

RECEIVED
The Assistant Treasurer
SIGNATORY

<input checked="" type="checkbox"/> Minister	<input type="checkbox"/> Assistant Adviser
<input type="checkbox"/> Chief of Staff	<input type="checkbox"/> DLO
<input type="checkbox"/> Media Adviser	<input type="checkbox"/> Other
<input type="checkbox"/> Adviser	

23 DEC 2010

ACTION

<input checked="" type="checkbox"/> Acknowledge	<input type="checkbox"/> Briefing
<input type="checkbox"/> Substantive Response	<input type="checkbox"/> Speech
<input type="checkbox"/> Appropriate Action	<input type="checkbox"/> Refer to
<input type="checkbox"/> Information	<input type="checkbox"/> No further action
<input type="checkbox"/> Constituent	

SMO REF: 17403/CXU



89659

ASSOCIATE JUDGES' CHAMBERS
SUPREME COURT
MELBOURNE, 3000

21 December 2010

Thank him
for his sub.
and address
question in
12/1 perc.
A1

Hon Bill Shorten MP
Minister for Financial Services and Superannuation;
Assistant Treasurer
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

RECEIVED
23 DEC 2010
TSY LIAISON



Dear Minister

I understand that your Government has made a commitment to update Australia's trust taxation laws and you have announced a public consultation process as a first step towards updating the trust income tax provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936* and rewriting them into the 1997 Act.

Background

I am a Judicial Member of the Court and, pursuant to section 75 of the *Constitution Act 1975* (Vic), along with the Chief Justice, President of the Court of Appeal, Judges and other Associate Judges, constitute the Court.

The Senior Master's (Funds in Court) Office [SMO] is an office of the Supreme Court of Victoria that deals with funds paid into Court, for the most part funds paid as compensation to persons under a legal disability [the beneficiaries]. The majority of the beneficiaries for whom the SMO administers funds either have an acquired brain injury or have been victims of crime.

The funds I hold, for over 5,000 beneficiaries, presently total in excess of \$1.12 billion. Most of that sum is held Common Funds. Each beneficiary has an account in the Common Fund and that account is identified by statute as a "trust". As part of my prudential management of the beneficiaries' funds, one of these Common Funds invests in Australian equities.

Excess imputation credits

I would appreciate it if you would consider this submission which relates to difficulties that have occurred in recent years when my Office has lodged trust tax returns on behalf of these beneficiaries.

The investment of the Common Fund in blue chip Australian shares has led to imputation credits being received by many of the trusts that are in excess of those trusts' assessed annual tax liability. That has arisen principally due to either the large, rebateable medical

expenses that are incurred on behalf of the beneficiary or the income levels of the trusts being below the income tax threshold level.

Problem due to change of legislation in 2002

In 2009/10 there were excess imputation credits totalling \$1,191,504.00 which could not be claimed on the trust taxation returns from the total available credits of \$4,444,875.00.

Prior to 2000, I was able to claim such excess imputation credits directly by lodging a trust taxation return for each beneficiary. However, as a result a retrospective amendment of the taxation legislation on 3 July 2002, such claims by me were no longer allowed. The Australian Taxation Office stated that the amendments were required as "*in certain circumstances, both the trustee and the beneficiaries were able to get a benefit from the same imputation credits*".

As a judicial officer, I have always been mindful to ensure that my taxation system does not enable any excess imputation credits to be claimed by both the trustee and the individual beneficiary.

Unfortunately, the change of legislation has resulted in the beneficiaries having to claim the excess imputation credits by lodgement of a personal taxation return - regardless of whether they were required to lodge a personal taxation return without the excess credits.

Given that the severe injuries suffered by many of the beneficiaries for whom I hold funds have resulted in a lack of cognitive capacity to administer their financial affairs, including having difficulty in lodging a tax return, it is extremely difficult for my staff to arrange for the refund of these credits by somehow having a return made and lodged and then receiving the refund from the beneficiary. (Many beneficiaries spend the money and then cannot account for it.)

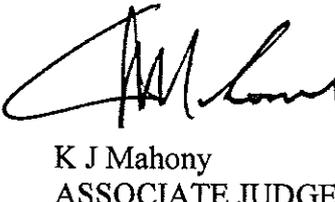
Submission to categorise Court trusts for people under a disability

I submit that these Court trusts are different from those the 2002 legislation was designed to affect; and that it is in the public interest that the beneficiaries' due entitlements are received and applied for them as are their other funds in Court.

I request that the Review receive and consider this initial submission. A suitable outcome to allow the Senior Master to claim the excess imputation credits directly, as was the case before 2000, would greatly improve the beneficiaries' financial situations and at the same time reduce processing at the Australian Taxation Office .

I would welcome the opportunity to provide you with further information that could assist the beneficiaries in this important matter; or to receive your advice as to whom the matter should be further and better addressed.

Yours sincerely



K J Mahony
ASSOCIATE JUDGE
SENIOR MASTER