

# UPDATE FOR TRUSTEES ON TFN REPORTING — JULY 2011

*The obligations under the TFN reporting and withholding rules are extensive, and trustees and their advisers need to be aware of the issues.*

*We discuss key issues raised by the rules below.*

*The decision by the ATO to extend the deadline for lodging the June 2011 TFN report until the lodgment day of the 2011 trust income tax return should ensure practitioners have sufficient time (in the majority of cases) to advise and educate their staff and clients of the new measures. It should also allow sufficient time to implement appropriate procedures to ensure compliance with future reporting obligations.*

*The ATO's primary guide on these rules, TFN withholding for closely held trusts, is available at [click here](#):*

## Extension of time for TFN reports

There continues to be some confusion amongst practitioners regarding the deadline for lodging the *TFN report* for the quarter ended 30 June 2011.

This is only of relevance for trustees who:

- Did not utilise the transitional opportunity to advise the ATO of beneficiaries' TFN details via the 2010 trust income tax return distribution statement (see discussion on transitional rules below); or
- Where the transitional rules were used — need to notify TFN details of new beneficiaries who did not receive a 2010 distribution but became presently entitled to a distribution in the 2011 year and the TFN details were provided to the trustee post lodgment day of the 2010 trust income tax return.

The legislative deadline is **31 July 2011**. In June, the ATO announced that the deadline for the June 2011 quarter has been extended to **31 August 2011**.

The ATO has further extended the deadline for lodging the *TFN report* for the quarter ended 30 June 2011 to **the lodgment date of the 2011 tax return**. This extension is available only to tax agents who lodge electronically, and who lodge both the June 2011 *TFN report* and the 2011 tax return electronically, as well as all future tax returns electronically.

The above extensions are not ongoing and normal due dates apply for lodgment of all future *TFN reports*. Any TFN details reported to trustees (for example, because a new trust is established) between 1 July 2011 and 30 September 2011 **need to be reported by 31 October** in a quarterly *TFN report* for the quarter ending 30 September 2011.

Importantly, if TFN details are notified to the trustee after 1 July 2011 in respect of:

- 2011 income year distributions — TFN withholding applies (and there are reporting and withholding obligations commencing 30 September 2011);
- 2012 or later year distributions — the trustee must lodge a new *TFN report* within one month of the end of the quarter in which the TFN details are provided to the trustee.

It will be interesting to know how the ATO plans to monitor reporting compliance. One wonders whether practitioners, already faced with an ever mounting burden of paperwork, simply stockpile TFN notifications until the June quarter in each year and report them all on the June *TFN report*.

## Completing the TFN report

Through discussions with specialists within the ATO's TFN project area, we have been advised that where a trustee is lodging a quarterly June 2011 *TFN report* in respect of amounts for the whole 2011 income year (i.e. from 1 July 2010 right through to 30 June 2011), the *TFN report* should be completed

with the quarterly dates 1 April 2011 to 30 June 2011 at the top of the first page. The quarterly *TFN report* should not be completed with the full year dates.

The *TFN report* is available in ELS or paper format, and is available at:

<http://www.ato.gov.au/content/downloads/BUS00281767NAT73651.pdf>

## Using the transitional rule

Trustees were able to report TFN details on the 2010 trust tax return before the due date for lodgment under the transitional rule instead of having to lodge a *TFN report*.

When completing the tax return, the ATO have advised us that some trustees put **N** at question 65 ('Is the trust a closely held trust?') because the trust was a family trust and therefore not a closely held trust under the TB statement rules, rather than **Y** which the ATO indicated should have been reported.

Where the ATO detected an inconsistency in the data reported, the ATO will have written to the trustee requiring them to lodge a *TFN report* for the June 2011 quarter to resolve the discrepancy if the ATO couldn't match up the data. In many cases, the ATO was able to match up the TFN details even if question 65 was answered **N** instead of **Y**.

Accordingly, unless trustees have received a letter advising that they need to lodge a *TFN report*, whatever has been reported through the 2010 tax return has been accepted by the ATO.

At this time, it is not possible to check the TFN status of beneficiaries on the portal.

## New corporate beneficiaries and trustee beneficiaries, and minors who have turned 18

Many accountants will have set up new trustee beneficiaries or corporate beneficiaries for their clients in June 2011 which have become presently entitled to a share of the income of a closely held trust for the 2011 income year. If a new TFN was applied for but not issued by 30 June 2011, the new beneficiary could not have reported their TFN details to the trustee before the end of the 2011 income year.

The same issue will apply to minors who turned 18 during the 2011 income year and became presently entitled on 30 June 2011 to a share of the income of a closely held trust without quoting a TFN to the trustee.

**The consequence is that the TFN withholding rules apply.**

The extension of time until 31 August or lodgment day (refer above) applies only to the lodgment of the *TFN report*, not to the reporting of TFN details to the trustee.

Many accounting firms will have set up new entities — where the TFN was not issued by the ATO until July or August 2011 — to which they are distributing trust income for the 2011 income year, and many may not be aware that trustees will have withholding and reporting issues commencing 30 September 2011.

The legislation is silent on pending TFNs, with the result that withholding applies. The ATO is aware of the issue but this is a legislative limitation.

## Completing the annual trustee payment report

The *annual trustee payment report* forms part of the 2011 trust tax return at labels **S** and **T**.

A payment for the purpose of completing label **S** is:

1. a **distribution** during the year **from the ordinary or statutory income** of the trust (if made); and
2. where a beneficiary is presently entitled to a share of the income of the trust at the end of the income year — **that share of the net income of the trust**.

Accordingly, the amount reportable at label **S** is the beneficiary's share of the net income as defined in s. 95 of the *ITAA 1936*.

This *annual trustee payment report* must be completed by all trustees of closely held trusts, even if there is no TFN withholding. The effect of the decision in *Bamford* and trust streaming under the newly enacted measures could produce some interesting results at label **S**.

It is fortunate the *annual trustee payment report* forms part of the 2011 trust income tax return as there will be ample time for the professional bodies to discuss the administrative nuances of these provisions further with the ATO who will hopefully provide worked examples and further guidance to provide practitioners with greater certainty and clarity.

***This edition of The Assessment was prepared jointly by Robyn Jacobson of TaxBanter and Rob Power of Webb Martin Consulting.***

***TaxBanter clients will receive coverage of the rules in coming training sessions and any specific enquiries can be directed to Rob Power on 03 8662 3200 or [robp@webbmartinconsulting.com.au](mailto:robp@webbmartinconsulting.com.au)***