
Trustee Corporations Association of Australia

**Submission to
Board of Taxation**

Tax Value Method

April 2002

Introduction

The Trustee Corporations Association of Australia is the national representative body for the trustee company industry. Its 17 member organisations comprise all 8 Public Trust Offices and all but 2 of the 11 private statutory trustee corporations.

Background information on the Association and the trustee company industry is provided in the Appendix.

The Association welcomes the opportunity to provide comments on the latest version of the Tax Value Method (TVM).

We appreciate that the Board of Taxation has undertaken considerable work in developing the TVM proposal. Nevertheless, we feel that much more work needs to be done to demonstrate to industry that the new system will provide the promised net benefits in terms of simplicity, consistency and lower compliance costs.

This scepticism is based on the observation that attempts to improve or simplify the tax system generally have had unintended adverse consequences in terms of administration and other areas. The GST is a good example; current legislation requires providers of long-term non-reviewable trusts to pay GST, without recovery, from 1 July 2005.

From the Association's particular viewpoint, we feel that the Board of Taxation needs to demonstrate that the TVM will not have unintended consequences for trusts. We note that the Demonstration Legislation only has division level headings for the sections on "Trusts and trust distributions" and "Trust tax losses".

The Board's "TVM Consultative Briefing – 6/3/02" contained case studies for companies, partnerships and individuals to illustrate how the TVM is meant to work. It is unclear to us how the proposed new approach will impact on current trust accounting methods. Most trusts do not operate in a corporate structure. Will the TVM require every trust to prepare a balance sheet and profit and loss statement?

We suggest that case studies for, say, private trusts, deceased estates and testamentary trusts – covering simple scenarios such as share investments, rental properties and bank accounts – also should be developed to clearly show how current trust accounting methods would be affected by the TVM.

We submit that the need to undertake early and detailed analysis of trust-related matters was clearly shown by the now-abandoned Entity Tax proposal. That exercise is testimony to the fact that the potential consequences for trusts of taxation reform is not well understood and cannot simply be ignored.

Set out below are some particular areas where we feel the potential impact of the TVM warrants careful thought.

Impact on personal trusts

Traditional tax models have been based, at least in part, on concepts found in trust law that distinguish between income (which is distributable to the life tenant) and capital (which is distributable to the remaindermen).

If the TVM is to eliminate or blur the distinction between income and capital gain, then we believe that extensive and early testing should occur to ensure that the economic intention of each trust will be retained under the TVM. This would require analysis of each type of trust and

the treatment under TVM of the various types of gains and losses within trusts.

Capital losses

At the moment, there are inequities between the treatment of capital losses and gains. We believe that capital losses within trusts should be able to be:

- passed on to beneficiaries of a trust,
- passed on to beneficiaries of a deceased estate, and
- offset against other income, up to a limit, provided there is not a sale and immediate repurchase of the same asset.

The absence of these reforms leads to resource-wasting efforts in order to be able to utilise capital losses.

Imputation credits

There are also inequities in the treatment of imputation credits. We believe that imputation credits should be available to:

- beneficiaries of a trust, and
- a trust set up for a legally disabled person.

Again, the absence of these reforms leads to resource-wasting efforts to utilise the credits. There is also the concern that persons will be deprived of entitlements for no sound reason.

Deminimus provisions

The Association believes that deminimus provisions should apply to the TVM so as to avoid a myriad of calculations for small gains. The need to make those calculations would impose an unnecessary burden on industry without a commensurate gain to consolidated revenue.

Appendix

Trustee Corporations Association of Australia

The Association, formed in 1947, is the national body for the trustee company industry in Australia. It represents 17 organisations, comprising all 8 Public Trust Offices and all but 2 of the 11 private statutory trustee corporations.

The Association has a staff of 4 and operates out of premises in Sydney. Its National Director is Michael Shreeve. The Association's National Council comprises the Chief Executive Officer of each member institution, and its Executive Committee is made up of 5 of those persons.

The Association's role is to:

- promote cooperation and a united industry position amongst members,
- advance and protect the interests of beneficiaries of trusts administered by trustee companies,
- promote the cause of investor protection in the Australian financial system, especially the importance of independent review generally and compliance monitoring specifically,
- set professional standards of conduct for statutory trustee companies in Australia, and
- provide professional education programs for staff of trustee companies through the *Executor & Trustee Institute*.

The Trustee Company Industry

Traditionally, only a natural person could act as a trustee to take on the role of executor or administrator of an estate. In the 1870s, Governments first enacted legislation to extend this function to licensed trustee companies. This was to benefit the public by providing greater expertise and resources than are available from an individual, together with perpetual succession to a client establishing a long-term trust. Within the next decade, most of the trustee companies now authorised by law were incorporated.

Trustees owe fiduciary duties to the beneficiaries of the assets they administer, and can be held personally liable for mismanagement. The directors of trustee companies are also jointly and severally liable for the impartial, prudent and proper administration of assets entrusted to their corporations.

Today, trustee companies have expanded their trusted role to provide a wide range of financial services to individual, family and corporate clients. Services include:

- Personal wealth management, including: providing financial and estate planning; giving tax advice and preparing tax returns; acting as trustee or providing administrative services for small superannuation funds; setting up and managing personal trusts and guardianships; preparing wills and acting as executor to carry out the will-maker's instructions; and, preparing and administering powers of attorney.
- Charitable trusts and foundations, including for medical research, galleries, museums, and educational scholarships.
- Funds management, offering most types of unit trusts and common funds.
- Corporate activities, including: registry operations; custodial services; securitisation facilities; compliance monitoring; and acting as trustee or administrator for non-family superannuation funds.

In aggregate, trustee companies have about \$300 billion of assets under administration, and capital resources of about \$600 million. They employ more than 3,500 staff in over 90 offices around Australia.

Almost 2 million Australians have wills recorded with trustee companies.

Each year trustee companies:

- write over 85,000 wills and powers of attorney.
- administer over 10,000 deceased estates.
- administer assets under agency arrangements or guardianships for over 10,000 people.
- prepare over 55,000 tax returns.

About half of trustee company revenue comes from funds management, and about a quarter each from corporate activities and from traditional personal and charity work.