

15 March 2023

The Treasury
The Hon Stephen Jones MP
Assistant Treasurer and Minister for Financial Services
By email: Stephen.Jones.MP@aph.gov.au

Dear The Hon Stephen Jones,

RE: 2023-24 Pre-budget Submission

Thank you for enabling the Society of Trust & Estate Practitioners Australia Pty Limited (STEP Australia) to make a late pre-Budget submission.

STEP Australia represents professionals from across Australia who are specialists in trusts, estate planning and in supporting the needs of families (young and old, wealthy and modest). The objective of a STEP Professional is to advance the interests of families across generations. This often involves us in identifying issues of relative importance to families and bringing these to the attention of those who can make a positive difference.

STEP Australia's membership includes lawyers, judicial members, accountants, financial wealth advisors, academics, and trustee company professionals from across Australia; our members bring a multi-disciplinary approach to the benefit of their clients. It is this unique multi-disciplinary approach that supports our insights into policy development.

We wrote to you in August 2022 outlining a range of legislative issues that expose executors and administrators to unnecessary tax risks and often come at a cost to revenue. Many of these issues were highlighted by the Inspector General of Taxation and Tax Ombudsman in her report into the ATO's systems and processes relating to the taxation of deceased estates. That Report observed that the undifferentiated application of general taxation of trusts principles to deceased estates may give rise to unintended tax consequences.

While STEP would like ultimately to see all of the issues addressed, one that is of particular concern to our members relates to the determination of the residency of the estate of a deceased person. Consider this example:

Jon, an Australian tax resident, dies. He has three adult children. His son lives in the US and is a tax resident there, his daughters live in Australia and are tax residents here.

Jon appoints his son Jacob as the executor of his Will. Jon's estate consists of a large portfolio of Australian shares.

Jacob sells the shares. Because the estate is regarded as a non-resident trust for tax purposes, no capital gain is required to be included in the net (or taxable) income of the estate in the year that these gains are made. To the extent that the proceeds attributable to the capital gains are later distributed to the Australian beneficiaries, they are likely to be assessed without the benefit of

the CGT discount. Jacob is not taxable on his share of the proceeds distributed to him as a beneficiary.

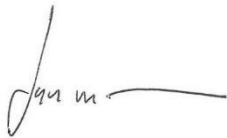
Had Jon appointed one of his daughters as executor or co- executor, the capital gains would have been included in the net income of the estate in the year they were made and taxed to the executor or beneficiaries (with the benefit of the CGT discount).

You can see that the choice of an executor affects the tax residency of the estate and produces unintended results both for the beneficiaries and the Australian revenue.

We note that in the United Kingdom, the estate of a deceased person is taken to have the same tax residence as the deceased. Adopting this approach in Australia would produce more predictable results for the estate and revenue authorities.

If you would like to discuss any of the above, please contact Ian Raspin TEP, STEP Australia Board Chair, on email iraspin@bnrpartners.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Raspin', with a long horizontal flourish extending to the right.

Ian Raspin TEP

Chair of STEP Australia