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The General Manager
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Dear Sir

Response to Treasury Consultation Paper
Modernising the Taxation of Trust Income - Options for Reform

Ernst & Young is pleased to respond to the consultation paper 'Modernising the taxation of trust income - options for reform' ('the consultation paper') of 21 November 2011.

We welcome the Government's decision to proceed with its previously announced intention to review the trust income tax income tax provisions in Division 6 of the *Income Tax Assessment Act 1936* ('the ITAA 1936') and rewrite them into the *Income Tax Assessment Act 1997* ('the ITAA 1997').

As a preliminary matter, we consider that the commencement date of any changes to the 'core' trust taxation rules in Division 6 should not be before 1 July 2014, to afford affected taxpayers sufficient time to consider and plan for those changes. An optional start date of 1 July 2014 with compulsory application from 1 July 2015 should also be considered.

In this regard, we note that the consultation strategy released in conjunction with the consultation paper indicates the intended date for the introduction of legislation to implement the proposed reforms is November 2012 for a potential 1 July 2013 start date. If this timetable can be achieved, substantial lead time will still be required by all trusts to analyse the new provisions and their impact and to implement any required changes (e.g. trust deed amendments).

We submit that to the extent that changes to trust deeds may be required in respect of the proposed reforms, transitional rules providing relief from income tax and state tax liabilities associated with any potentially resulting resettlements should be provided for.

In summary, we also submit that:

- the tax principle that tax liabilities 'follow the money' is simplistic and the policy principle might be better expressed as to align the tax liability to the economic benefit, recognising retention of income and capital distributions, unpaid present entitlement and allocation of expenses being determined in accordance with the trust deed and general trust law principles
- we agree that the consultation paper's identification of the 'basic' issues of Division 6 of the ITAA 1936 are those in most need of immediate reform and should be the Government's priority
- the reform of other aspects of the tax law specifically affecting trusts including the trust loss rules in Schedule 2F to the ITAA 1936 and the "fixed trust" definition is desirable

- the reform of the 'core' rules for taxing trust income should be undertaken as a single process and reform of the other tax rules affecting trusts can be dealt with in separate stages of the broader reform process
- the uncertainty regarding the scope of Division 6 should be resolved by clarifying that it is an exclusive code for the taxation of all trusts, subject to specified exclusions and rules providing for particular interactions with other provisions in the tax law
- bare trusts and arrangements where ownership of assets is held by funds management intermediaries for investors should be carved out of the rewritten Division 6 rules
- the law should specify how such excluded trusts are treated for income tax purposes. For most of these exclusions the law should confirm that the "trust" is effectively ignored for income tax purposes
- interaction with the proposed managed investment trust (MIT) reforms including the optional attribution method of taxation will be important and the design of the rewritten Division 6 may depend upon how those measures are intended to be included within the income tax law
- the current accepted treatment to allocate expenses to classes of income on a 'fair and reasonable basis' appears to work effectively and should therefore not require any extensive new prescriptive legislation
- prescribing a mandatory definition of distributable income based on tax concepts is not desirable
- character flow through and 'streaming' should be provided on a general basis rather than the use of specific provisions
- losses of a particular class of income should not automatically be quarantined for recoupment against income of that same class but should be dealt with in accordance with the trust deed or absent this should be recognised as a general expense to be allocated against any remaining classes of income on a reasonable basis
- several other tax rules might require updates following any changes to Division 6
- the interaction of those areas of the tax law identified in Chapter 4 with an updated and rewritten Division 6 should be considered as part of the reform of the 'core' rules; however further consideration should be given to those interactions once the preferred approach for reforming the core Division 6 rules has been selected
- there should be a single generic tax regime for the taxation of trust income (subject to specific rules for particular categories of trust, such as CIVs which are not MITs)
- the 'proportionate within class' model is the most desirable of the three approaches outlined in Chapter 8 of the consultation paper
- the adoption of a TAD model without significant additional development and testing of these concepts is not supported. However we are concerned that the time required for this additional work would unnecessarily delay the implementation of any of the Division 6 rewrite

Our detailed responses to the specific questions raised in the consultation paper are set out in the Appendix.

Should you have any questions or would like to discuss our submission, please do not hesitate to contact Ian Burgess on (07) 3243 3711 or Tony Stolarek on (03) 8650 7654.

Yours sincerely

Ernst & Young

Ernst & Young

Appendix

Responses to Specific Questions

Our responses to the questions set out in the 'Questions for Consultation' section of the consultation paper are as detailed below.

