



Australian Government

Australian Taxation Office

Family trust election, revocation or variation 2008

Election form and explanatory notes for 1 July 2007 – 30 June 2008

WHEN TO USE THE FAMILY TRUST ELECTION, REVOCATION OR VARIATION 2008

Trustees must use the *Family trust election, revocation or variation 2008* for:

- making a family trust election in accordance with section 272-80 of Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936) specifying the 2004-05 or later income year
- revoking a family trust election in the 2007-08 income year in accordance with subsections 272-80(6) to (8) of Schedule 2F to the ITAA 1936, or
- varying the specified individual under subsections 272-80(5) to (5D) and (8) of Schedule 2F to the ITAA 1936.

Note that in the 2008 Budget the Government announced its intention to reverse the ability to vary the specified individual, other than in relation to a marriage breakdown, effective from 1 July 2007. Also, the broadened definition of 'family' will be reversed, effective from 1 July 2008. At the time of printing, these changes had not become law. You should check on our website at www.ato.gov.au for updated information, once the new law is enacted, before lodging this form.

CONDITIONS FOR MAKING A FAMILY TRUST ELECTION

Where specifying the 2007-08 income year

To make a family trust election specifying the 2007-08 income year, the trust must pass the family control test in section 272-87 of Schedule 2F to the ITAA 1936, at the end of that income year (see subsection 272-80(4) of Schedule 2F to the ITAA 1936). However, the election will only be in force from the earliest time (**the election commencement time**) in the 2007-08 income year from which the trust passes the family control test, continuously until the end of that income year (see subsection 272-80(10) of Schedule 2F to the ITAA 1936).

A trust can only have one family trust election in force (see subsection 272-80(11) of Schedule 2F to the ITAA 1936). However, trustees can make a family trust election and one or more interposed entity elections in accordance with section 272-85 of Schedule 2F to the ITAA 1936.



If you wish to revoke or vary a family trust election, the *Family trust election, revocation or variation 2008* can only be used for the 2007-08 income year.



For more information visit
www.ato.gov.au

Where specifying the 2004–05, 2005–06 or 2006–07 income year

For the 2005–06 and later income years trustees are able to make family trust elections specifying an earlier income year provided certain conditions are met. Generally these conditions require that from the beginning of the specified income year until 30 June of the income year immediately preceding the one in which the election is made:

- the trust passes the family control test in section 272-87 of Schedule 2F to the ITAA 1936, and
- any conferrals of present entitlement to, or any actual distributions of, income or capital of the trust during that period have been made on or to the individual specified in the election or members of that individual's family group (see subsection 272-80(4A) of Schedule 2F to the ITAA 1936).

As subsection 272-80(4A) of Schedule 2F to the ITAA 1936 applies to elections specifying an income year before the income year in which the election is made, trustees using the *Family trust election, revocation or variation 2008* to make a family trust election can specify the 2004–05, 2005–06 or 2006–07 income year provided the above conditions are met.

CONDITIONS FOR REVOKING A FAMILY TRUST ELECTION

The trustee(s) of a trust may revoke a family trust election where:

- the family trust is a fixed trust at the beginning of the specified income year and the trust satisfies all the other conditions set out in subsections 272-80(6) and (7) of Schedule 2F to the ITAA 1936, or
- under legislative changes that took effect on 1 July 2007, at any time while the election was in force, the trust, or another entity, has not recouped a tax loss or claimed a deduction for bad debts, or a beneficiary of the trust has not received a franked distribution indirectly through the trust in relation to which the beneficiary was entitled to franking credits, only as a result of the election being in force. The trust must also satisfy the related conditions in subsections 272-80(6A), (6B) and (8) of Schedule 2F to the ITAA 1936 which includes specific time periods during which a family trust election can be revoked in this situation.

CONDITIONS FOR VARYING A FAMILY TRUST ELECTION

Under legislative changes that took effect on 1 July 2007, the specified individual in a family trust election can be varied where:

- the new individual was a member of the family of the original specified individual at the election commencement time
- no conferrals of present entitlement to, and distributions of, income or capital have been made (by the trust or an interposed entity) outside the new specified individual's family group during the period in which the family trust election has been in force, and
- the trust meets the related conditions in subsections 272-80(5A), (5B), (6B) and (8) of Schedule 2F to the ITAA 1936 which includes specific time periods during which the specified individual in a family trust election can be varied.

