

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 20-21 February 2008

Question: aet 23

Topic: Family Trusts – Succeeding Grandchildren

Hansard Page: E25

Senator JOYCE asked:

Senator JOYCE—Can you help us clarify by your interpretation of what happens to assets that are within a trust once it descends subsequent to grandchildren in the trust? What is going to happen?

Senator Conroy—As you would be aware it is a very complex question and I will happily take it on notice and seek the Treasurer's views on it.

Senator JOYCE—It is not that complex.

Senator Conroy—I will happily seek the Treasurer's views and take it on notice.

Senator WEBBER—So what do you want, Senator Joyce, is the minister to give you personal taxation advice?

Senator JOYCE—No, no.

Senator WEBBER—Is that what you want?

Senator JOYCE—No, Senator Webber, I want—

CHAIR—No discussion across the committee, please.

Senator JOYCE—Through you, Madam Chair—

CHAIR—Can you direct all questions through me?

Senator JOYCE—What I want is a clear—

CHAIR—Senator Joyce, can you direct all questions through me to either the—

Senator JOYCE—Madam Chair, what I want is a clear explanation, and it is quite simple, as to whether when an asset that is within a trust descends subsequent to grandchildren there is going to be by a transition of that asset an impediment to the great-grandchild.

CHAIR—Minister, do you have anything further to add to your answer?

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Senator Conroy—As I said, I will happily take that on notice and seek an answer from the Treasurer.

Answer:

A capital gains tax taxing point occurs when a beneficiary of the trust becomes absolutely entitled to a capital gains tax asset of the trust. The trust will include, in its net income, the net capital gain or loss from the disposal of the asset unless the asset was acquired by the trust before 20 September 1985. Depending on the circumstances, the trustee will pay any tax liability associated with a net capital gain, or alternatively, the net capital gain could be included in the assessable income of the beneficiary that is absolutely entitled to a capital gains tax asset.

If the trustee of the trust has made a family trust election, the grandchildren of the test individual nominated in the family trust election or of the test individual's spouse will be part of the 'family group'. These grandchildren can receive distributions from the family trust without being subject to family trust distribution tax at 46.5 per cent. If the trust makes a distribution to, or confers a present entitlement to, income or capital on a person other than the test individual or a member of their 'family group', family trust distribution tax will be payable on that amount. A great grandchild of the test individual or their spouse is also currently included in the 'family group' as a result of changes made by the previous Government in Tax Laws Amendment (2007 Measures No. 4) Act 2007. The Government announced, prior to the election, that it would reverse these family trust changes.