



Closely held trusts

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QC 29042

Rules for closely held trusts

Work out if the trustee beneficiary reporting rules or TFN withholding rules apply to you as a trustee.

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Two special sets of rules apply to closely held trusts – the trustee beneficiary (TB) reporting rules and the tax file number (TFN)

withholding rules. However the circumstances when they apply are different.

The information provided here will help you to quickly work out:

- whether your trust is one to which either or both sets of rules applies (Part A)
- which beneficiaries the rules apply to (if they apply to your trust) (Part B).

Part A: The trust

Follow these steps to work out whether you, as trustee of the test trust, are subject to the rules:

- [Step 1 – Determine residency status of trust](#)
- [Step 2 – Determine whether the test trust is a closely held trust](#)
- [Step 3 – Determine if there is an exclusion that applies](#)

Step 1 – Determine residency status of trust

The rules that apply to you depend on the residency status of the test trust.

If the test trust is a **resident** trust:

- TB reporting rules apply
- TFN withholding rules apply.

If the test trust is a **non-resident** trust:

- TB reporting rules apply
- TFN withholding rules **do not** apply.

Step 2 – Determine whether the test trust is a closely held trust

A trust will be a closely held trust when it either:

- satisfies the '20/75 test' (see [note](#)), or
- is a discretionary trust (one that is not a **fixed trust**).

Note: A trust satisfies the 20/75 test where up to 20 individuals have between them, directly or indirectly, fixed entitlements to a 75% or greater share of the income or capital of the trust.

Special rules treat the trustees of some discretionary trusts as individuals. An individual and all of his or her relatives are taken to be one individual for the purposes of the test.

If the test trust does not meet either of the requirements, it is not a closely held trust and you do not need to continue.

Step 3 – Determine if an exclusion applies

Use the following table to determine if the test trust is excluded from the definition of a closely held trust for each set of rules.

Exclusions from TB reporting rules and TFN withholding rules

Type of test trust	TB reporting rules apply	TFN withholding rules apply
Complying super fund	Excluded	Excluded
Complying approved deposit fund	Excluded	Excluded
Pooled superannuation trust	Excluded	Excluded
Deceased estate – before the end of the income year in which the fifth anniversary of the individual's death occurred	Excluded	Excluded
Deceased estate – after the year of income in which the fifth anniversary of	Not excluded	Not excluded

the individual's death occurred		
Fixed unit trust – where all of the income and capital is subject to fixed entitlements, held directly or indirectly, for the benefit of entities whose income is exempt from income tax	Excluded	Excluded
Fixed unit trust – where only some of the income and capital is held for the benefit of entities whose income is exempt from income tax	Not excluded	Not excluded
Unit trust – where the units are listed on the stock market operated by ASX Limited	Excluded	Excluded
Family trust (that is, one with a valid family trust election in force)	Excluded, but not excluded from trustee beneficiary non-disclosure tax for circular trust distributions	Not excluded
A trust that is subject to a valid interposed entity election	Excluded, but not excluded from trustee beneficiary non-disclosure tax for circular trust distributions	Not excluded
A trust that forms part of a 'family	Excluded, but not excluded from	Not excluded

group'	trustee beneficiary non-disclosure tax for circular trust distributions	
A discretionary mutual fund	Not excluded	Excluded
An employee share trust for an employee share scheme	Not excluded	Excluded
A law practice trust	Not excluded	Excluded

If the test trust is excluded for both sets of rules, you do not need to continue.

If it is not excluded from one or both sets of rules, you need to complete Part B to determine whether for each beneficiary the test trust is affected by the rules.

Find out about:

- [Part B – The beneficiary](#)

Part B: The beneficiary

Where the test trust is not excluded from the set of rules by Part A, you need to determine for each beneficiary if the test trust is affected by:

- [Step 4 – TB reporting rules](#) (including trustee beneficiary non-disclosure tax for circular trust distributions)
- [Step 5 – TFN withholding rules.](#)

Step 4 – determine whether there is a trustee beneficiary

Where trustee beneficiary reporting rules apply see Trustee beneficiary reporting rules.

Where a trust is not excluded from the trustee beneficiary non-disclosure tax for circular trust distributions, see Circular trust

distribution.

Step 5 – determine whether for each beneficiary the test trust is subject to the tax file number (TFN) withholding rules

The TFN withholding rules apply for resident beneficiaries only.

The TFN withholding rules do not apply if the resident beneficiary is either:

- a trustee beneficiary where the test trust is required to make a correct TB statement
- an exempt entity (for example, tax concession charities, deductible gift recipients and other entities that self-assess their status as tax-exempt)
- a beneficiary that you are liable to pay tax for under **section 98** of the ITAA 1936 for example certain beneficiaries under a legal disability
- a beneficiary for which **family trust distribution tax** is payable on the distribution (this is where the beneficiary in receipt of the distribution is outside the **family group**).

You must apply the rules if your beneficiary does not belong to one of the excluded categories in Step 5.

See also:

- Trustee beneficiary reporting rules
- Circular trust distribution
- TFN withholding for closely held trusts
- What trustees need to do

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