Consultation Question 1

Do the policy principles outlined in Chapter 1 accurately reflect the existing framework for the taxation of trusts?

The five principles outlined in the consultation paper may be a useful policy framework for the rewrite of the provisions for the taxation of trust income.

However, we note that the first of those five principles (i.e. "Tax liabilities in respect of the income and gains of a trust should 'follow the money' in that they should attach to the entities that receive the economic benefits from the trust.") appears to have only recently been incorporated in the existing law for taxing trust income by *Tax Laws Amendment (2011 Measures No. 5) Act 2011* ('TLAA5') in limited capital gains and franked distribution streaming cases.

We consider this principle is rather simplistic as it implies that tax liabilities should follow cash paid to beneficiaries. We expect the policy intent is more to align the tax liability to the economic benefit. This principle, if properly expressed, may be valid, subject to the following observations:

- recognition of both income and capital distributions should be possible (e.g. the capital gain streaming rules in TLAA5);
- distributions to beneficiaries which are retained by the trust (i.e. the creation of unpaid present entitlements and retention of capital gain amounts that are not income) should be recognised; and
- for the purpose of ascertaining beneficiaries' entitlements to trust amounts, the allocation of expenses against different classes of income should be determined in accordance with the trust deed and general trust law principles. This is in contrast to difficulties applying expenses against capital gains and franked dividend under the streaming rules in TLAA5.

Consultation Question 2

The Government has identified a number of areas of the trust income tax provisions that require immediate reform. Are these the areas in most need of immediate reform? If not, what areas should the Government seek to reform as a priority?

Yes. We agree with the consultation paper's identification of the 'basic' issues of Division 6 (of Part III of the ITAA 1936) e.g. the interaction between the distributable income and taxable income of trusts, as being those in most need of immediate reform.

We also agree with the recognition by the consultation paper that the reform of other aspects of the tax law specifically affecting trusts (e.g. including the trust loss rules in Schedule 2F to the ITAA 1936 and the "fixed trust" definition) is desirable. Notwithstanding this, we consider that addressing the basic Division 6 issues should be the Government's priority.

Consultation Question 3

Should the trust income tax provisions be updated and rewritten as part of a single process or would it be more appropriate to conduct this reform through a staged approach?

If the reform approach chosen by the Government is to focus on a significant update and rewrite of 'core' rules for taxing trust income (i.e. Division 6), before addressing other aspects of the tax law affecting trusts (e.g. the trust loss rules), we submit that:

- the reform of those core rules should be undertaken as a single process ; and
- the other tax rules affecting trusts identified in the consultation paper as benefiting from reform can be dealt with in separate stages of the broader reform process.

If instead a 'minor tune-up' approach is preferred by the Government, we consider that addressing both the core and other trust tax rules as part of a single process may be desirable.

Consultation Question 4

Uncertainty about the scope of Division 6 is arguably one of the key issues hampering the effective taxation of trust income. If the scope of Division 6 is clarified, under either an inclusion or exclusion approach, should a general principle or a comprehensive list be adopted?

We consider that the uncertainty regarding the scope of Division 6 should be resolved by clarifying that it is an exclusive code for the taxation of all trusts, subject to:

- specified exclusions (including for trusts to the extent rules within the proposed managed investment trust ('MIT') regime apply); and
- rules providing for particular interactions with other provisions in the tax law.

The rewritten Division 6 should be an exclusive code for the taxation of the net income of a trust for both the beneficiaries and the trustee of the trust. This would resolve uncertainty including for example in respect of the distribution of tax free and tax deferred distributions where under current Australian Taxation Office ('ATO') guidance certain beneficiaries may be taxable on those amounts as ordinary section 6-5 income while other beneficiaries may not be so taxable (as detailed in ATO Income Tax Ruling IT 2512 and ATO ID 2011/58).

We recommend that an exclusion approach using a comprehensive list of types of trust arrangements is adopted. The excluded trusts might be defined in a number of ways including for example with reference to certain registrations under other statutes (as adopted for example for the MIT withholding tax provisions using the *Corporations Act 2001*) and/or to responsibilities and activities. The law should be clear and simple to apply and should not require unnecessary confirmation from the ATO.

