

EXPOSURE DRAFT

1 Inserts for
2 **Tax Laws Amendment (2010 Measures**
3 **No. 2) Bill 2010: TFN withholding for**
4 **closely held trusts**

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) 1 July 2010.	

7
8 **Schedule 1—TFN withholding for closely held**
9 **trusts**
10

11 *Income Tax Assessment Act 1936*

12 **1 After Division 4A of Part VA**

13 Insert:

14 **Division 4B—Quotation of tax file numbers in connection**
15 **with certain closely held trusts**

16 **202DN Application of Division**

17 This Division applies to both the trustee of a trust and to a
18 beneficiary of the trust, if:

- 19 (a) paragraph 12-175(1)(b) in Schedule 1 to the *Taxation*
20 *Administration Act 1953* applies to the trust; and

21 Note: That paragraph applies to certain closely held trusts.

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(b) paragraph 12-175(1)(c) in that Schedule applies to the beneficiary.

202DO Quotation of tax file numbers

- (1) The beneficiary may quote the beneficiary's tax file number to the trustee.
- (2) The beneficiary *quotes* the beneficiary's tax file number to the trustee if the beneficiary, or another person acting for the beneficiary, informs the trustee of the number in a manner approved by the Commissioner.

202DP Trustee must report quoted tax file numbers

- (1) The trustee must report the beneficiary's tax file number to the Commissioner, in the approved form, if:
- (a) the beneficiary quotes the beneficiary's tax file number to the trustee during a quarter (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (b) the beneficiary has not quoted the beneficiary's tax file number to the trustee in connection with an investment to which this Part applies; and
 - (c) the trustee has not reported, and is not required to report, the beneficiary's tax file number to the Commissioner under Division 6D of Part III of this Act (about trustee beneficiary non-disclosure tax).
- (2) The trustee must give the report to the Commissioner within:
- (a) one month after the end of the quarter to which it relates; or
 - (b) within such further time as the Commissioner allows.
- (3) The Commissioner may, by notice in writing given to the trustee, inform the trustee that the period specified in the notice (being a period greater than 3 months) is to be the trustee's reporting period for the purposes of this section. If the Commissioner does so, a reference in this section to a quarter is taken to be a reference to the period specified in the notice.
- (4) For the purposes of this section, disregard subsection 202DR(2).

Note: Refusal or failure to report to the Commissioner as required by this section is an offence under section 8C of the *Taxation Administration Act 1953*.

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202DR Effect of incorrect quotation of tax file number

Commissioner may notify trustee of correct tax file number

- (1) If the Commissioner is satisfied:
- (a) that the tax file number quoted to the trustee:
 - (i) has been cancelled or withdrawn since it was quoted; or
 - (ii) is otherwise wrong; and
 - (b) that the beneficiary has a tax file number;
- the Commissioner may give the trustee notice in writing of the beneficiary's correct tax file number.
- (2) For the purposes of this Part, treat the beneficiary as having always quoted the beneficiary's tax file number to the trustee, if the Commissioner gives the trustee a notice under subsection (1).

Commissioner may notify trustee if beneficiary does not have a tax file number etc.

- (3) If:
- (a) the Commissioner is satisfied that the tax file number quoted to the trustee:
 - (i) has been cancelled since it was quoted; or
 - (ii) is for any other reason not the beneficiary's tax file number; and
 - (b) the Commissioner is not satisfied that the beneficiary has a tax file number;
- the Commissioner may give the trustee written notice accordingly.

Commissioner to give beneficiary copy of notice

- (4) If a notice is given under subsection (3), the Commissioner must give the beneficiary a copy of the notice, together with a written statement of the reasons for the decision to give the notice.

Date notice takes effect

- (5) The notice takes effect on the day specified in the notice, being a day not earlier than the day on which the copy of the notice is given to the beneficiary.

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Tax file number deemed not quoted

- 1
2 (6) On and from the day on which the notice takes effect, the
3 beneficiary is taken not to have quoted his or her tax file number to
4 the trustee.

2 After paragraph 202F(1)(da)

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6 Insert:

- 7 (db) a decision to give a notice under subsection 202DR(3);

8 *Income Tax Assessment Act 1997*

9 **3 Section 995-1 (definition of *quoted*)**

10 Repeal the definition, substitute:

11 *quoted*:

- 12 (a) an entity has *quoted* its *tax file number in connection with a
13 *Part VA investment if the entity is taken, for the purposes of
14 Part VA of the *Income Tax Assessment Act 1936*, to have
15 quoted its tax file number in connection with the investment;
16 and
17 (b) if Division 4B of that Part applies to the trustee of a trust and
18 to a beneficiary of the trust—the beneficiary has *quoted* its
19 tax file number to the trustee if the beneficiary is taken, for
20 the purposes of that Part, to have quoted its tax file number to
21 the trustee.

