PS LA 2000/2 - An exemption for the trustees of some trust estates from the requirement to furnish a tax return on behalf of the trust estate

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Practice Statement Law Administration

PS LA 2000/2

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs, tax officers must follow their business line's escalation process.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

SUBJECT:	**An exemption for the trustees of some trust estates from the requirement to furnish a tax return on behalf of the trust estate**
PURPOSE:	**To identify trustees who are not required to furnish a tax return**

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STATEMENT

1. An exemption from the requirement to furnish a return for trustees of certain defined trusts has been granted by the delegate of the Commissioner.

2. A trustee is granted an exemption from lodging a tax return on behalf of any trust estate of either of the following two classes: 'Transparent Trusts' and 'Secured Purchase Trusts'.

3. In this practice statement, a 'Transparent Trust' is a trust in which the beneficiary of the trust estate has an absolute, indefeasible entitlement to the capital and the income of the trust.

4. In this practice statement, a 'Secured Purchase Trust' is a trust created solely to facilitate the financing or holding of publicly listed company shares (Shares) or publicly listed units in a unit trust (Units). A Secured Purchase Trust has all of the following characteristics:

   - the trust capital must consist wholly or predominantly of Shares or Units and the terms of the trust must be structured such that the property of the trust (the Share or Unit) is used as security for a debt or other liability of the beneficiary that is related to the Share or Unit, and
   - the income of the trust must be vested indefeasibly in the beneficiary of the trust.

5. However, this practice statement does not exempt a trustee from the requirement to furnish an income tax return for any income year in which the trustee is liable to pay tax under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* (ITAA 1936).

6. With the exception of paragraph 5, this practice statement applies to years of income both before and after the issue of the practice statement. Paragraph 5 of this practice statement applies from 14 March 2012.

7. Nothing in this practice statement prevents an authorised officer of the Australian Taxation Office (ATO) from issuing a notice pursuant to section 162 or section 163 of the ITAA 1936 requiring a trustee to furnish a return in respect of any trust estate, or further return in respect of any trust estate, for any year of income or substituted accounting period.

EXPLANATION

8. Every person must, if required by the Commissioner by notice in the Commonwealth of Australia Gazette (the Gazette), provide a return for a year of income within the period specified in the notice (subsection 161(1) of the ITAA 1936).

9. Each year, by way of notice in the Gazette, the Commissioner will typically require Australian resident trustees of trust estates that have derived income to provide a return of income for the relevant year of income. However, the notice will typically reserve the power of the Commissioner, or an authorised officer of the ATO, to grant an exemption from lodgment of a return for a year of income.

10. The beneficiary of a Transparent Trust has an absolute entitlement to the trust property. Because of this, the capital gains tax provisions of the *Income Tax Assessment Act 1997* (ITAA 1997), do not recognise a disposal of the legal title by the trustee. (See, for example, subsection 104-10(2) of the ITAA 1997).

11. Because the beneficiary has an absolute entitlement to the income of the trust, the beneficiary, and not the trustee, will be taxed in respect of that income.

12. A Secured Purchase Trust is a trust created to facilitate and secure the purchase or holding of Shares or Units. As such, the beneficiary may not have an absolute entitlement to trust property (the Share or Unit) because the trust property will be subject to a security interest until it is paid for.

13. To meet the criterion for exclusion, a Secured Purchase Trust must be structured such that a disposal of the trust property (the Share or Unit) by the trustee to the beneficiary would not be considered a disposal of a CGT asset by virtue of paragraph 104-10(7)(a) of the ITAA 1997.

14. In addition, as is the case with the Transparent Trust, income of the trust estate of a Secured Purchase Trust must be vested indefeasibly in the beneficiary to meet the criterion for exclusion. Income of a Transparent Trust or a Secured Purchase Trust will be considered to be vested indefeasibly in the beneficiary, even though it is subject to a lien or other security interest in favour of someone other than the beneficiary, so long as the beneficiary is entitled to that income as it is accrued in the trust.

15. Whilst this practice statement exempts some trustees from the requirement to lodge a tax return, it does not relieve trustees or beneficiaries from their other taxation obligations, including under Division 6 of Part III of the ITAA 1936 or under Subdivision 115-C or 207-B of the ITAA 1997 (though not all trustees have obligations under these provisions[1]). Where an application of these provisions results in a trustee having a liability under section 98, 99 or 99A of the ITAA 1936, it is appropriate that the trustee lodge a return reflecting this. In these cases the exemption provided by this practice statement therefore does not apply and the trustee is required to furnish a tax return on behalf of the trust estate.

[1] See the Decision Impact Statement NSD 2009/1190 in respect of decision to Federal Court case *Colonial First State Investments Ltd v. Commissioner of Taxation* [2011] FCA 16; 2011 ATC 20-235.

Amendment history

Date of amendment	Part	Comment
14 March 2012	Generally	Updated practice statement to align with current publication standards.
	Paragraph 2	Updated as a result of legislative changes to Division 6D of Part III of the ITAA 1936.
	Paragraphs 5, 6, 9, 11, 14 and 15	Amended as a result of the Decision Impact Statement NSD 2009/1190 that the Commissioner published in respect *of Colonial First State Investments Ltd v. Commissioner of Taxation.*
	References, Authorised by & Contact details	Updated.
21 November 2011	Contact details	Updated.

Subject references	absolute entitlement administrative law bare trusts Commissioner's discretion secured debt shares tax returns trustees trust income trust property unit trusts
Legislative references	ITAA 1936 98 ITAA 1936 99 ITAA 1936 99A ITAA 1936 161(1) ITAA 1936 162 ITAA 1936 163 ITAA 1936 Pt III Div 6 ITAA 1997 104-10(2) ITAA 1997 104-10(7)(a) ITAA 1997 Subdiv 115-C ITAA 1997 Subdiv 207-B
Case references	Colonial First State Investments Ltd v. Commissioner of Taxation [2011] FCA 16; 2011 ATC 20-235
Other references	Decision Impact Statement NSD 2009/1190
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Other Business Lines consulted	LB&I, S&ME & MEI