We recommend that the use of the capital gains tax exclusion based on absolute entitlement to an asset as used in section 106-50 of the ITAA 1997 should be reworked. The operation of this provision remains uncertain including following publication of the ATO's views in a draft taxation ruling in 2004 (TR 2004/D25). Also it is likely that an absolute entitlement approach would not exclude many of the trust arrangements discussed in our response to question 5 below. Similarly, merely including an express exclusion for "bare trusts" would also not be sufficient as under a strict application of legal principles many arrangements which should be excluded might not meet that test.

The law should include a regulation making power to allow the list of excluded trust arrangements to be updated in a timely manner as needed, including to rectify any inappropriate interpretations of the law, not in line with the policy, which may arise when implemented.

Consultation Question 5

What types of trust might it be appropriate to carve out of the operation of Division 6? Are there any other areas of the tax law where a similar carve out for these types of trust may or may not be appropriate?

Bare trusts and arrangements where ownership of assets is held by funds management intermediaries for investors should be carved out of the rewritten Division 6 rules.

This carve out should include:

- custodian;
- investor directed portfolio services ('IDPS');
- individual managed account ('IMA');
- self managed account ('SMA'); and
- nominee arrangements.

Such arrangements are not intended by the parties to be transactions taxed as part of a trustee/beneficiary relationship. The arrangements are typically established for practical reasons and administrative convenience including to achieve economies of scale and to meet regulatory and governance requirements. The custodian/manager/nominee typically has no active duties or rights and only acts upon client instructions in accordance with their contractual obligations.

Their potential default inclusion of such arrangements in the trust tax rules creates uncertainty, additional costs of compliance and can also result in inappropriate outcomes. Their exclusion should also help to focus the rewritten provisions on measures appropriate to cater for family and business trust arrangements.

Other relationships including constructive trusts from equitable assignments (for example as part of securitisation arrangements) should also be excluded. These relationships are causing unnecessary complexity including for example in applying the Division 230 ITAA 1997 taxation of financial arrangement rules.

The law should specify how such excluded trusts are treated for income tax purposes. For most of these exclusions the law should confirm that the "trust" is effectively ignored for income tax purposes and that the "beneficiary" is taken to have undertaken any act etc done by the intermediary. This rule should apply for all income tax purposes including where there are losses. However such excluded trust might still be subject to separate reporting requirements and to withholding tax on certain payments.

A further carve out for testamentary trusts and deceased estates to better cater for their unique requirements in separate specific tax rules might also be considered.

Interaction with MIT reforms

Interaction with the proposed MIT reforms including the optional attribution method of taxation will be important and the design of the rewritten Division 6 may depend upon how those measures are intended to be included within the income tax law. This design element may therefore not be able to be progressed until the MIT rules are enacted.

Separation of the income tax rules for MITs, including bringing the current Division 275 ITAA 1997 capital election rules and Division 840 ITAA 1997 MIT withholding tax rules together in one place, should improve clarity for eligible funds. However the trade off for creating a more comprehensive stand alone MIT taxation division may be some duplication of certain rules common with non-MIT trusts. Extensive linking of Division 6 provisions within a separate MIT division is unlikely to assist.

Rules will be needed to deal with the interaction of the proposed optional MIT attribution rules and the rewritten Division 6. In particular under the current MIT proposals eligible trusts can move in and out of the MIT attribution rules notwithstanding that the election to use that method is irrevocable. Such a change of status might occur where the MIT becomes ineligible to use the attribution method, for example where the clearly defined rights requirement is no longer met, where it is proposed that a 5 year exclusion penalty may apply.

The current proposed limitation of the MIT reforms to trusts that meet the current definition of a MIT, along with the new proposed restrictions for the optional attribution rule and "fixed trust" treatment, will inappropriately exclude many non closely held collective investment vehicles from those rules. By default they will remain wholly taxable under the rewritten Division 6. This includes for example:

- Institutional collective investment vehicles ('CIV') (where ownership by certain entities including for example insurance companies may prevent MIT status)
- Resident and non-resident private equity trusts
- Venture capital and hedge funds

An expansion of the MIT provisions to include such additional non closely held CIVs would allow more appropriate taxation rules to apply to those entities.

In our view, the Division 6 reforms need to provide clearly for the particular requirements of such CIVs which are not MITs.

Consultation Question 6

Is there sufficient uncertainty with the current treatment of expenses to warrant a legislative solution?

The current accepted treatment to allocate expenses to classes of income on a 'fair and reasonable basis', as described in *Ronpibon Tin v FCT* (1949) 78 CLR 47and discussed in the consultation paper, appears to work effectively and should therefore not require any extensive new prescriptive legislation.

