



Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2008/TPALS/004

Lodgment of correct trustee beneficiary statements in accordance with the *Income Tax Assessment Act 1936* for the year of income ended 30 June 2008 (or approved period in lieu)

Explanatory Statement

General outline of Instrument:

This Instrument sets out a specified class of trustees of closely held trusts who will not be required to make a correct Trustee Beneficiary statement (TB statement) for the year of income ended 30 June 2008 (or approved period in lieu).

The proposed Instrument will be a Legislative Instrument for the purposes of the *Legislative Instruments Act 2003* and it is legally binding on the Commissioner of Taxation ("the Commissioner")

Date of effect:

The Instrument applies to the year of income ended 30 June 2008 or an approved periods in lieu and is effective from the day after it is registered.

What is this Instrument about:

The purpose of the Instrument is to determine that trustees of late balancing closely held trusts which have been granted leave to adopt an accounting period, being a 12 month period ending between 23 September 2008 and 31 December 2008 in lieu of the year of income ended 30 June 2008, do not have to make a correct TB statement for the relevant year of income if a share of the net income of the trust is included in the assessable income of a trustee beneficiary.

What is the effect of this Instrument:

The effect of this Instrument is that trustees of late balancing closely held trusts in the specified class will not be required to make a correct TB statement for the year of income ended 30 June 2008.

Compliance cost impact:

An assessment of the compliance cost impact indicates that the impact will be minimal for both implementation and on-going compliance costs. The Instrument relieves a class of trustees from the obligation to lodge a correct TB statement for the year of income ended 30 June 2008. The number of trustees who may be affected is small.

Background:

Subdivision C ('Trustee beneficiary non-disclosure tax on share of net income') of Division 6D of Part III of the *Income Tax Assessment Act 1936* ('ITAA 1936') was enacted by *Tax Laws Amendment (2007 Measures No 4) Act 2007*, and is applicable to the first income year starting on or after 24 September 2007. Under section 102UK, if a share of the income of a closely held trust which includes an untaxed part is included in the assessable income of a trustee beneficiary and the trustee of the closely held trust does not make a correct TB statement about the share, the trustee becomes liable to pay tax.

Under section 18 of the ITAA 1936 the Commissioner of Taxation may grant leave to a person to adopt an accounting period being 12 months ending on some date other than 30 June.

Late balancing trusts with a 12 month accounting period ending between 23 September 2008 and 31 December 2008 in lieu of the year of income ended 30 June 2008, are required to use the *Trust tax return 2008* and any relevant 2008 schedules when lodging their tax returns for the approved period in lieu of the year ended 30 June 2008.

Due to the timing of the enactment and commencement of Subdivision C of Division 6D of Part III of the ITAA 1936, it was not possible to provide for correct TB statements in the *Trust tax return 2008*. The trusts in the relevant classes are therefore being relieved of the obligation to lodge a correct TB statement for the specified year of income, so that all trusts and trustees are treated consistently in terms of their taxation and lodgment obligations.

Consultation:

There has been consultation with the Trustee Beneficiary Rules Working Party (a subcommittee of the National Tax Liaison Group) in relation to this Instrument.

M D'Ascenzo
Commissioner of Taxation
24 June 2008
