[Insert DD Month YYYY]

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[Insert Client Name]

[Insert Client Position]

[Insert Company Name]

[Insert Company Address]

[Suburb State Post Code]

Dear [Insert Client Name]

**Re: TFN withholding regime for closely held trusts**

A trustee of a resident closely held trust is required to withhold tax where an eligible resident beneficiary fails to quote its Tax File Number (**TFN**) to the trustee prior to receiving a trust distribution or becoming presently entitled to a share of the income of the trust estate.

Where withholding is required, trustees must withhold tax from the distribution or the share of net income to which the beneficiary has been made presently entitled at the highest marginal tax rate plus the Medicare levy, which is 47% for the year ended 30 June 2023.

Such tax is withheld if the beneficiary did not quote its TFN before the distribution is made by the trustee, or before the end of the year in which the beneficiary’s present entitlement to trust income arose. The beneficiary can claim a credit for the amount of tax withheld by the trustee in its income tax return.

However, once a trustee has provided a beneficiary’s TFN details to the Australian Taxation Office, (**ATO**) it will not be necessary for the TFN to be provided again by that trustee for that beneficiary, as it is in effect a ‘once-only’ reporting obligation.

**Which beneficiaries are excluded?**

Importantly, the TFN withholding regime does not apply in relation to present entitlements and distributions made in the following circumstances:

* to beneficiaries that are tax exempt,
* to beneficiaries whose tax liability is ordinarily assessed to the trustee e.g. minors and foreign residents, or
* where the distribution has already given rise to Family Trust Distributions Tax or the distribution is subject to the Trustee Beneficiary Reporting rules, or
* where the distribution was subject to TFN withholding in an earlier year, for example where a beneficiary was presently entitled to the amount but it was not distributed in the earlier year, or
* where the distribution is less than the thresholds set by the regulations.

**What trustees are impacted?**

The TFN withholding regime applies to trustees of closely held trusts, including family trusts.

Closely held trusts are discretionary trusts or any fixed trusts, where up to 20 individuals have fixed entitlements (either directly or indirectly) to a 75 per cent or greater share of the income or capital of the trust.

While the definition of a closely held trust ordinarily excludes a family trust, the TFN withholding regime specifically includes family trusts (i.e. a discretionary trust is a closely held trust for the purposes of the TFN withholding regime even where the trustee of such a trust has made a family trust election). The provisions similarly apply to a trustee who has made an interposed entity election and related trusts of family group members of the individual specified in a family trust election.

However, the following categories of trusts are excluded from the TFN withholding regime:

* complying superannuation funds,
* complying approved deposit funds,
* pooled superannuation trusts.
* deceased estates (up until the end of the income year in which the fifth anniversary of the deceased’s death occurs),
* fixed trusts that are unit trusts where exempt entities have fixed entitlements to all of the income and capital of the trust,
* unit trusts whose units are listed on the Australian Securities Exchange,
* employee share trusts for employee share schemes,
* law practice trusts, which are trusts regulated by a State or Territory law for the regulation of legal practices,
* discretionary mutual trusts as defined under sections 5(5) and 5(6) of the *Financial Sector (Collection of Data) Act 2001*, and
* non-resident trusts.

**Amounts to be withheld**

The withholding obligation arises when the trustee of the trust makes a distribution of an amount that includes ordinary or statutory income to an eligible beneficiary who has not quoted a TFN by the time the distribution is made, or when an eligible beneficiary becomes presently entitled to a share of income of the trust and the beneficiary has failed to quote its TFN by the end of the income year.

The amounts to be withheld are:

* Where amounts have been distributed during the year – 47% of the amount of the distribution to the eligible beneficiary.
* Where the beneficiary becomes presently entitled to a share of the trust income at the end of the year – 47% of the beneficiary’s share of the net income for the year. This amount is adjusted for amounts withheld from any distributions made to the beneficiary earlier during the year to ensure that tax is not withheld twice.

In addition, the trustee must:

* register for Pay As You Go (PAYG) withholding for closely held trusts,
* lodge an annual TFN withholding report containing details of any withheld amounts by 30 September in respect of the preceding 30 June year end,
* provide an annual payment summary to the beneficiary by 14 October where tax has been withheld,
* remit any tax withheld to the ATO by 28 October, and
* withhold tax in respect of future amounts unless a TFN is quoted.

If a trustee fails to withhold and remit the amounts required, the trustee will be subject to administrative penalties.

**Reporting Requirements for Trustees**

Where a beneficiary provides their TFN to a trustee, the trustee will be required to lodge a TFNReportwith the ATO for the quarter in which the TFN was quoted. The report is due by the last day of the month following the end of the quarter.

The trustee is only required to notify the ATO once of the beneficiary’s TFN. Accordingly, a TFN Report will only be required to report new TFNs provided to the trustee. This means that a trustee that has already disclosed all known beneficiary TFNs to the ATO will only ever need to lodge a further TFN report if new beneficiaries are added, or existing beneficiaries are provided with a TFN.

Failure to lodge any required reports on time may attract administrative penalties.

To arrange a meeting to discuss the above or any other tax issues, please do not hesitate to contact me on [insert telephone number of partner].

Yours faithfully

**[Insert name of Partner]**