However, legislative support for the treatment of expenses in determining beneficiaries' income entitlements may be warranted in circumstances where the relevant trust deed does not specify the trustee's powers in that regard (or there is a failure by the trustee to exercise any such powers). In those circumstances, we consider that as a 'safety net' the legislation should provide for the apportionment of expenses against relevant classes of income on this accepted 'fair and reasonable' basis. More specifically, such a rule could require:

- expenses directly related to a particular class (or classes) of income to be applied against that class (or classes), with any resulting losses for a particular class (or classes) being treated as an indirect expense; and
- indirect expenses that do not directly relate to a particular class (or classes) of income to be proportionately applied all income amounts remaining after the application of direct expenses.

In this regard, we do not perceive any policy basis for an ordering rule of the type in former section 50 of the ITAA 1936, which would differentially allocate indirect expenses against particular classes of income.

However, where the relevant trust deed provides the trustee with the discretion to allocate expenses against particular classes of income or prescribes some other basis for doing so, the income entitlements of beneficiaries should be determined accordingly (subject to general trust law principles). Preserving the operation of the trust deed in relation to how expenses are treated in determining beneficiary entitlements is consistent with the first of the policy principles set out in the consultation paper (i.e. that tax liabilities should follow the financial benefits to which beneficiaries are in fact entitled).

We recognise that certain allocations of expenses against particular classes of income (e.g. preferentially allocating general expenses against dividend income) where allowed (or even required) by the trust deed could be perceived as an integrity risk. However, we submit that risk is capable of being managed by existing integrity rules (e.g. Part IVA of the ITAA 1936).

An example of how the safety net expenses allocation rule described above might operate (broadly based on example 1 in Taxation Ruling TR 92/13) is set out below:

During the year ended 30 June 2011, the following income was derived by the Family Investment Trust ('the Trust'):

	$
Fully franked dividend from Company A Ltd	*12,000*
Interest income	*8,000*
Rental income	*32,000*

The following expenses were also incurred by the Trust in that income year:

	$
Rental property expenses	*36,000*
General administration costs	*2,000*

The distributable income of the Trust (defined in its deed as income according to ordinary trust concepts) and it tax net income are calculated as follows:

	$
Total income	*52,000*
Less total expenses	*(38,000)*
Distributable income	*14,000*
plus franking credits	*5,143*
Tax net income	*19,143*

The trustee of the Trust has a discretion to apply the distributable income of the Trust to certain beneficiaries, including Beneficiary A, Beneficiary B and Beneficiary C. The deed also expressly confers a power on the trustee to identify and selectively allocate income by classes to beneficiary.

In exercise of those powers, the trustee resolved to make the following distributions of income in respect of the year ended 30 June 2011:

- *All of the dividend income to Beneficiary A; and*

- *The remaining income to Beneficiary B and Beneficiary C in equal shares.*

On the basis that trust deed does not specify the trustee's powers with respect to applying expenses against particular classes of income, the proposed statutory rule discussed above would apply to the Trust for the year ended 30 June 2011 as follows:

- *Being directly related to Trust's the rental income (i.e. $32,000), the rental expenses (i.e. $36,000) would be applied against that income, resulting in a $4,000 loss.*

- *The Trust's indirect expenses of $6,000 (consisting of the $4,000 rental loss and $2,000 administration costs) would be proportionally allocated against the Trust's remaining income as follows:*

	Pre-allocation income ($)	*Proportional indirect expense allocation ($)*	*Remaining distributable income ($)*
Dividend income	*12,000*	*3,600*	*8,400*
Interest income	*8,000*	*2,400*	*5,600*
	20,000	*6,000*	*14,000*

As a result:

- *Beneficiary A would be treated as receiving $8,400 dividend income, together with $5,143 franking credits; and*

- *Beneficiary B and Beneficiary C would each be treated as receiving $2,800 interest income.*

Consultation Question 7

If the concept of distributable income is to be defined using tax concepts, what adjustment will need to be made to existing tax concepts to allow for a workable definition?

In our view, prescribing a mandatory definition of distributable income (or, as referred to in the consultation paper, 'trust amount') based on tax concepts is not desirable.

In particular, any legislative definition of the trust amount will still require a determination of what amounts included in the definition represent entitlements which have been conferred on beneficiaries by trustees. That is, even where there is a standard trust amount definition, there will not be a standard means of identifying who has benefited from the amounts included in the definition (which will determined according to the terms of the trust deed, which may rely on different concepts to those on which the trust amount is based).

