Australian Government
Australian Taxation Office

## Appendix 11: Closely held trust reporting

If you are the trustee of a closely held trust (that is not an excluded trust) you may need to provide annual reports to the Commissioner under the trustee beneficiary reporting rules (the TB rules) and/or the TFN withholding rules.

You can provide both of these reports by completing in full the statement of distribution at item **55** on the trust tax return.

**See also:**

- Rules for closely held trusts (/General/Trusts/In-detail/Closely-held-trusts/Rules-for-closely-held-trusts/)

### What is a closely held trust?

A **closely held trust** is:

- a trust where 20 or fewer individuals have between them, directly or indirectly, and for their own benefit, fixed entitlements to 75% or more of the income or capital of the trust, or
- a discretionary trust

except where the trust is an **excluded trust**.

See subsection 102UC(1) (/law/view/document?DocID=PAC/19360027/102UC) of the ITAA 1936.

The types of trusts that qualify as excluded trusts will vary depending on which of the reporting rules for closely held trusts apply.

### What is a discretionary trust?

A **discretionary trust** is a trust that is not a fixed trust within the meaning of section 272-65 (/law/view/document?DocID=PAC/19360027/Sch2F-272-65) of Schedule 2F to the ITAA 1936.

## TFN withholding rules for closely held trusts

If you are the trustee of a resident closely held trust (that is, not an excluded trust) you will need to complete an *Annual trustee payment report* under the TFN withholding rules.

### What is an excluded trust for the TFN withholding rules?

An **excluded trust** is:

- a complying superannuation fund, a complying approved deposit fund, or a pooled superannuation trust
- a trust of a deceased estate (but only until the end of the income year in which the fifth anniversary of the individual's death occurred)
- a fixed trust that is a unit trust where exempt entities have fixed entitlements (directly or indirectly) to all of the income and capital of the trust.
- a unit trust whose units are listed on the Australian Stock Exchange (ASX).

See subsections 102UC(1) and (4) (/law/view/document?DocID=PAC/19360027/102UC) of the ITAA 1936 and section 272-100 (/law/view/document?DocID=PAC/19360027/Sch2F-272-100) of Schedule 2F of the ITAA 1936.

The Regulations also exclude the following types of trusts from these rules:

- a trust that is a discretionary mutual fund

- an employee share trust
- a law practice trust.

### What is an excluded beneficiary for the TFN withholding rules?

The TFN withholding rules apply to most beneficiaries, but there are some exclusions from the rules.

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
- who are in the capacity of a trustee of another trust estate, and the trustee of the first trust is subject to the trustee beneficiary reporting rules.

For more information, see TFN withholding for closely held trusts (/General/Trusts/In-detail/Closely-held-trusts/TFN-withholding-for-closely-held-trusts/).

### Annual trustee payment report

Unless you are the trustee of an excluded trust, you will need to complete an *Annual trustee payment report* under the TFN withholding rules.

**What is an Annual trustee payment report?**

An *Annual trustee payment report* is a report of all payments made to a beneficiary during an income year from the trust's income, whether or not withholding has occurred.

A payment is a:

- distribution during the year from the ordinary or statutory income of the trust
- beneficiary's share of the net income of a trust where they are presently entitled to a share of trust income.

**How do I make an Annual trustee payment report?**

You make an *Annual trustee payment report* by completing in full the information on the statement of distribution for each beneficiary, including the beneficiary identity details.

### Annual trustee payment report information

- You will need to complete **S** where you have made one or more distributions during the income year (not as a result of present entitlement created at year end) that are wholly or partly from the ordinary or statutory income of the trust for the year, and the total of those distributions exceed the beneficiary's share of the net income of the trust.
- Only include the excess of the distributions made during the income year over the beneficiary's share of the net income of the trust at **S**.
- If the only amount distributed is as a result of a present entitlement created at year end, you do not show anything at **S**.
- You will need to complete **T** where you have withheld from any payments (including distribution) you have made to beneficiaries.

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**Example 10.1**

The trustee of a closely held trust derives interest income of $12,000 and rental income of $10,000. The section 95 net income of the trust is $20,000, comprising the interest and rental income, less allowable deductions of $2,000. The allowable deductions comprise $1,000 of capital allowance deductions and $1,000 of rental property expenses.

Under the trust deed, the capital allowance deductions are chargeable against capital. As a result, the distributable income of the trust is $21,000.

The trust deed allows the trustee to distribute particular classes of income to specific beneficiaries. During the income year, $12,000, being the interest derived by the trust, is distributed to Beneficiary 1.

