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Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

economics.sen@aph.gov.au

Dear Sir

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

The Financial Planning Association of Australia (FPA)¹ welcomes the opportunity to provide input to the Senate Economics Committee *Inquiry into the Tax Laws Amendment (2008 Measures No. 4) Bill 2008*. Of particular concern to the FPA is the consumer impact of the proposed changes to the definition of 'family' in tax provisions for family trusts.

Family trusts provide a very cost effective and efficient mechanism for providing for future generations of Australians, as well as children and parents of separated and blended families. The FPA believes the proposed definitional change to 'family' significantly reduces Australians access to family trust mechanisms.

Providing for future generations

Many Australian consumers share a desire to provide for the basic needs of successive generations of their family and extended family. The most common and effective means of achieving this goal is to establish a family trust with multi-generational life.

Since the introduction of family trusts, these mechanisms have been used for multi-generational financial support. The FPA is concerned that the proposed change to the definition of 'family' (Part 2(5)) would remove the ability of people to provide for future generations. The FPA does not believe it is in the interest of the community to discourage people from caring for and financially supporting future generations of their family and extended family.

We recognise that there are perceptions that family trusts are used for flexible income (and therefore income tax) distribution purposes. However, we believe these are perceptions only. In reality, family trusts are put in place not as tax minimisation strategies, but to provide for one's current and future family, especially as part of personal estate planning.

The proposed changes to the definition of 'family' in s272-95(1) of the Tax Laws Amendment (2008 Measures No. 4) Bill 2008, do not allow for a trust to continue for the benefit of generations beyond the grandchild of the test individual.

¹ The FPA is the peak professional organisation for the financial planning sector in Australia. With approximately 12,000 members organised through a network of 31 Chapters across Australia, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than \$630 billion.

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To allow individuals to provide for future generations, the FPA recommends amending the definition of 'family' proposed in s272-95(1) as follows:

- (1) The *family* of an individual (the *test individual*) consists of the test individual and each relative of them.

The definition of the term 'relative' in the Income Tax Assessment Act 1997 (provided below) should apply to all matters relating to family trusts:

relative of a person means:

- a) the person's 'spouse; or
- b) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse; or
- c) the spouse of a person referred to in paragraph (b).

Blended families

With the changing nature and make up of Australian families, the FPA believes the above definition of 'relative' should be expanded to include 'ex-spouse' and 'child of ex-spouse' (including that of a de facto) even after the de facto (or marriage) relationship has ended, whether through separation/divorce or death.

Many former marriage partners work together and share finances to raise their family, even though the family may be separated. A family trust is a very cost effective and efficient mechanism for parents to provide for their children, and often produces a fairer financial result for both parents. The use of a family trust in these circumstances is an effective vehicle that incurs significantly less legal fees than other family maintenance mechanisms. Expanding the definition of 'relative' to include 'ex-spouse' and 'child of ex-spouse' would ensure that spousal maintenance set up in a family trust could continue without tax penalty.

In addition, this definitional change would ensure de facto and same sex relationships are also afforded access to family trusts mechanisms.

The FPA believes the above recommendations would provide a fair and equitable system for Australian families to provide for future generations through effective estate planning, without eroding the Government's tax avoidance mechanisms.

If you would like to discuss any of the issues raised in the FPA submission, please contact me on 02 9220 4505 or gerard.fitzpatrick@fpa.asn.au.

Yours faithfully

Gerard Fitzpatrick
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