A further difficulty associated with designing a definition of a trust amount based on tax concepts is that where it is intended to reflect the 'money' that the tax liability should follow (i.e. consistent with the first of the policy principles set out in the consultation paper), there are significant complexities in adjusting for amounts included in trust taxable income, but not available for distribution. A detailed discussion of this issue is set out in our submission in response to the March 2011 discussion paper *Improving the taxation of trust income* in relation to a potential definition of 'adjusted taxable income' (attached).

However, we consider that statutory recognition is desirable that 'income equalisation' or 'reclassification' clauses (as defined in the consultation paper) are effective to achieve the distributions of trust taxable income intended by trustees , subject to the approach that is selected for determining trust amounts and the entitlement of beneficiaries thereto.

In this regard, the risk noted in the consultation paper that such clauses might facilitate the manipulation of the tax liabilities of trust beneficiaries should be addressed by existing integrity provisions (e.g. Part IVA of the ITAA 1936). Reducing the incentive for taxpayers to avoid trustee assessments by reducing the trustee rates of tax should also be considered

Consultation Question 8

Should character flow through and 'streaming' be provided on a general basis with specific limitations or alternatively through the use of specific provisions? If 'streaming' is provided using specific provisions, in addition to capital gains and franked distributions what other types of income should be afforded this treatment?

As a general principle, we agree that character flow through and 'streaming' should be provided on a general basis.

In this regard, we consider that the highly complex nature of the capital gains and franked dividend streaming rules (and associated amendments) recently enacted by TLAA5 illustrates that a general character flow through and streaming rule is preferable to the use of specific provisions. That is, a core rule which clearly recognises that different classes of income can be streamed to particular beneficiaries for tax purposes is much simpler (both conceptually and in relation to the legislative mechanisms required to implement it) than multiple complex targeted sets of provisions outside the core trust rules dealing with the treatment of particular classes of income that may be distributed by trusts.

We further submit that there is no apparent policy basis for differentiating between the streaming of capital gains and franked dividends and the streaming of other classes of income.

The ATO has indicated that it intends to administer Division 6 on the basis that streaming of a trust's taxable income is not effective and issue a Taxation Ruling on the meaning of 'income of the trust estate' for the purposes of Division 6. This represents a departure from previous ATO positions (e.g. regarding streaming in Taxation Ruling TR 92/13).

Accordingly, in the absence of some legislative clarification of such fundamental aspects of Division 6 pending its update and rewrite, some transitional protection for taxpayers whose affairs are predicated on its previously accepted interpretations in the interim should be considered.

Consultation Question 9

How should losses be dealt with where character flow through of different classes of income is recognised?

We consider that where losses arise in respect of a particular class of income (calculating according to the rules for allocating expenses, discussed in response to Question 6), they should not automatically be quarantined for recoupment against income of that same class (regardless of whether or not the trust has made an overall loss for a particular income year).

It is possible that in some investment trusts there will be an intent, expressed in the trust deed, for losses on a particular class of asset to be borne by beneficiaries entitled to the income and capital arising from that asset.

We therefore agree that the normal default position should be that losses should be recognised as a general expense to be allocated against any remaining classes of income on a reasonable (likely proportionate) basis.

However such losses should be dealt with in accordance with the trust deed where the trust deed evidences an intention to limit or quarantine the losses.

Consultation Question 10

In addition to those areas of the tax law highlighted in Chapter 4, are there any other areas that may need to be updated if changes are made to the current operation of Division 6?

Other tax laws that might require updates following any changes to Division 6 may include:

- Clarification of the operation of the withholding tax rules including their ordering rules and the operation of the TFN withholding rules in particular for non-resident beneficiaries and tax free and tax deferred amounts
- Interaction with the public trading trust rules (and corporate unit trust rules should these not be repealed prior to the Division 6 changes)
- Taxation of financial arrangements rules
- International tax provisions including the foreign source income attribution rules

Consultation Question 11

Are there issues with the operation of the provisions highlighted in Chapter 4 that may need to be addressed, in addition to any changes that may need to be made to ensure that these provisions are able to operate effectively with an updated version of Division 6?

We agree that the interaction of those areas of the tax law identified in Chapter 4 of the consultation paper with an updated and rewritten Division 6 should be considered as part of the reform of the 'core' rules for the taxation of trust income in Division 6.

