Chapter 3

Extending the tax file number withholding provisions

3.1 In the 2009-10 budget, the Government announced that it would extend the existing tax file number (TFN) withholding arrangements to closely held trusts,[1] including family trusts, to ensure that assessable distributions paid to beneficiaries of those trusts are taxed.[2] The provision of TFNs will assist the Tax Office with data matching.[3]

3.2 The amendments set out in Schedule 2 take effect from 1 July 2010. They are expected to save around $50 million a year.

Introduction

3.3 Division 12 of the *Taxation Administration Act 1953* identifies payments from which amounts must be withheld. Subdivision 12-E prescribes that where the recipient of an investment payment has not quoted their TFN or Australian business number, the entity making the payment is required to withhold an amount from the payment made.

3.4 While withholding arrangements currently apply to various entities, including unit trusts that pay or distribute income, they do not extend to situations involving closely held trusts. Schedule 2 of the bill will rectify this omission.[4]

The proposed changes

3.5 The amendments will ensure that where an eligible beneficiary receives a distribution, or is presently entitled to income of the trust at the end of an income year, but has not quoted their TFN to the trustee of the trust, the trustee will be required to withhold an amount from the beneficiary's payment or entitlement.[5]

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1 Closely held trusts are either discretionary trusts or trusts where the beneficiaries (there can be up to 20 beneficiaries) have a fixed entitlement, which between them is at least 75 per cent share of the income or capital. CCH Australia Limited, *Australian Master Tax Guide* 44th Edition, Sydney, 2009, para 6-275, p. 237.

2 The Hon Wayne Swan MP, Treasurer of the Commonwealth of Australia, The Hon Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Corporate Law, 'Improving Fairness and Integrity in the Tax System', *Media Release* No. 67, 12 May 2009.

3 Explanatory Memorandum, Tax Laws Amendment (2010 Measures No. 2) Bill 2010, p. 36.

4 Explanatory Memorandum, p. 36.

5 Explanatory Memorandum, p. 36.

3.6 The trustee will then need to report and remit any amounts withheld to the Commissioner of Taxation.[6] Consistent with the existing TFN withholding rules, the beneficiary will be entitled to a credit equal to the amount withheld and remitted by the Trustee when the beneficiary's income tax return is lodged.[7]

3.7 A trustee who fails to withhold and/or remit any withheld amounts under the provisions will incur penalties in accordance with the existing TFN withholding penalty arrangements.[8]

Exceptions to the amendments

3.8 The amendments set out in Schedule 2 will not apply to non-resident trusts and special rules will apply to unit trusts.[9] Similarly, the measure will not extend to beneficiaries who are non-residents, an entity whose income is tax-exempt or those under a legal disability (eg the beneficiary is a child).[10]

3.9 Schedule 2 also sets out special rules for situations where:

(i) the trustee of the trust is liable to pay tax on behalf of a beneficiary; or

(ii) the trustee is liable to pay family trust distribution tax; and

(iii) the trustee is subject to trustee beneficiary reporting rules.[11]

3.10 These exceptions did not attract comment throughout the course of the inquiry.

Views on the proposed changes

3.11 The measures set out in Schedule 2 of the bill were generally supported in principle:

> Senator CAMERON—On schedule 2, that amends the tax laws to extend the tax file number withholding arrangements to closely held trusts including family trusts. That is a reasonable proposition as well, isn't it?
>
> Mr El-Ansary—It is…Certainly from a conceptual perspective, from a policy perspective that is a consideration here, we do not have any philosophical concerns…[12]

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6 Explanatory Memorandum, p. 37.

7 Explanatory Memorandum, paras 2.92–2.93, p. 57.

8 Explanatory Memorandum, p. 37.

9 Explanatory Memorandum, paras 2.20–2.21, p. 40.

10 Explanatory Memorandum, p. 41.

11 Explanatory Memorandum, pp 40-43.

12 Mr Yasser El-Ansary, Tax Counsel, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, 28 April 2010, p. 18.

> I support the extension of the TFNs provisions and the reporting requirements to beneficiaries and trustees of closely held trusts…[13]

3.12 Some concern was expressed, however, that the proposed changes will introduce a significant compliance burden on trustees:

> …we are very concerned that the proposed arrangements will entail considerable administrative burden and in some areas will be very difficult, if not impossible, to comply with within the suggested timeframes.[14]
>
> But the issue that must be taken into account is that the amendments as proposed, the imposed compliance obligations and complexity on tax agents in particular, are in our view unreasonable...this will impose significant compliance obligations on practitioners who typically deal with small, closely held trusts.[15]
>
> 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.[16]

3.13 These views relate primarily to the obligations (for trustees) that will be introduced by the amendments including:

- (i) the need to register, or be registered, for PAYG withholding;
- (ii) the requirement to remit amounts withheld in an approved form through the business activity statement system;
- (iii) the requirement to lodge an annual report for withheld amounts;
- (iv) the requirement to report TFNs quoted to the Commissioner;
- (v) the requirement to report the amounts withheld and amounts distributed to the Commissioner; and
- (vi) the requirement to notify beneficiaries of amounts withheld through the issuing of payment summaries.[17]

3.14 Some submitters contended that the requirements are unnecessarily complex and result in duplication:

> There are already a number of other existing provisions that require trustees to withhold tax. The Institute's position is that these should be streamlined

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13 Mr John Passant, *Proof Committee Hansard*, 30 April 2010, p. 2.

14 Trustee Corporations Association of Australia, *Submission 5*, p. 1.

15 Mr Yasser El-Ansary, Tax Counsel, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, 28 April 2010, p. 20.

16 Mr Darren Bates, *Submission 6*, p. 1.

17 Explanatory Memorandum, pp 51–56.

> rather than continuing to introduce new provisions that overlap each other in certain areas.[18]
>
> As part of the trust return lodgement process, the Commissioner has already collected TFN information for beneficiaries in the Distribution Statements that are lodged with the Trust Income Tax Return. From a practical perspective, Trustees of Trusts should not have to lodge a further report where the Commissioner has already been provided the TFN information in prior years.[19]

3.15 It was also argued it may be hard for beneficiaries to provide TFNs:

> …a lot of these older Australians may not even have a tax file number. There are two reasons for that. Having a tax file number is not a compulsory part of receiving an aged pension from Centrelink and there are exemptions through the share registries for aged pensioners and the like to not have to quote their tax file number to the share registry, so they do not have withholding tax taken from their dividends that they have directly.[20]

Committee view

3.16 The tax file number system has made an important contribution to the integrity of the Australian tax system. The committee supports this extension of its applicability.

3.17 The committee regards the concerns expressed about the schedule as overstated. Collecting TFNs from the beneficiaries of trusts covered by the bill will not be onerous as by definition a closely held trust only has a small number of beneficiaries. Often they will be relatives. Retirees who have retired in the past two decades will still have TFNs from when they are working, those with high incomes already have them and for those without a TFN it is an easy and costless matter to obtain one.

Recommendation 4

3.18 The committee recommends that the Senate pass Schedule 2 of the bill.

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18 Institute of Chartered Accountants in Australia, *Submission 9*, p. 14.

19 Dominion Private Clients, *Submission 11*, p. 23.

20 Mr Christopher Holloway, Trustee Corporations Association of Australia, *Proof Committee Hansard*, 29 April 2010, p. 2.