In addition to this, subsections 272-80(5C) and (5D) of Schedule 2F to the ITAA 1936 contain the conditions under which the specified individual can be varied if, as a result of a family law obligation arising from a marriage breakdown, the control of the trust passes to a new specified individual and/or their family members.

HOW TO COMPLETE THE FAMILY TRUST ELECTION, REVOCATION OR VARIATION 2008

Write the tax file number (TFN) of the trust in the space provided.

All trustees using the *Family trust election, revocation or variation 2008* must complete item **1**, and item **2** if it applies.

If the trustee(s) are making a family trust election specifying the 2004–05 or later income year, complete section A.

Trustees must provide **all** the information required in section A for a family trust election specifying the 2004–05 or later income year to be made in accordance with section 272-80 of Schedule 2F to the ITAA 1936.

NOTE

When making a family trust election, make sure to write either 2005, 2006, 2007 or 2008 (as appropriate) in the '**Income year specified**' box at item **5** of section A.

If the trustee(s) are revoking a family trust election in the 2007–08 income year, complete section B. Trustees must provide **all** the information required in section B for a family trust election to be revoked in accordance with subsections 272-80(6) to (8) of Schedule 2F to the ITAA 1936.

If the trustee(s) are varying the specified individual, complete item **5** or **6** (depending on which is applicable) and item **7** of section A. Trustees must provide **all** the applicable information required for the specified individual in their family trust election to be varied in accordance with subsections 272-80(5A) to (5D) and (8) of Schedule 2F to the ITAA 1936.

Although it is not an offence not to quote a TFN, any TFN required on this form is information which the Commissioner requires within the meaning of subsection 272-80(3) of Schedule 2F to the ITAA 1936. If a TFN of a person or entity is required on the *Family trust election, revocation or variation 2008* and the relevant person or entity does not have a TFN, print **X** in the box provided.

Where the *Family trust election, revocation or variation 2008* is being used to make a family trust election, every trustee of the trust must sign and date the form at the time the family trust election is made. If a trustee is a company, the company's public officer must sign for that corporate trustee.

Where the *Family trust election, revocation or variation 2008* is being used to revoke or vary a family trust election, every trustee of the trust must sign and date the form at the time:

- the 2008 tax return for the trust is lodged with this form, or
- the *Family trust election, revocation or variation 2008* is required to be given to the Commissioner.

If a trustee is a company, the company's public officer must sign for that corporate trustee.

HOW TO MAKE, REVOKE OR VARY A FAMILY TRUST ELECTION

To make a family trust election, complete the *Family trust election, revocation or variation 2008*. It can be sent to the Commissioner at the address below.

To revoke or vary a family trust election where the 2008 tax return is required, complete the *Family trust election, revocation or variation 2008*, include it as part of the tax return for the trust and send them to the address below.

To revoke or vary a family trust election where the 2008 tax return is not required, complete the *Family trust election, revocation or variation 2008*. You must send it to the address below no later than two months after the end of the 2007–08 income year.

If you need more time to revoke or vary the election, with or without the 2008 tax return, write to the Commissioner before the due date requesting an extension of time, stating the reasons for the delay and the proposed date for lodging the form and/or tax return.

Send your completed form and/or tax return to:

**Australian Taxation Office
GPO Box 9845
IN YOUR CAPITAL CITY**



Family trust election, revocation or variation

2008

Please print neatly in BLOCK LETTERS with a black or blue ballpoint pen only.

Tax file number (TFN)
of the trust

Complete item **1** and item **2** if it applies. You must provide all the information required in Section **A** for a family trust election or Section **B** for a revocation of a family trust election to be made in accordance with section 272-80 of Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936). For a variation to be made in accordance with section 272-80 of Schedule 2F to the ITAA 1936, you must only complete item **1** and **2** (if it applies), items **5** or **6** (depending on which is applicable), item **7** and the declaration. If there is not enough space on the form to properly answer any item or if an item requires further information to be provided, attach a separate sheet of paper with the additional information.

