Trustee beneficiary reporting rules

Check if a closely held trust is required to include a trustee beneficiary statement in their trust tax return.

Last updated 15 November 2019

This information is for trustees of closely held trusts that have trustee beneficiaries.

When lodging your trust tax return, you may need to include a trustee beneficiary (TB) statement with details of your trustee beneficiaries that are entitled to:

- a share of trust income (whether or not it is assessable)
- capital of the trust.

We use the TB statement to check:

- whether the trustee beneficiary correctly declares its share of the trust net income
- whether the net assets of the trustee beneficiary reflect the receipt of the trust capital and any non-assessable income.

Do you need to make a TB statement?

Find out if you need to make a Trustee beneficiary statement.

How to make a TB statement

Find out how to make a Trust beneficiary statement.

Trustee beneficiary non-disclosure tax

Find out about Trustee beneficiary non-disclosure tax.

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Do you need to make a TB statement?

Find out if you need to make a Trustee beneficiary statement.

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If you're a trustee of a closely held trust (that is not an excluded trust), you must make a correct TB statement for an income year if:

- a share of the trust's net income is included in the assessable income of a trustee beneficiary (under section 97 of the *Income Tax Assessment Act 1936* (ITAA 1936)), and
- the share includes an untaxed part.

You must also make a TB statement where a trustee beneficiary is presently entitled at the end of the income year to a share of a tax-preferred amount of the trust.

If you fail to make a correct TB statement in respect of a beneficiary when required, you're liable to pay trustee beneficiary non-disclosure tax on the untaxed part of the beneficiary's share of net income

If you fail to report a trustee beneficiary's entitlement to a tax-preferred amount, you may be guilty of an offence under section 8C of the *Taxation Administration Act 1953*.

You don't have to make a TB statement if:

- the closely held trust
  - has a valid family trust election in force
  - has a valid interposed entity election in force
  - forms part of a 'family group'

- you're within a class of trustees that we've **determined** by legislative instrument is not required to do so.

Next step:

- How to make a TB statement

Find out about:

- Trustee beneficiary
- Closely held trusts
- Excluded trusts
- Beneficiaries that are trustees of discretionary trusts
- Untaxed part of a share of the net income
- Tax-preferred amount

Trustee beneficiary

A trustee beneficiary is a beneficiary of a trust in its capacity as trustee of another trust.

Closely held trusts

A trust is a closely held trust if it:

- is a discretionary trust, or
- has up to 20 individuals who, between them, directly or indirectly, and for their own benefit, have fixed entitlements to a 75% or more share of the income or a 75% or more share of the capital of the trust ('the 20/75 test').

However, a trust is not a closely held trust if it is an excluded trust.

Excluded trusts

Broadly, a trust will be an excluded trust if it is a:

- complying superannuation fund
- complying approved deposit fund
- pooled superannuation trust

- deceased estate (up until the end of the year of income in which the fifth anniversary of the death of the individual occurs)
- fixed trust that is a unit trust where all of the beneficiaries are entities exempt from income tax, and have fixed entitlements to all of the income and capital of the trust
- unit trust whose units are listed on the stock market operated by ASX Limited.

Whether or not a trust is an excluded trust is considered in terms of the trust itself and not its beneficiaries.

The 20/75 test

An individual and all of their relatives are taken to be one individual for the purposes of the 20/75 test.

Beneficiaries that are trustees of discretionary trusts

For the purposes of the 20/75 test, a trustee beneficiary that is a trustee of a discretionary trust will be taken to be an individual, and to hold the fixed entitlement for its own benefit, if:

- it holds a fixed entitlement to a share of the income or capital of the trust, and
- no person holds that fixed entitlement directly or indirectly through the discretionary trust.

Example: Beneficiaries that are trustees of discretionary trusts

'Trust A' is a unit trust. All three beneficiaries of Trust A are trustees of discretionary trusts. The trustees of two of the discretionary trusts each hold a fixed entitlement to a 50% share of the income of Trust A. The trustee of the third discretionary trust holds a fixed entitlement to a 100% share of the capital of Trust A. No person holds a fixed entitlement, directly or indirectly, through any of the discretionary trusts.

The trustee beneficiaries are therefore treated as individuals for the purposes of the 20/75 test.