At the end of the income year, Beneficiary 2 and Beneficiary 3 are made presently entitled in equal shares to the income of the trust that has not previously been distributed.

- Beneficiary 1 quoted their TFN to the trustee. Beneficiary 1's share of net income is $11,428, that is, ($12,000 ÷ $21,000) × $20,000 = $11,428.
- Beneficiary 2 quoted their TFN to the trustee. Beneficiary 2's share of net income is $4,286, that is, ($4,500 ÷ $21,000) × $20,000 = $4,286.
- Beneficiary 3 did not quote their TFN to the trustee. Beneficiary 3's share of net income is $4,286, that is, ($4,500 ÷ $21,000) × $20,000 = $4,286.

To correctly complete an *Annual trustee payment report*, you need to provide the required identity details for each beneficiary in full and for:

- Beneficiary 1, include $11,428 at **B** on the distribution statement and include $572 at **S** (being the excess of the amount distributed during the income year $12,000 and the share of net income of $11,428)
- Beneficiary 2, include $4,286 at **B** on the distribution statement and do not include an amount at **S** (because the only amount paid or payable to Beneficiary B relates to a present entitlement created at year end)
- Beneficiary 3, include $4,286 at **B** on the distribution statement, do not include an amount at **S** (because the only amount paid or payable to Beneficiary B relates to a present entitlement created at year end), and complete **T** for the amount withheld $1,993 ($4,286 × 46.5%).

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**Example 10.2**

Assume the same facts as in example 10.1, except that at the end of the income year, Beneficiary 1 and Beneficiary 3, and not Beneficiary 2 and Beneficiary 3, are made presently entitled in equal shares to the income of the trust that has not previously been distributed.

- Beneficiary 1 quoted their TFN to the trustee. Beneficiary 1's share of net income is $15,714, that is, (4,500 + 12,000) (16,500 ÷ 21,000) × 20,000 = $15,714.
- Beneficiary 2 quoted their TFN to the trustee. Beneficiary 2's share of net income is $0.00.
- Beneficiary 3 did not quote their TFN to the trustee. Beneficiary 3's share of net income is $4,286, that is, (4,500 ÷ 21,000) × 20,000 = $4,286.

To correctly complete an *Annual trustee payment report*, you need to provide the required identity details for each beneficiary in full and for:

- Beneficiary 1, include $15,714 at **B** on the distribution statement and do not include an amount at **S**; there is no disclosure required at **S** as the distribution ($12,000) does not exceed the share of net income ($15,714)
- Beneficiary 2, there is no disclosure requirements on the statement of distribution
- Beneficiary 3, include $4,286 at **B** on the distribution statement, do not include an amount at **S**, and complete **T** for the amount withheld $1,993 ($4,286 × 46.5%).

## Annual TFN withholding report

Where you have been required to withhold amounts from beneficiaries, you must lodge a separate Annual TFN withholding report (/Forms/Annual-TFN-withholding-report/) with us. Do not lodge an *Annual TFN withholding report* if you did not have to withhold amounts from beneficiaries. If a report is required, you must lodge it within three months after the end of the income year unless you have been given more time to lodge. If you have a 30 June balancing date, the report will be due on 30 September.

## Trustee beneficiary reporting rules

A trustee of a closely held trust (that is, not an excluded trust) is required to complete and lodge a TB statement for a year of income if a share of the net income of the trust is included in the assessable income of a trustee beneficiary under section 97 of the ITAA 1936, and the share comprises or includes an untaxed part.

A TB statement must also be lodged where a trustee beneficiary is presently entitled to a share of a tax-preferred amount of the closely held trust.

A trustee beneficiary is a beneficiary of the trust in the capacity of trustee of another trust.

#### What is an excluded trust for the TB rules?

An **excluded trust** is:

- a complying superannuation fund, a complying approved deposit fund, or a pooled superannuation trust
- a trust of a deceased estate, but only until the end of the income year in which the fifth anniversary of the individuals death occurs
- a fixed trust that is a unit trust where exempt entities (entities whose ordinary and statutory income are exempt from tax) have fixed entitlements (directly or indirectly) and for their own benefit, to all of the income and capital of the trust
- a unit trust whose units are listed on the ASX
- a family trust, or
- a trust that has made an interposed entity election under section 272-85 (/law/view/document?DocID=PAC/19360027/Sch2F-272-85) of Schedule 2F to the ITAA 1936 or is wholly owned by the family (see subsection 272-90(5) (/law/view/document?DocID=PAC/19360027/Sch2F-272-90) of Schedule 2F to the ITAA 1936).

