



21 July 2008

The Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir or Madam

### **Inquiry into *Tax Laws Amendment (2008 Measures No. 4) Bill 2008***

The Institute of Chartered Accountants in Australia (the Institute) welcomes the opportunity to make a submission to the Senate Standing Committee on Economics in relation to its inquiry into the following measures contained in *Tax Laws Amendment (2008 Measures No. 4) Bill 2008* (the Bill):

#### **Schedule 2 - Family trusts**

The Institute is the leading professional accounting organisation in Australia, representing over 48,000 members in public practice, commerce, academia, government and the investment community. The Institute's members are advisers to businesses at all levels, from small and medium sized businesses to the largest global corporations operating in Australia and overseas.

#### **Submission**

The Institute is disappointed that the Government has decided to proceed with the repeal of two of the measures that were introduced less than 12 months ago relating to family trusts in Schedule 8 of *Tax Laws Amendment (2007 Measures No. 4) Act 2007* (the 2007 Act) - albeit that this repeal will only have effect from 1 July 2008 and not from the date that these measures applied from.

The first proposed change reverses amendments that were made in the 2007 Act to include lineal descendants of a nephew, niece or child of the test individual or the test individual's spouse in the definition of family in s 272-95. The Bill proposes that the definition of family will revert back to how it was before – i.e. the definition will again limit lineal descendants to only children or grandchildren of the test individual or of the test individual's spouse from the 2008-09 year onwards.

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The second proposed measure will reverse another of the changes in the 2007 Act so that a test individual specified in a family trust election cannot be varied, other than specifically in relation to the 2007-08 income year or a marriage breakdown.

These two measures now being reversed in the Bill formed part of a package of important amendments to increase flexibility for family trusts by the previous government following *inter alia* a detailed submission by the Institute in November 2004 identifying shortcomings of Schedule 2F to the *Income Tax Assessment Act 1936*.

As stated therein:

The definition of "family" only extends down two generations. We don't perceive any policy rationale for placing a generational limit on the definition of family especially given that the typical life of a trust is 80 years, which means they commonly extend into a fourth generation. This means that many family trusts will eventually have to distribute outside the family group and such distributions will be subject to FTDT'.

With the proposed change in the Bill, this situation will unfortunately again arise.

In terms of the second proposed reversal, the one time ability to change the test individual was very limited – as stated in the Explanatory Memorandum to the Bill becoming the 2007 Act:

8.31 Under these amendments, a test individual specified in a family trust election is allowed to be changed, once only, where:

- the new test individual was a member of the original test individual's family at the election commencement time; and
- no conferrals of present entitlement to, and distributions of, income or capital have been made (by the trust or an interposed entity) outside the new test individual's family group during the period in which the election has been in force.

**[Schedule 8, item 2, subsection 272-80(5A)]**

8.32 This is intended to deal with the situation where **a trust has chosen the wrong test individual in its family trust election but the trust had acted in the past as if the proposed new test individual was always the test individual**. On this basis, the new test individual must have been alive at the election commencement time. [our emphasis]

The Institute supported the changes in the 2007 Act which were long-awaited and the subject of much consultation. We are of the view that they struck the right balance between flexibility and maintaining the integrity of the income tax system. (For the sake of completeness, we note that many issues raised in the Institute's November 2004 submission along with subsequent inconsistencies identified unfortunately remain outstanding).

The Institute therefore does not support the measures in Schedule 2 of the Bill.

Should you wish to discuss any issues raised in our submission, please do not hesitate to contact Ali Noroozi on 02 9290 5623.

Yours faithfully



**GRAHAM MEYER**  
Chief Executive Officer