

## What are the TFN Withholding rules?

The TFN withholding rules basically set out situations where TFN withholding tax should be withheld from payments made in the event the recipient has not provided their tax file number. Common situations captured within these rules include payments of remuneration made by an employer to an employee, and interest income paid by a bank to a customer where no TFN has been provided.

The government has recently extended the TFN withholding rules to include payments made to beneficiaries by closely held trusts in respect of trust distributions where the beneficiary has not provided their TFN.

## What is a Closely Held Trust?

For the purposes of the TFN withholding rules, a "closely held trust" is:

- A trust where up to 20 individuals have between them (directly or indirectly) fixed entitlements to at least 75% of either income or capital, for their own benefit, or
- A discretionary trust

"Excluded trusts" are not regarded as closely held trusts. Examples of excluded trusts include a complying superannuation or a deceased estate in its first five years of existence. It is important to note that for the purposes of the TFN withholding rules, a family trust is never regarded as an excluded trust.

## I am the Trustee of a Closely Held Trust. What do I need to do?

If you are the trustee of a closely held trust, you have additional administrative and reporting obligations under the TFN withholding rules. Unless you use a tax agent who uses electronic lodgement when dealing with the ATO, from 1 July 2010 you need to:

- Lodge a "TFN Report" with the ATO on a quarterly basis containing the following details in relation to all known and potential beneficiaries:

- Full name
- TFN
- Entity type
- DOB (where beneficiary is an actual person)
- Postal address
- Business or residential address
- ABN (if one is held. This requirement does not apply to beneficiaries who are actual persons)

The TFN report needs to be prepared on a quarterly basis and it is due for lodgement at the end of the month following the end of the relevant quarter. Once you lodge your first report, you are only required to lodge subsequent quarterly reports when there are new details or changes to report.

**If you use a tax agent and your tax agent lodges your trust's income tax return electronically, there is a lodgement concession which allows this report to be lodged on an annual basis along with the income tax return**

- Lodge an "Annual Trustee Payment Report" with the ATO containing details of total payments made to each beneficiary in the income year. This report can be made when lodging the trust tax return by completing the required information in the Statement of Distribution
- Advise known and potential beneficiaries that if they do not provide their TFN by the time a distribution is declared, you will be required to deduct TFN Withholding from their share of the distribution
- If a beneficiary does not provide their TFN in the correct timeframe, provided the distribution payment is not an "excluded payment" and the beneficiary is not an "excluded beneficiary", you need to:
  - Deduct TFN withholding from any payments you make to them at the top

# TFN Withholding Rules for Closely Held Trusts

- marginal income tax rate plus the Medicare Levy
- Register for PAYG Withholding for closely held trusts
- Lodge an annual activity statement and remit to the ATO any amounts withheld
- Provide a payment summary to each beneficiary that had amounts withheld
- Lodge an "Annual TFN Withholding Report" with the ATO containing details of the amounts paid to beneficiaries and any amounts withheld from those payments

"Excluded payments" include payments below an annualised amount of \$120, payments subject to family trust distributions tax and payments that relate to a previous year's distribution when the TFN withholding rules were not relevant.

"Excluded beneficiaries" include:

- Non-residents
- Persons under a legal disability
- Income Tax Exempt entities for tax purposes

## I am a Beneficiary of a Closely Held Trust. What do I need to do?

If you are a beneficiary of a closely held trust, provided you are not an "excluded beneficiary" you need to do either of the following from 1 July 2010 onwards:

- Provide your TFN to the relevant trustee, as well as the other required disclosure details, or
- Actively decide to not provide your TFN and understand the consequences of this decision. The consequences are that TFN withholding will be deducted from your distribution payment at the top marginal income tax rate plus the Medicare Levy. However you can claim this as a credit for income tax paid when lodging your income tax return

### What Next?

If you are the trustee of a trust, contact your manager or partner at Isaacs & Cole to discuss how these rules potentially impact you.

*Disclaimer: The information contained in this fact sheet is not intended as specific advice. Please contact Isaacs & Cole to discuss your individual situation.*