

MEDIA RELEASE

STEP Australia Stands for Change to Underdeveloped Tax Law Governing Deceased Estates

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Tax law for trusts is blanketly applied to deceased estates - a cause for concern according to STEP Australia experts

9 September 2021 – STEP Australia has called for the assistance of Assistant Treasurer, Michael Sukkar, in order to address a pressing issue in Australian tax law. Currently, general principles governing the taxation of trusts are being applied to taxation of deceased estates. This presents a distinct possibility of ambiguous and inappropriate taxation practices, potentially affecting the financial wellbeing of thousands of Australian families. STEP’s goal is to advocate for simplified, consistent, and unambiguous legislation in this overlooked area of law.

In July 2020, the Inspector General of Taxation and Tax Ombudsman (**IGTO**) published a report calling attention to the issue that general principles of trust taxation are used to govern the taxation of deceased estates. This has caused significant problems in areas such as determining the residency of an estate for capital gains tax purposes. To address this issue, the IGTO recommended that the ATO work with external stakeholders in this space such as members of the National Tax Liaison Group in order to identify specific consequences and difficulties arising from this legislation. Further, it was suggested that submissions be made to the Board of Taxation and other bodies to draw attention to this issue and its potential policy solutions. Because of the gravity of this overlooked area of law, STEP Australia echoes these recommendations and has called for further support from the Assistant Treasurer.

Peter Bobbin TEP, Chair of STEP Australia commented “Ideally there would be a separate code for the taxation of deceased estates, however, at the very least some further differentiation from general trust principles would be appropriate”. The UK has, for example, several provisions differentiating the way tax is handled for deceased estates, such as different practices for determining the residence of an estate. Unaddressed details like these are potentially responsible for dramatically escalating compliance costs from tax advice needed to navigate this nuanced legal terrain.

The substantial and wide-reaching impact of this ill-developed area of the law on Australian families presents a need for a thorough review and reassessment of the application of the current taxation provisions. STEP Australia fully supported the IGTO’s concerns and recommendations made in mid-2020, and has now called upon Assistant Treasurer, Michael Sukkar, to ensure that this matter is appropriately progressed, by requesting that the matter be referred to The Board of Taxation for review.

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ABOUT STEP:

STEP is the global professional association for practitioners who specialise in family inheritance and succession planning. STEP works to improve public understanding of the issues families face in this area and promotes education and high professional standards among its members. STEP members help families plan for their futures, from drafting wills to issues surrounding international families, protection of the vulnerable, family businesses and philanthropic giving. Full STEP members, known as TEPs, are internationally recognised as experts in their field, with proven qualifications and experience.

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