However, the basis on which those provisions will interact with an updated and rewritten Division 6 will depend on which of the various reform options are selected (e.g. how the scope of Division 6 is to be defined will influence the nature of its interaction with the proposed MIT regime).

Accordingly, we submit that further consideration should be given to those interactions once the preferred approach for reforming the core Division 6 rules has been selected. This could take place during the consultation roundtables scheduled following the proposed release of a policy design paper in May 2012.

Consultation Question 12

Should there be one generic or multiple targeted tax regimes for the taxation of trust income? If a generic regime is desirable, which of the three approaches outlined in Chapter 8 should be adopted? Are there any other models that could be considered in updating the operation of Division 6?

We support a single generic tax regime for the taxation of trust income (subject to specific rules for particular categories of trust, such as CIVs which are not MITs).

In this regard, we consider that the 'proportionate within class' model is the most desirable of the three approaches outlined in Chapter 8 of consultation paper. This approach:

- is consistent with the way many tax payers have previously interpreted and applied Division 6 (including how taxpayers have applied Taxation Ruling TR 92/13 prior to its withdrawal);
- builds on recent clarifications by the courts of various aspects of Division 6 (e.g. the application of the proportionate approach);
- does not involve the introduction of a substantially different model for taxation of trust income.

Consultation Question 13

If a 'proportionate within class' model was adopted would it be necessary to define the concept of distributable income in the same ways as outlined under the 'patch' model?

As discussed in relation to Question 7, we do not consider that prescribing a mandatory definition of distributable income (or, as referred to in the consultation paper, 'trust amount') based on tax concepts is desirable.

In this regard, we also consider that former TR 92/13 appropriately illustrates how a proportionate within class model could be applied in the absence of such a statutory trust amount definition.

Consultation Question 14

As highlighted in Chapter 8 the adoption of a TAD model may result in increased trustee assessments. If a TAD model was adopted is there an appropriate way to reduce the potential effects of the top marginal tax rate applying to unallocated amounts?

We do not support the adoption of a TAD model without significant additional development and testing of these concepts. However we are concerned that the time required for this additional work would unnecessarily delay the implementation of any of the Division 6 rewrite within both the current Treasury consultation strategy timeline and also within our suggested adjusted timeline set out in answer to question 16 below.

The proposed TAD model would likely result in the greatest implementation and increased costs of compliance burdens on taxpayers out of the models as well as the potential for significant additional tax liabilities (including from the loss of certain tax concessions at this level). The model will require departure from established processes and potentially changes to trust deeds and other documentation.

A reduction in the tax rate applying to trustees for unallocated amounts could be considered as part of a trade off for such fundamental changes provided there was a credit mechanism for subsequent distributions. However the introduction of a pseudo imputation system for trusts or other integrity rules would be complex and in many cases unnecessary for the majority of family and business trust arrangements compared to current outcomes.

A reduced trustee assessment rate equal to the company tax rate (i.e. currently 30%) might also assist to resolve any integrity concerns with potential inappropriate distribution practices favouring such entities. However without a credit mechanism this reduced rate of trustee tax would still disadvantage many trust beneficiaries when the retained trust income is eventually distributed.

Consultation Question 15

If a TAD model was adopted, how should the tax law define the concept of a 'distribution'?

As discussed above at this stage we do not support the adoption of a TAD model.

Consultation Question 16

If significant changes are made to the current operation of Division 6 what transitional measures do you consider the Government may need to provide?

We consider that the commencement date of any significant changes should not be before 1 July 2014, in order to allow full consideration and planning for those measures by affected taxpayers.

An optional start date of 1 July 2014 with compulsory application from 1 July 2015 should also be considered.

We note that the consultation strategy released in conjunction with the consultation paper indicates the intended date for the introduction of legislation to implement the proposed reforms is November 2012 for a potential 1 July 2013 start date. Even if this timetable can be achieved, substantial lead time will still be required by all trusts to analyse the new provisions and their impact and to implement any changes required to systems, trust deeds etc. The typical small business taxpayer trust is unlikely to commence consideration of such changes outside their yearly distribution (May or June 2013) and/or tax return lodgement processes (late 2013/early 2014).

We also submit that, to the extent that changes to trust deeds may be required in respect of the proposed reforms to the rules for taxing trust income, relief from income tax and state tax liabilities associated with any potentially resulting resettlements should be provided for. Transitional relief introduced for investment funds implementing the managed investment scheme Corporations Act changes in 1998 should be considered as an income tax precedent (Division 960 Income Tax (Transitional Provisions) Act 1997).