22 *Taxation Administration Act 1953*

23 **4 Subsection 10-5(1) in Schedule 1 (after table item 14)**

24 Insert:

- 14A A beneficiary of a closely held trust becoming presently 12-175
entitled to income of the trust, where the beneficiary does
not quote its tax file number

25 **5 Subsection 12-5(2) in Schedule 1 (table item 5, column 26 headed “In priority to:”)**

27 Before “section”, insert “section 12-175 (Beneficiary becomes presently
28 entitled to income of closely held trust) or”.

29 **6 After section 12-170 in Schedule 1**

30 Insert:

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1 Payment in respect of entitlement to trust income where TFN 2 not quoted

3 12-175 Beneficiary becomes presently entitled to income of closely 4 held trust

5 *Scope*

- 6 (1) This section applies to the trustee of a trust (the *first trust*) if:
- 7 (a) a beneficiary of the trust becomes presently entitled, for the
8 purposes of Division 6 of Part III of the *Income Tax*
9 *Assessment Act 1936*, to a share of the income of the trust of
10 an income year at a time (the *entitlement time*) (whether the
11 entitlement time occurs before, at or after the time any of the
12 share is paid to the beneficiary); and
- 13 (b) the trust is:
- 14 (i) an Australian resident; and
- 15 (ii) a closely held trust (within the meaning of that Act,
16 disregarding paragraphs (c), (d) and (e) of the definition
17 of *excluded trust* in subsection 102UC(4) of that Act);
18 and
- 19 (c) the beneficiary is:
- 20 (i) an Australian resident; and
- 21 (ii) not an *exempt entity; and
- 22 (iii) not under a legal disability for the purposes of
23 section 98 of that Act.

24 *Trustee must withhold*

- 25 (2) The trustee of the first trust must, at the entitlement time, withhold
26 an amount from that share of the *net income of the trust:
- 27 (a) if the beneficiary had not *quoted the beneficiary's *tax file
28 number to the trustee at that entitlement time; and
- 29 (b) the trustee is not required to make a correct TB statement
30 about that share under Division 6D of Part III of the *Income*
31 *Tax Assessment Act 1936* (about trustee beneficiary
32 non-disclosure tax); and
- 33 (c) family trust distribution tax is not payable on that share of the
34 income of the trust under Schedule 2F to that Act.

35 Note 1: If the trust is a unit trust, the trustee may be required to withhold under
36 section 12-140 or 12-145 in priority to this section: see section 12-5.

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1 Note 2: The trustee commits an offence if the trustee fails to withhold an
2 amount as required by this section: see section 16-25.

3 *Application of rest of Part*

- 4 (3) This Part applies as if the trustee had paid that share to the
5 beneficiary at the earlier of:
6 (a) the entitlement time; and
7 (b) the end of the income year.

8 *Deemed present entitlements*

- 9 (4) To avoid doubt, in the case of a share to which the beneficiary is
10 taken to be presently entitled under subsection 95A(2) or
11 section 101 of the *Income Tax Assessment Act 1936*,
12 paragraph (1)(a) of this section:
13 (a) applies to the share when the beneficiary is first taken to be
14 presently entitled to it under those provisions of that Act; and
15 (b) does not apply to the share when the beneficiary later
16 becomes actually presently entitled to it.

17 Note: This is because the beneficiary becomes entitled to the share, for the
18 purposes of Division 6 of Part III of that Act, when the beneficiary is
19 first taken to be presently entitled to it.

20 **12-180 Exception for payments below thresholds set by regulations**

- 21 (1) Section 12-175 does not require an amount to be withheld if the
22 payment is less than the amount worked out under the regulations.
23 (2) Regulations made for the purposes of this section may deal
24 differently with different payments.

25 **7 At the end of subsection 12-190(5) in Schedule 1**

26 Add:

- 27 ; or (d) is covered by section 12-175 (Beneficiary becomes presently
28 entitled to income of closely held trust); or
29 (e) would be covered by section 12-175 if the other entity had
30 not quoted as mentioned in paragraph 12-175(2)(a); or
31 (f) would be covered by section 12-175 apart from
32 section 12-180 (which is an exception to section 12-175).

33 **8 Subsection 15-15(1) in Schedule 1**

34 Omit “or 12-145”, substitute “, 12-145 or 12-175”.

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9 Subsection 15-15(1) in Schedule 1 (note)

Before “Subdivision 12-H”, insert “Section 12-175 is about a beneficiary of a closely held trust becoming presently entitled to income of the trust.”.

10 Section 16-5 in Schedule 1

Omit “If Division 12”, substitute “(1) If Division 12 (other than section 12-175)”.

11 At the end of section 16-5 in Schedule 1

Add:

- (2) If section 12-175 requires a trustee to withhold an amount from a payment, the trustee must do so at the entitlement time mentioned in that section in relation to the payment.