1 Full name and current postal address (including country – if outside Australia) of trust for which the family trust election, revocation or variation is made.

Full name of the trust

Current postal address of the trust

Suburb or town State Postcode

Country – if not Australia

2 If the name and/or the postal address for the trust identified in item 1 above has changed since its last tax return (if any) was lodged, print it exactly as shown on the last notice of assessment or the last tax return lodged.

Full name of the trust as shown on last notice of assessment or last tax return lodged

Postal address of the trust as shown on last notice of assessment or last tax return lodged

Suburb or town State Postcode

Country – if not Australia

Section A Family trust election or variation details

3 Was the central management and control of the trust outside Australia at any time during the period from the election commencement time (see items 5 and 6) until the time the election is made (relevant period)?

Print **Y** for yes or **N** for no.

If you printed **Y**, specify the time(s) at which central management and control was outside Australia.

Full period

Print **F** in the box if the central management and control of the trust was outside Australia at all times during the relevant period **OR** specify the time(s) during the relevant period at which central management and control of the trust was outside Australia.

If more than two time periods are to be specified, attach a separate sheet of paper with details of the additional time periods.

from Day Month Year to Day Month Year

from Day Month Year to Day Month Year

4 Full name, TFN, current postal address and residency details of every trustee of the trust from the election commencement time until the time the election is made (relevant period). Where any trustee is a company, the Australian company number (ACN) or Australian registered body number (ARBN) of each such trustee is also required.

If there was more than one trustee of the trust during the relevant period, attach a separate sheet of paper with all the information required for each additional trustee.

TFN of trustee

OR

Print **X** in the box if the trustee does not have a TFN.

If the trustee is an individual

Title – for example, Mr, Mrs, Ms, Miss

Surname or family name

Given names

If the trustee is a company

Name

ACN/ARBN* *Cross out whichever is not applicable.

Current postal address of the trustee

Suburb or town

State

Postcode

Country – if not Australia

At any time during the relevant period was the trustee a non-resident for tax purposes?

Print **Y** for yes or **N** for no.

If you printed **Y**, specify the time(s) at which the trustee was a non-resident for tax purposes.

Print **F** in the box if the trustee was a non-resident for tax purposes at all times during the relevant period

Full period

OR

Specify the time(s) during the relevant period at which the trustee was a non-resident for tax purposes.

Day Month Year

to

Day Month Year

If more than one time period is to be specified, attach a separate sheet of paper with details of the additional time periods in relation to the trustee.

5 Where making a family trust election – write the four-digit, 2005 or later, income year specified for the purposes of the family trust election. Where varying the specified individual of a family trust election, other than by way of an order, an agreement or an award (see item 6) – write the four-digit, 2008 income year of the trust's return of income with which the variation must be lodged. The variation effective date is the first day of that year of income or the commencement date of the original election, whichever is later.

If the income year specified does not end on 30 June, state the substituted accounting period for that income year.

Income year specified

from

Day Month Year

to

Day Month Year

6 The commencement time for the family trust election or the effective date of a variation by way of an order, an agreement or an award.

Day Month Year

Note: Only complete this item if:

- specifying the 2007–08 income year for an election and the family control test in section 272-87 of Schedule 2F to the ITAA 1936 has **NOT** been satisfied at all times during the 2007–08 income year. In these circumstances, the election commencement time will be the earliest time from which the family control test was passed continuously until the end of the 2007–08 income year. In all other circumstances the election commencement time is the first day of the income year specified in item 5 of Section A, or
- varying the specified individual of a family trust election under subsection 272-80(5C) of Schedule 2F to the ITAA 1936 as a result of an order, an agreement, or an award. The variation effective date is the variation date specified by the order, agreement or award.

7 Full name, TFN, date of birth and current address of principal place of residence (including country – if outside Australia) of the individual (specified individual) whose family group is taken into account in relation to the family trust election.

Note: Only one individual can be specified.

TFN of the specified individual	<input type="text"/>	OR	<input type="checkbox"/> Print X in the box if the specified individual does not have a TFN.
Full name of the specified individual	Title – for example, Mr, Mrs, Ms, Miss		Date of birth of the specified individual
	<input type="text"/>		<input type="text"/>
Current address of principal place of residence of the specified individual	Surname or family name		Given names
	<input type="text"/>		<input type="text"/>
	<input type="text"/>		
	Suburb or town	State	Postcode
<input type="text"/>			
Country – if not Australia			

Note: Only complete Section B if revoking a family trust election otherwise go to Declaration on page 4.

