PS LA 2015/2 - Trustee assessments

This Law Administration 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 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.

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* (ITAA 1936))[1], we do not, as a matter of course, issue any nil assessments to the trustee to reflect the position as returned.[2]

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 Aspects of Income Tax Self Assessment*[3] that 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. 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 shouldn't you issue an original trustee assessment?

Except in situations covered by points 3. or 4., you should not issue an original trustee assessment:

- more than four years after the relevant trust tax return was lodged, or
- for the income year ended 30 June 2014 and later income years, more than two years after lodgment if the trust is a small business entity[4] for that year and none of the qualifications in item 3 of the table in subsection 170(1) apply.

3. When don't these time limits apply?

The time limits on issuing assessments mentioned in point 2. 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[5], or
- where the time limit is extended.(see point 4.)

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 won't be completed within the time limits mentioned in point 2., you should seek the trustee's agreement to extend the period.[6]

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 point 2. (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

[1] All legislative references are to the ITAA 1936 unless otherwise specified.
[2] Paragraph 2.3 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005.
[3] The Treasury, August 2004.

[4] A small business entity is one that satisfies the definition in section 328-110 of the *Income Tax Assessment Act 1997*.
[5] For example see subsections 170(6), (9), (9D), (10), (10AA) or (11).
[6] Such an agreement does not arise under subsection 170(7) which relates to a formal extension of the period for amending assessments.

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 an 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 2010 income tax return for the Oak Family Trust was lodged on 9 May 2011. The trust was not a small business entity for the 2010 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 point 4).

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, the Commissioner considers the trustee should instead be assessed under section 99A. The section 99A assessment must be made by 9 May 2015 (unless the time limit is extended as discussed in point 4). [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 then that assessment should 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 2008 year. As a result of some compliance action taken by the ATO, 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. Whilst 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 point 2. (14 May 2014). You obtain the trustee's agreement to extend the time limit by a further six months. You have until 14 November 2014 to issue a trustee assessment/s (if required), unless you negotiate further time.

Example 5 – extended timeframes

The 2009 return for the Pine Family Trust lodged on 9 May 2010 indicates that all of 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 of the net income. You should escalate the case to an SES officer who, having regard to all of the facts will determine in consultation with the trustee, a period within which an assessment is to issue.

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