PS LA 2015/2 - Time limits for trustee assessments

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PS LA 2015/2
Time limits for trustee assessments

This Practice Statement explains our practice of limiting the time in which we will raise an original income tax assessment for a trustee.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. 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 do not 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.

1. What is this Practice Statement about

Where a trust tax return shows no trustee tax liability (whether under sections 98, 99 or 99A of the *Income Tax Assessment Act 1936*), we do not, as a matter of course, issue any nil assessments to the trustee to reflect the position as returned.[1]

All legislative references in this Practice Statement are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

Strictly, this means that time does not begin to run for a period of review (in respect of any assessment) and the Commissioner has an unlimited period within which to review and assess the trustee's tax position. This is not consistent with the outcome contemplated by the *Report on Aspects of Income Tax Self Assessment*[2], where taxpayers returning a nil liability should have a limited period of review.

This Practice Statement outlines our practice of limiting the period within which we will raise an original trustee assessment where the trust tax return shows no trustee tax liability for that proposed assessment. The practice means that returns lodged by trustees are broadly exposed to similar time limits for review as other taxpayers.

For any income year, a trustee may be issued separate assessments under section 98 for each relevant beneficiary and/or an assessment under sections 99A or 99. Our practice about time limits applies separately to the making of each of these original assessments.

2. When should you not issue an original trustee assessment

Except in situations covered by sections 3 or 4 of this Practice Statement, you should not issue an original trustee assessment:

- more than 4 years after the relevant trust tax return was lodged, or
- for the 2013–14 income year and later income years, more than 2 years after lodgment if the trust is a small business entity[3] for that year and none of the qualifications in table item 3 of subsection 170(1) apply.

3. When do these time limits not apply

The time limits on issuing assessments mentioned in section 2 of this Practice Statement do not apply:

- if the trustee has not lodged a trust return for the year in question
- if the Commissioner is of the opinion that there has been fraud or evasion
- where an extended or unlimited amendment period would apply[4], or
- where the time limit is extended (see section 4 of this Practice Statement).

4. Can the time limits be extended

Yes. If you have started to examine the affairs of a trust (or that of a related entity which could affect the trust's tax affairs) and that examination will not be completed within the time limits mentioned in section 2

[1] Paragraph 2.3 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005.
[2] The Treasury (August 2004) *Report on Aspects of Income Tax Self Assessment*, Commonwealth of Australia, Canberra.
[3] A small business entity is one that satisfies the definition in section 328-110 of the *Income Tax Assessment Act 1997*.
[4] For example, see subsections 170(6), (9), (9D), (10), (10AA) or (11).

of this Practice Statement, you should seek the trustee's agreement to extend the period.[5]

In some cases, it may not be reasonably practicable for you to ascertain that the trustee is liable to tax within the time limits mentioned in section 2 of this Practice Statement (or as extended) because of actions taken or statements made, or unreasonable omissions, by the trustee or a related entity.

For example, the trust return may indicate that a beneficiary is assessable on some part of the trust's net income, but the beneficiary's return is later amended to exclude that amount on the basis that the trustee is instead properly assessable. (That is, relevant information is only provided to us after, or close to, the expiration of the period within which we would otherwise raise a trustee assessment).

In these cases, you should escalate the case to a Senior Executive Service (SES) officer who, in consultation with the trustee, will determine a period within which an assessment is to be raised.

EXAMPLES

Example 1 – time limit within which to raise an original trustee assessment

The 2009–10 income tax return for the Oak Family Trust was lodged on 9 May 2011. The trust was not a small business entity for the 2009–10 income year. An audit of the trust reveals that some of the trust net income should be assessed to the trustee under section 99A. You must issue an assessment to the trustee by 9 May 2015 (unless the time limit is extended as discussed in section 4 of this Practice Statement).

Example 2 – multiple trustee assessments

A trust return for the Cedar Family Trust was lodged on 9 May 2011. The trust was not a small business entity for that income year. An assessment issued to the trustee under section 98 on 30 June 2011. As a result of audit activities, it is determined the trustee should instead be assessed under section 99A. You must make the section 99A assessment by 9 May 2015 (unless the time limit is extended as discussed in section 4 of this Practice Statement). [The section 99A assessment is an original, not an amended, assessment.]

Similarly, if the result of the audit was that the trustee was assessable under section 98 in respect of a different beneficiary, that assessment must also be issued by 9 May 2015.

Example 3 – time limits do not apply – unlimited amendment period

A beneficiary has been assessed under section 97 on all of the net income of a trust for the 2007–08 income year. As a result of compliance action, it was established that the beneficiary's entitlement to trust income arose out of a reimbursement agreement. Consequently, the net income is assessable to the trustee under section 100A. While you can assess the trustee at any time (see subsection 170(10)), you should endeavour to do so as soon as practicable.

Example 4 – extension of time limits

A trust's taxation affairs are being reviewed but, due to the complexity of the arrangements, you do not expect to complete the review before the end of the time limits outlined in section 2 of this Practice Statement. (14 May 2014). You obtain the trustee's agreement to extend the time limit by a further 6 months. You have until 14 November 2014 to issue a trustee assessment (if required) unless you negotiate further time.

Example 5 – extended time limits

The 2008–09 return for the Pine Family Trust lodged on 9 May 2010 indicates that all the net income is assessable to an individual beneficiary. That beneficiary's assessment issued on 6 June 2010.

On 1 June 2014, the beneficiary requests an amendment on the basis that the trustee's resolution appointing income was invalid. The default beneficiary (a minor) was instead presently entitled to all the income and the trustee should have been assessed under section 98 on all the net income. You should escalate the case to an SES officer who, having regard to all the facts, will determine in consultation with the trustee a period within which an assessment is to issue.

Date issued: 19 February 2015

Date of effect: 19 February 2015

Business line: PW

[5] Such an agreement does not arise under subsection 170(7), which relates to a formal extension of the period for amending assessments.

Amendment history

9 May 2024

Part	Comment
Title	Amend title from 'Trustee assessments' to 'Time limits for trustee assessments'.
All	Content reviewed by PW for technical accuracy. Updated to apply current ATO style and accessibility guidance.

4 July 2018

Part	Comment
Section 1	Amend first sentence in section 3.

17 October 2017

Part	Comment
Preamble	Updated.

19 February 2015

Part	Comment
All	First published in new format.

References

Legislative references	ITAA 1936 97 ITAA 1936 98 ITAA 1936 99 ITAA 1936 99A ITAA 1936 100A ITAA 1936 170(1) ITAA 1936 170(6) ITAA 1936 170(7) ITAA 1936 170(9) ITAA 1936 170(9D) ITAA 1936 170(10) ITAA 1936 170(10AA) ITAA 1936 170(11) ITAA 1997 328-110
Other references	*Report on Aspects of Income Tax Self Assessment* Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005

ATO references

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