Note: A trustee is required to withhold an amount under section 12-175 when a beneficiary becomes presently entitled to income of a closely held trust.

12 Subsections 16-75(1) to (4) in Schedule 1

After “Division 12”, insert “(other than section 12-175)”.

13 At the end of section 16-75 in Schedule 1

Add:

Beneficiary becomes presently entitled to income of closely held trust

- (5) A trustee must pay to the Commissioner an amount the trustee withholds under section 12-175 from a payment made during an income year. The trustee must do so:
- (a) by the end of the 28th day of the next month following the day by which the trustee was required to give to the Commissioner a report under subsection 16-153(1A) for the income year; or
 - (b) within a longer period allowed by the Commissioner.

14 Before subsection 16-153(1) in Schedule 1

Insert:

- (1A) A trustee must give a report to the Commissioner in the *approved form if:

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1 (a) the trustee made any *withholding payments covered by
2 section 12-175 (about beneficiaries becoming presently
3 entitled to income of closely held trust) during an income
4 year; or

5 (b) the trustee would be taken to have made any withholding
6 payments covered by that section during an income year if
7 the relevant beneficiary had not *quoted the beneficiary's
8 *tax file number as mentioned in subsection 12-175(2).

9 Note: The effect of paragraph (1A)(b) is that the trustee must report
10 amounts distributed to beneficiaries even if the trustee was not
11 required to withhold from those distributions.

12 (1B) The trustee must give the report to the Commissioner:

13 (a) not later than 2 months after the end of the income year; or

14 (b) within such further period (if any) as the Commissioner
15 allows.

16 **15 Paragraph 16-155(1)(a) in Schedule 1**

17 After "12-85," insert "12-175,".

18 **16 After section 16-155 in Schedule 1**

19 Insert:

20 **16-156 Annual payment summary for section 12-175**

21 (1) A trustee must give a *payment summary (and a copy of it) to a
22 beneficiary of the trust if:

23 (a) the trustee made any *withholding payments covered by
24 section 12-175 to the beneficiary during the income year; or

25 (b) the trustee would be taken to have made any withholding
26 payments covered by that section to the beneficiary during an
27 income year if the beneficiary had not *quoted the
28 beneficiary's *tax file number as mentioned in subsection
29 12-175(2).

30 Note: The effect of paragraph (1)(b) is that the trustee must give a
31 payment summary of distributions to the beneficiary even if the
32 trustee was not required to withhold from those distributions.

33 (2) The *payment summary:

34 (a) must cover each of the *withholding payments mentioned in
35 subsection (1); and

36 (b) may be in electronic form; and

37 (c) must be given:

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- 1 (i) not later than 14 days after the day by which the trustee
2 was required to give the Commissioner a report under
3 subsection 16-153(1A) for the income year; or
4 (ii) within a longer period allowed by the Commissioner.

5 **17 Subsection 16-170(1) in Schedule 1**

6 Before “Subdivision 12-H”, insert “section 12-175 or”.

7 **18 After subsection 16-170(1) in Schedule 1**

8 Insert:

9 (1AAA) A *payment summary* relating to section 12-175 is a statement that:

- 10 (a) names the trustee and the beneficiary; and
11 (b) states the total of the *withholding payments (if any) that it
12 covers, and the total of the *amounts withheld by the trustee
13 from those withholding payments; and
14 (c) specifies the income year of the trust to which it relates; and
15 (d) is in the *approved form.

16 **19 Subsection 16-170(3) in Schedule 1**

17 After “section 16-155,”, insert “16-156,”.

18 **20 Subsection 16-170(4) in Schedule 1**

19 After “subsection (1),”, insert “(1AAA),”.

20 **21 Subsection 16-175(1) in Schedule 1**

21 After “section 16-155,”, insert “16-156,”.

22 **22 Subsection 16-175(1) in Schedule 1**

23 After “subsection 16-170(1),”, insert “(1AAA),”.

24 **23 Subparagraph 18-65(3)(d)(iv) in Schedule 1**

25 Omit “and”.

26 **24 At the end of paragraph 18-65(3)(d) in Schedule 1**

27 Add:

- 28 (v) section 12-175 (beneficiary of closely held trust does
29 not quote tax file number); and

30 **25 Application provision**

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- 1 The amendments made by this Schedule apply to a share of the income
2 of a trust of:
3 (a) the 2010-11 income year; or
4 (b) a later income year.

5 **26 Application provision—tax file number reporting**

- 6 Section 202DP of the *Income Tax Assessment Act 1936*, inserted by this
7 Act, applies to a quarter in relation to a trust if the quarter commences
8 during:
9 (a) the 2010-11 income year of the trust; or
10 (b) a later income year.