

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury

Australian Taxation Office

Budget Estimates 2004-05, (4 June)

Outcome 2, Output 2.2.1

Topic: Difficulties prosecuting trusts for GST non-payment.

Hansard Page: E114

Senator **Wong** asked:

Have you been advised that, due to a number of trusts whose ABN is issued in the incorrect legal name, there are difficulties in prosecuting quite a number of trusts for GST non-payment?

Mr Carmody—I am not aware of that as an issue.

Senator WONG—There is no such advice?

Mr Carmody—I said I am not aware of it. None of my officers look like they are aware of it, but we can follow up on the issue for you.

Senator WONG—So you are saying there is no problem with referring trusts for prosecution?

Mr Carmody—I said that I am not aware that there has been any issue and none of my officers here are aware that there has been any issue, but we will follow up and see whether there has been an issue.

Answer:

The practice of the Tax Office when registering trusts for Australian Business Numbers (ABNs) is to do so in the name of the trust (as in *Smith Family Trust*) or in the name of the trustee for the trust (as in *The trustee of the Smith Family Trust*). This practice is supported by the decision of the Full High Court in *Federal Commissioner of Taxation v Prestige Motors Pty Ltd*, (1994) 94 ATC 4570, where the validity of a notice issued in the name of the trust was upheld in favour of the Commissioner.

The Tax Office has not experienced any difficulties in connection with prosecuting trusts for failure to lodge activity statements or when initiating legal action to collect outstanding GST from trusts.