Australian Government
Australian Taxation Office

Who the rules apply to

The TFN withholding rules apply to most closely held trusts (including family trusts) and their beneficiaries, with some exclusions.

Closely held trusts

For the purposes of the TFN withholding rules, a closely held trust is a resident trust (/Business/International-tax-for-business/In-detail/Residency/Residency-requirements-for-companies,-corporate-limited-partnerships-and-trusts/?page=4#Trusts) that either:

- has up to 20 individuals who, between them – directly or indirectly, and for their own benefit – have fixed entitlements to a 75% or greater share of the income or a 75% or greater share of the capital of the trust (the '20/75 test')
- is a discretionary trust.

However, a trust is not a closely held trust if it's an excluded trust. For the purposes of the TFN withholding rules, family trusts are not excluded trusts.

Individuals

The following groups of people are taken to be a single individual for the '20/75 test':

- an individual, whether or not they hold fixed entitlements directly in the trust
- the individual's relatives
- other individuals who, in relation to any fixed entitlements, are nominees of the individual or the individual's relatives.

The trustee of a discretionary trust that is also a beneficiary of the trust is taken to be an individual if:

- the trustee holds a fixed entitlement to a share of the income or capital of the trust
- no person holds that fixed entitlement directly or indirectly through the discretionary trust.

Discretionary trusts

A discretionary trust is a trust that is not a fixed trust.

To be a fixed trust, persons must hold fixed entitlements (that is, vested and indefeasible interests) to all of the income and capital of the trust.

A trust where the trustee has discretion to determine how the trust property or income is distributed to beneficiaries would be a discretionary trust.

Excluded trusts

A trust will be an excluded trust if it is:

- a complying super fund, complying approved deposit fund or a pooled super trust at the relevant time
- a trust of a deceased estate (up until the end of the income year in which the fifth anniversary of the individual's death occurs)
- a fixed trust that is a unit trust where all of the beneficiaries are entities exempt from income tax, and have fixed entitlements to all of the income and capital of the trust

- a unit trust whose units are listed on the Australian Securities Exchange
- a trust that is a discretionary mutual fund according to the meaning in subsections 5(5) and 5(6) of the Financial Sector (Collection of Data) Act 2001 (https://www.legislation.gov.au/Details/C2015C00404)
- an employee share trust for an employee share scheme (see subsection 130-85(4) of the Income Tax Assessment Act 1997 (/law/view/document?DocID=PAC/19970038/130-85&PiT=99991231235958))
- a law practice trust, which is a trust regulated by a state or territory law for the regulation of legal practices or legal services.

Affected beneficiaries

The TFN withholding rules apply to most beneficiaries of closely held trusts, regardless of whether they are an individual, company, partnership, trust or super fund.

Beneficiaries receiving pensions and benefits, including the age pension and disability support pension, are not exempt from these rules. Beneficiaries must quote their TFN to the trustee to avoid having amounts withheld from payments made by the trustee.

The TFN withholding rules do not apply to beneficiaries:

- that are non-residents for tax purposes
- that are exempt entities as defined in the tax laws, such as tax concession charities, deductible gift recipients and other entities that self-assess their status as income tax exempt
- under a legal disability (for example, minors).

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