

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 32

Topic: Tax concession - Primary Producer

Senator Colbeck:

1. Did the ATO conduct any impact analysis on its decision to withdraw the tax concession allowing farmers to retain primary producer status in the event of a loss?
2. Did the ATO conduct any consultation with any farm representative organisations prior to making this decision? Who? When?
3. Did the ATO conduct any consultation with other government agencies prior to making this decision? Who? When?
4. How many farms and how many family trusts made losses in 2009-2010? In how many of these cases did farmers retain their primary producer status?
5. Has the ATO provided advice to Government or the Treasury about legislative 'fixes' to this issue? If so, when and to whom?

Answer:

1. After the High Court decision in the *Commissioner of Taxation v Phillip Bamford & Ors; Phillip Bamford & Anor v Commissioner of Taxation [2010] HCA 10 (Bamford)* (30 March 2010), the law in effect was held not to allow beneficiaries to be presently entitled to income of a trust where there is no distributable income, such as where the trust is in a loss position.

The Commissioner is bound by the decision of the High Court.

Where the Australian Taxation Office (ATO) identified public rulings which were not in accordance with the decision and reasoning of the High Court in *Bamford*, the public was notified through a decision impact statement published on the ATO web site on 2 June 2010. The decision impact statement advised that the rulings were withdrawn with effect from the beginning of the 2010-2011 income year.

The ATO gave consideration to the legal and administrative implications of the decision of the High Court in preparing and publishing a decision impact statement.

The ATO recognised that the implications of the decision of the High Court would be adverse for some beneficiaries of trusts engaged in primary production activity. As the decision was handed down part-way through an income year, the ATO recognised that this could also cause difficulties for taxpayers. Taking the above into account, the ATO withdrew Taxation Ruling TR 95/29 *Division 16 - applicability of averaging provisions to beneficiaries of trust estates carrying on a business of primary production*, with effect from the 2010-2011 income year, so that there would be no adverse affect on taxpayers in the 2009-2010 income year.

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

2. The ATO held discussions with the National Farmers Federation on 9 July 2010 to explain that Taxation Ruling TR 95/29 was no longer consistent with the law following the decision in *Bamford* and that the ATO was bound by the decision and reasoning of the High Court to withdraw the ruling.

3. The ATO consulted with Treasury to advise them of the consequences of the decision in *Bamford*.

4. A significant number of trust returns for the 2009-10 income year are not yet due for lodgment with the ATO. No beneficiaries will lose primary producer status as a result of the lodgment of 2009-10 trust returns, as the ATO withdrew TR 95/29 with effect from the 2010-11 income year.

The withdrawal will affect primary producers who are beneficiaries of a trust, where the trust carries on the primary production activity and where the trust is in a loss position.

Table 2: Trusts with primary production income reporting to be in a net loss position.

Financial year	2006-07	2007-08	2008-09
Trusts w/net losses	8,346	7,935	7,841

No beneficiaries will lose primary producer status as a result of the lodgment of the 2009-10 financial year trust returns, as the ATO withdrew Taxation Ruling TR 95/29 with effect from the 2010-11 financial year.

5. Policy advice to the Government is a matter for Treasury.