek to impose a significant amount of compliance onto trustee/trust taxpayers and indirectly onto their tax advisers.

Issue #1 – why do we actually need this legislation?

I am at a loss as to why Schedule 2 was introduced in the first place. According to the Explanatory Memorandum on page 4 it was to "*facilitate data-matching and allow the ATO to check whether the assessable income of beneficiaries of these trusts correctly includes their share of the net income of the trust*".

For over twenty years that I have been preparing trust income tax returns the very final section of that return has required the following distribution statement information:

- The name of each beneficiary that is receiving an amount of the trust's taxable income;
- The **tax file number** (TFN) of that beneficiary;
- The beneficiary's address if the tax file number is not provided; and
- The specific amount of the trust's taxable income that the beneficiary is entitled to.

I can understand the ATO's concern about inability to data match the trust's taxable income to beneficiary tax returns if the TFN of the beneficiary is not provided.

However, of the trust tax returns that I have prepared in my 20 years and have seen others prepared, the TFN's of most, if not all, beneficiaries have always been included.

With the vast array of computer power that is at the hands of the ATO I am at a loss as to why the ATO cannot match the information contained in the distribution statement from the trust tax return with the information that they receive from the beneficiary's own tax return.

All Schedule 2 needs to do is to impose a withholding tax on trustee's if they fail to include a beneficiary's tax file number in the annual trust income tax return distribution statement.

Issue #2 – why does the bill impose so much reporting?

From 1 July 2010, the proposed legislation in Schedule 2 will, if passed, require trustee's to:

- register for PAYG withholding (ie like an employer);
- collect and report quarterly the Tax File Numbers (TFN) of beneficiaries who receive **payments** from that trust;
- withhold tax from **payments** if the beneficiary fails to quote a TFN prior to the payment being made;
- withhold tax from the annual trust distribution if the beneficiary fails to quote a TFN prior to the trustee resolving to distribute the trust's taxable income to that beneficiary; and
- lodge an annual report of payments and taxable distributions made to beneficiaries even if they have quoted a TFN.

All Schedule 2 needs to do is only impose on those trustee's the reporting requirement if they don't have a beneficiary's TFN.

Issue #3 – why does the ATO need to know how much has been paid to beneficiaries?

In the real world of business there is no correlation whatsoever between the cash payments made to beneficiaries and their share of the trust's taxable income (which is what the beneficiary pays tax on).

For this reason I cannot understand why the ATO needs to know how much has been paid to beneficiaries during the course of the year. All that the beneficiary is taxed on is their share of the trust's taxable income. Only this amount needs to be reported and matched with the beneficiary's TFN.

All Schedule 2 needs to do is to impose a withholding tax on trustee's if they fail to include a beneficiary's tax file number in the annual trust income tax return distribution statement.

Issue #4 – cost of compliance

On page 4 of the Explanatory Memorandum the Compliance Cost Impact of Schedule 2 is considered "Low". If Schedule 2 simply applied to those trustees who don't obtain tax file numbers (TFN's) from beneficiaries I would agree with this statement as there would be very few closely held trustee/trusts that would not have this information.

However, as is outlined above the proposed bill extends significant and unnecessary reporting obligations onto all trusts even those that do have the TFN's for their beneficiaries.

All Schedule 2 needs to do is to impose a withholding tax on trustee's if they fail to include a beneficiary's tax file number in the annual trust income tax return distribution statement.

Issue #5 – why does Schedule 2 apply to 'Family Trusts' as well?

As noted in the bill, Schedule 2 also applies to 'family trusts' which is a defined tax term. A trust that is a 'family trust' has made a Family Trust Election that has been lodged with the ATO. One of the outcomes in making a Family Trust Election is that a 'family trust' is restricted as to who are eligible beneficiaries of

that trust – namely family members whose TFN's would be available to the trustee. If the bill has to proceed in its current format it should exclude 'family trusts'.

Family trusts should be excluded from Schedule 2.

Should you wish to discuss this further please do not hesitate to contact me.

Yours faithfully

DARREN BATES