Section B Family trust revocation

8 The later time under paragraph 272-80(6)(b) of Schedule 2F to the ITAA 1936 from which, or the first day of the income year under subsection 272-80(6A) in which, the family trust election referred to in items 9 and 10 ceases to be in force.

<input type="text"/>	Day	Month	Year
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9 The income year for which the details of the election being revoked were included in the tax return for the trust or given to the Commissioner as required under subsection 272-80(2) of Schedule 2F to the ITAA 1936 or sub-items 22(4) or 22A(4) of Schedule 1 to the Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998.

Income year	<input type="text"/>
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10 Specify the income year exactly as it appears in item 5 of Section A of the relevant Family trust election and/or family trust revocation included in the tax return for the trust or given to the Commissioner for the income year identified in item 9, and the current TFN of the individual specified in that election.

Income year	<input type="text"/>	TFN of the specified individual	<input type="text"/>	OR	<input type="checkbox"/> Print X in the box if the specified individual does not have a TFN.
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11 Full name, TFN and current postal address of any company, partnership or trust which has an interposed entity election in force in respect of the trust and the specified individual identified in items 1 and 10. In the case of a company, also provide the ACN or ARBN.

TFN of the *company/partnership/trust	<input type="text"/>	OR	Print X in the box if the *company/partnership/trust does not have a TFN.	<input type="checkbox"/>
Full name of the *company/partnership/trust including ACN	<input type="text"/>			
	ACN/ARBN* <input type="text"/>			
* Cross out whichever is not applicable				
Current postal address of the *company/partnership/trust	<input type="text"/>			
	<input type="text"/>			
	Suburb or town	State	Postcode	<input type="text"/>
	Country – if not Australia			

* Cross out whichever is not applicable.

If there was more than one company, partnership or trust which has an interposed entity election in force in respect of the trust and the specified individual identified in items 1 and 10, attach a separate sheet of paper with all the information required above for each additional company, partnership or trust.

Declaration:

I/We declare that all the information required has been provided on this form and any attachments to this form, and that the information provided is true and correct in every detail, and that the trustee(s) is/are making, varying or revoking a family trust election, the details of which are set out above, for the purposes of section 272-80 of Schedule 2F to the ITAA 1936 and that the trustee(s) is/are able to make, vary or revoke the election in accordance with that section.

Full name of the trustee(s) at the time the family trust election is made or, where this form is being used to revoke a family trust election, the time the 2007-08 tax return is lodged with this form or this form is required to be given to the Commissioner.

Note: If Section A is required to be completed, the name of the trustee(s) must be written exactly as it appears in item 4.

If the trustee is an individual	
Title – for example, Mr, Mrs, Ms, Miss	Surname or family name
<input type="text"/>	<input type="text"/>
Given names	
<input type="text"/>	

If the trustee is a company
Name
<input type="text"/>
<input type="text"/>

Signature of the trustee or, if the trustee is a company, the signature of the public officer of the corporate trustee

Date declaration made

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

If there is more than one trustee of the trust at the time the family trust election is made or a family trust election is revoked or varied, attach a separate sheet of paper with the above details and signature for each additional trustee.

For more information, see *Explanatory notes for the family trust election, revocation or variation 2008*.

Hours taken to prepare and complete this form (See notes below)

The Tax Office is committed to reducing the costs of complying with the taxpayer's taxation obligations.

By completing this item you will help us to monitor these costs as closely as possible.

When completing this item the trust should consider the time, rounded up to the nearest hour, which the trust (including the trustees) spent:

- reading the instructions
- collecting the necessary information to complete this form
- making any necessary calculations, and/or
- actually completing this form.

Notes:

1. The answer should reflect the time both your business and tax agent spent preparing and completing this form. This includes the time spent by any other person whose assistance was obtained in doing this, such as an employee of the business.
2. If this form is lodged with the 2007-08 tax return, the answer should be included in the time box provided in the tax return.