### See also:

- subsection 102UC(4) (/law/view/document?DocID=PAC/19360027/102UC) of Schedule 2F to the ITAA 1936
- section 272-100 (/law/view/document?DocID=PAC/19360027/Sch2F-272-100) of Schedule 2F to the ITAA 1936

#### How do you make a TB statement?

You make a TB statement by completing the statement of distribution in full for each trustee beneficiary including the beneficiary details and the TB statement information.

## What is a tax-preferred amount?

A **tax-preferred amount** is an amount of trust income of the trust that is not included in the assessable income of the trust in working out its net income or an amount of trust capital.

#### What is an untaxed part of a share of net income?

An **untaxed part of a share of net income** is the trustee beneficiary's share of the net income of a closely held trust less any part that has been taxed under:

- subsection 98(4) (/law/view/document?DocID=PAC/19360027/98&PiT=99991231235958&anchor=98(4)#98(4)) of the ITAA 1936
- Subdivision 12-H (/law/view/document?DocID=PAC/19530001/Sch1-12-375) in Schedule 1 to the TAA

- Division 6D (/law/view/document?DocID=PAC/19360027/102UA) (trustee beneficiary non-disclosure tax) in respect of which the trustee of another trust estate is liable to pay the non-disclosure tax.

An untaxed part of a share of net income includes interest, dividends or royalties that have been subjected to a withholding tax if these amounts are included in the assessable income of a non-resident trustee beneficiary.

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**Example 10.3**

The trustee of Trust A (a closely held trust) has net income of $10,000. The trust's distributable income is also $10,000. The trust has three trustee beneficiaries:

- The trustee of Trust B is a resident and was presently entitled to a 60% share of the trust's distributable income. As a result, it is assessable on the same percentage share of Trust A's net income, that is, $6,000.
- The trustee of Trust C is a resident and received a distribution of $2,000 during the income year. The $2,000 represented an amount of trust capital that was not included in Trust A's assessable income and was not part of the trust's distributable income. As a result, the trustee of Trust C is presently entitled to a tax-preferred amount of $2,000.
- The trustee of Trust D is a non-resident and was presently entitled to 40% share of the trust's distributable income. Their share of trust A's net income is $4,000 (all attributable to Australian sources).

To make correct TB statements for the trustee beneficiaries, the trustee of Trust A would report:

- the name and TFN of the trustee of Trust B, '**0**' at **P** and '**6,000**' at **Q**
- the name and TFN of the trustee of Trust C, '**2,000**' at **P** and '**0**' at **Q**
- no TB statement is required for Trust D. The trustee of Trust A is liable to pay tax on Trust D's share of the net income under subsection 98(4) (/law/view/document?DocID=PAC/19360027/98&PiT=99991231235958&anchor=98(4)#98(4)) of the ITAA 1936. That amount does not then form part of the untaxed part of a share of net income and does not need to be reported at **O**.

The reporting obligations under Division 6D apply to both Australian and foreign source income. However, Australian source income which is taxed under subsection 98(4) (/law/view/document?DocID=PAC/19360027/98&PiT=99991231235958&anchor=98(4)#98(4)) of the ITAA 1936 is not included as an untaxed part of a share of net income. If the share of the net income which is included in the assessable income of a non-resident trustee beneficiary includes income from a foreign source, then that foreign source income is an untaxed part of a share of net income and must be reported in a TB statement.

For more information about what amounts comprise an untaxed part of a share of net income or a tax-preferred amount, see Trustee beneficiary reporting rules (/General/Trusts/In-detail/Closely-held-trusts/Trustee-beneficiary-reporting-rules/).

#### Trustee beneficiary non-disclosure tax

If you do not correctly complete the TB statement on the statement of distribution, you may be liable for TBNT.

The trustee of a closely held trust may also be liable for TBNT where a share of the trust's net income of a closely held trust is included in the assessable income of a trustee beneficiary under section 97 (/law/view/document?DocID=PAC/19360027/97) of the ITAA 1936 and the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the untaxed part of the share, referred to as a **round robin** or **circular distribution**.

TBNT is currently imposed at the rate of 49%.

### See also:

- Trustee beneficiary reporting rules (/General/Trusts/In-detail/Closely-held-trusts/Trustee-beneficiary-reporting-rules/)

Last modified: 04 Aug 2017 QC 51275

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