Diagram showing Test A, the Test trust, is a unit trust. Discretionary trust 1 holds a fixed entitlement to a 50% share of the income of Trust A. Discretionary trust 2 holds a fixed entitlement to a 50% share of the income of Trust A. Discretionary trust 3 holds a fixed entitlement to a 100% share of the capital of Trust A.
Trust A satisfies the 20/75 test, and is a closely held trust for the purposes of the trustee beneficiary reporting rules, on two grounds:

- Twenty or fewer individuals have between them fixed entitlements to a 75% or more share of the income of the trust.
- Twenty or fewer individuals have between them fixed entitlements to a 75% or more share of the capital of the trust.

Either of these grounds is sufficient for Trust A to satisfy the 20/75 test.

Untaxed part of a share of the net income

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

- subsection 98(4) of the ITAA 1936 (about certain non-resident trustee beneficiaries)
- Subdivision 12-H in Schedule 1 of the *Taxation Administration Act 1953* (about distributions of managed investment trust income)
- Division 6D of the ITAA 1936 (trustee beneficiary non-disclosure tax).

Example: Untaxed part of a share of the net income

'Trust A' is a closely held trust. It has two trustee beneficiaries, the trustees of 'Trust X' and 'Trust Y'.

The trustee of Trust X is a resident and their share of Trust A's net income is $3,000. The trustee of Trust Y is a non-resident and their share of Trust A's net income is $10,000, all of which is attributable to Australian sources.

Diagram showing Trust X, a resident, having a share of $3,000 of Trust A's net income and Trust Y, a non-resident, having $10,000 of Trust A's net income.

The trustee of Trust A is assessed and liable to pay tax on the trustee of Trust Y's share of the net income ($10,000), under subsection 98(4) of the ITAA 1936. The trustee of Trust A does not need to make a TB statement about the trustee of Trust Y or its share of Trust A's net income, because the whole of Trust Y's share has been taxed under subsection 98(4) of the ITAA 1936 – it's excluded from the trustee beneficiary reporting rules.

The trustee of Trust A must make a TB statement about the trustee of Trust X and their share of Trust A's net income ($3,000) – that is, the untaxed part of the share of the net income of Trust A.

Tax-preferred amount

A tax-preferred amount is:

- income of the trust for trust law purposes that is not included in the trust's assessable income in working out its net income
- capital of the trust.

Examples of tax-preferred amounts include:

- capital gains that are not included in the trust's assessable income (for example, capital gains made on pre-capital gains tax assets and the discount component of any discount capital gains)
- returns of trust capital to unit holders or beneficiaries
- non-assessable non-exempt income
- exempt income
- the excess of trust law income over a trust's net (or tax law) income.

How to make a TB statement

Find out how to make a Trust beneficiary statement.

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You make a correct trustee beneficiary (TB) statement for an income year by:

- providing certain information in the statement of distribution in your trust tax return for that year, and
- lodging the TB statement by the due date for your trust tax return.

You need to complete the TB statement for all relevant trustee beneficiaries.

For **resident** trustee beneficiaries you must report:

- the name and TFN of the trustee beneficiary
- the untaxed part of their share of the trust's net income
- their share of the tax-preferred amount.

For **non-resident** trustee beneficiaries you must report:

- the name and address of the trustee beneficiary
- the untaxed part of their share of the trust's net income
- their share of the tax-preferred amount.

Handling tax file numbers

To make a TB statement for a resident trustee beneficiary you must provide their TFN. The TFN and name to be provided is the one issued to the trust estate, not the one issued to the trustee in their individual capacity.

You must use secure methods when collecting, storing and disclosing TFN information. You can, in connection with making a TB statement:

- record a TFN or maintain such a record
- use a TFN in a manner connecting it with the identity of the trustee beneficiary
- divulge or communicate a TFN to a third person.

Extension of due date

Generally you must lodge the TB statement by the due date for your trust tax return for the income year.

We may grant an extension of time to lodge a TB statement in certain circumstances – for example, if you could not obtain the required information from a third party by the due date, or you inadvertently failed to lodge a TB statement.

Applications should be made in writing to:

> **Australian Taxation Office**
> **PO Box 1128**
> **PENRITH NSW 2740**

Amendment requests

You can request an amendment of your TB statement if you lodged it within the required lodgment period believing, on reasonable grounds, that it was correct, and either:

- you could not have foreseen the event that caused it to be incorrect
- it was not correct due to an inadvertent error.

Your request to amend a TB statement must be made either:

- before any trustee beneficiary non-disclosure tax becomes due and payable on the untaxed part of the share of the net income
- within four years of trustee beneficiary non-disclosure tax becoming due and payable.

See also:

- Do you need to make a TB statement?
- Trustee beneficiary non-disclosure tax

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Trustee beneficiary non-disclosure tax

Find out about Trustee beneficiary non-disclosure tax.

