

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

Question: SBT 78**Topic: Tax Ruling – Primary Production Trusts**

Senator Bushby asked:

1. The Commissioner's ruling on averaging income in a primary-production loss-making trust provided relief to farmers to legal problems surrounding the application of the trust tax rules. The withdrawal of this ruling (95/29) has created uncertainty for many farmers who are beneficiaries under such trusts. Does the Commissioner support legislative amendments to rectify this situation?
2. When did this decision formally occur, why was it made, what discussion took place about it?
3. How many farm businesses continue to use trust arrangements to manage their businesses?
4. Does the withdrawal of this ruling have the potential to cost some rural producers more in taxation?

Answer:

1. A decision about whether to amend the tax law is a matter for Government.
2. On 30 March 2010, the High Court handed down a decision in the *Commissioner of Taxation v Phillip Bamford & Ors; Phillip Bamford & Anor v Commissioner of Taxation* [2010] HCA 10 (*Bamford*).

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 decision impact statement was published on the ATO web site on 2 June 2010.

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 came part-way through an income year the ATO also 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 2010-11 income year, so that there would be no adverse affect on taxpayers in the 2009-10 income year.

The ATO held discussions with the National Farmer's Federation about the withdrawal of TR 95/29.

3. The table below provides information on the number of trusts reporting to have income from primary production. Data for the 2009-10 financial year is not yet available as there are trust returns yet to be lodged.

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

Table 1: Trusts reporting having business income from primary production:

Financial year	2006-07	2007-08	2008-09
Trusts	25,110	25,340	23,244

4. Without knowing the exact financial circumstances of each primary producer, and the decision each one may make about their taxation affairs, it is not possible to predict the exact tax that a primary producer will pay.