

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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ATO Practice Statement Law Administration

PS LA 2000/2

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: An exemption for the trustees of some trust estates from the requirement to furnish a tax return on behalf of the trust estate

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'. Accordingly, trustees of such trusts will not be required to lodge a 'Correct UB Statement' pursuant to Division 6C of Part III of the *Income Tax Assessment Act 1936* (the '1936 Act').
3. In this 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 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. This Statement applies to years of income both before and after the issue of the Statement.
6. Nothing in this Statement prevents an authorised officer of the Australian Taxation Office from issuing a notice pursuant to section 162 or section 163 of the 1936 Act 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

7. 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 (sub-section 161(1) of the 1936 Act).
8. In the Gazette No GN26 of 30 June 1999, the Commissioner required Australian resident trustees of trust estates that have derived income to provide a return of income for the year of income ended 30 June 1999, or approved period in lieu.
9. The Gazette notice reserved the power of the Commissioner, or an authorised officer of the Australian Taxation Office, to grant an exemption from lodgment of a return for a year of income (Table L).
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* (the '1997 Act'), do not recognise a disposal of the legal title by the trustee. (See, for example, subsection 104-10(2) of the 1997 Act).
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 notwithstanding the existence of the trust.
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 1997 Act.
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 income is considered, in tax law, to have been derived by the beneficiary as it is accrued in the trust.

Amendment history

Date of amendment	Part	Comment
21 November 2011	Contact details	Updated

subject references: absolute entitlement; administrative law; bare trusts;
correct UB statement; discretion; secured debt; share; tax
returns; trustees; trust income; trust property; unit

legislative references: ITAA 1936 161
ITAA 1936 162
ITAA 1936 163
ITAA 1936 Div 6C of Part III
ITAA 1997 Div 104 of Part 3-1
ITAA 1997 104-10(2)
ITAA 1997 104-10(7)(a)

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