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No correct TB statement

You (or, if you're a trustee company, you and your directors) may be liable to pay trustee beneficiary non-disclosure tax (TBNT) if you don't lodge a correct TB statement in respect of a trustee beneficiary's share of net income within the required time. In some circumstances, a director will be excluded from liability – for example, where the director didn't take part in the decision not to make a correct TB statement.

If TBNT is payable in respect of a share of net income, then that amount is not also assessed under the usual trust-assessing provisions.

Circular trust distribution

In some circumstances, you may be liable to pay TBNT even if you make a correct TB statement of a trustee beneficiary's share of net income. You (or, if you are a trustee company, you and your directors) may be liable to pay TBNT if:

- a share of the net income is included in the assessable income of a trustee beneficiary (under section 97 of the ITAA 1936)
- you become presently entitled to an amount that is reasonably attributable to the whole or a part of the untaxed part of that share (referred to as a 'round robin' or 'circular trust distribution')
- TBNT has not previously been payable in respect of that share.

Although you don’t need to make a TB statement if you are a trustee of a family trust, you are still liable to pay **TBNT for circular trust distributions**.

Example: Round robin distribution

> 'Trust A', 'Trust B' and 'Trust C' form a chain of trusts. Each is a closely held trust and is required to make a TB statement. Each trust’s trustee is a beneficiary of another trust in the chain, so: the trustee of Trust B is a beneficiary of Trust A,

the trustee of Trust C is a beneficiary of Trust B, and the trustee of Trust A is a beneficiary of Trust C.

Diagram showing Trust A distributing $10,000 to Trust B, Trust B distributing $10,000 to Trust C and Trust C distributing $10,000 to Trust A.

Trust A has net income of $10,000 in an income year.

The trustee of Trust B is presently entitled to $10,000, being its share of Trust A's net income, and includes this in its assessable income. The trustee of Trust A makes a correct TB statement advising us that the untaxed part of the trustee of Trust B's share of the net income is $10,000. Therefore, the trustee of Trust A is not liable to pay TBNT for this distribution.

Similarly, the trustee of Trust C is presently entitled to $10,000, being its share of Trust B's net income and includes this in its assessable income. The trustee of Trust B also makes a correct TB statement advising us that the trustee of Trust C's share of Trust B's net income is $10,000. Therefore, the trustee of Trust B is not liable to pay TBNT for this distribution.

Following from this, the trustee of Trust A is presently entitled to $10,000, being its share of Trust C's net income. This income is reasonably attributable to the $10,000 that the trustee of Trust A has reported as being distributed to the trustee of Trust B. This means that the trustee of Trust A has become entitled to a share of its own net income.

Therefore, as the trustee of Trust A is presently entitled to an amount reasonably attributable to the whole of the untaxed part of this share of its own net income, and TBNT has not previously been payable in respect of this share (by the other trustees in the chain), the trustee of Trust A is liable to pay TBNT on this income.

Determining liability to the tax

TBNT is payable at the rate of 47% (plus the Temporary Budget Repair Levy of 2% for the 2014–15, 2015–16 and 2016–17 financial years) on the untaxed part of a share of the net income of the trust that is included in the trustee beneficiary's assessable income.

The amount of TBNT is reduced by the amount of any offset which you would have been entitled to if the share of net income had instead been assessed to you under section 99A.

Where you and your directors are liable to TBNT, that liability is joint and several - it can be recovered from any of you.

TBNT liability can be determined in two ways:

- You can self-assess and report your TBNT liability.
- We may raise TBNT liabilities as a result of compliance or other ATO activity. You will be issued with a notice of liability, together with a payment slip.

When the tax is due

TBNT is due 21 days after the end of either:

- the due date of your trust tax return for the income year
- such further period as we allow.

If TBNT remains unpaid 60 days after it is due to be paid, it will attract the general interest charge (GIC) until the full debt - tax and GIC – is paid.

Recovering the tax

You (or, if you're a trustee company, you or any of your directors) may seek to recover TBNT (or related GIC) from a trustee beneficiary if:

- the trustee beneficiary either
  - refused or failed to give you information relating to the TB statement when asked to do so, or
  - provided incorrect information relating to the TB statement and you honestly believed on reasonable grounds that it was correct
- you've distributed an amount representing some, or all, of the share of net income to them without withholding TBNT, and
- you've paid some or all of the TBNT (or related GIC).

See also:

- Do you need to make a TB statement?

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.