

## Changes resulting from Bills proposing a realisations charge as well as an interest charge

This circular provides additional information on the impending changes that relate to the calculation and collection of revenue in estates administered by all trustees, including the Official Trustee, under the [Bankruptcy Act 1966](#). As explained in the leaflet of 17 October 1966 to registered trustees, the Government introduced three bills of which the [Bankruptcy \(Estate Charges\) Bill 1996](#) and the [Bankruptcy Amendment Bill 1996](#) (BAB), when enacted, will increase as well as make changes to, the method of collecting revenue from estates.

Following the issue of the leaflet a number of trustees have contacted ITSA with questions. The main issues are covered below.

### What will happen from 16 December 1996?

*(Particularly in relation to the Realisations and Interest Charges)*

Before detailing the changes expected from the bills currently before Parliament, it is appropriate to initially outline the changes to the collection of revenue brought about by the [Bankruptcy Legislation Amendment Act 1996](#) (BLAA) that was recently passed by the Parliament. The BLAA changes came into effect on 16 December 1996.

As the BLAA abolishes the offices of the Registrar and Deputy Registrar in Bankruptcy, fees previously paid to the Registrar in Bankruptcy under Rule 179 of the Bankruptcy Rules will now be payable to the Commonwealth through the Official Receiver in your respective State or Territory. The creation of a 'One Stop Service' (OSS) within ITSA will enable the Official Receivers to attend to those functions, including the collection of revenue, previously performed by the Registrars in Bankruptcy. Some of those other functions are:

- issuing of bankruptcy notices;
- acceptance of debtor's petitions;
- maintenance of a bankruptcy index - the National Personal Insolvency Index (NPII);
- being a repository for documents to be filed by registered trustees; and
- being a repository for the payment of fees previously prescribed under Rule 179.

*Please note that the issuing of Creditor's Petitions will remain a function of the Federal Court of Australia.*

Under BLAA, and in accordance with section 175, trustees are required to provide an account to the Official Receiver in relation to each estate at the end of every six months after commencing to act as trustee, or 28 days after the trustee ceases to act as trustee (Regulations 8.14A and 16.14) or, immediately after the final dividend. This requirement

is identical to the requirements previously prescribed under sections 175 and 211 and Rule 179. Even though section 211 has been repealed, under the new section 210 and Part 3 of Schedule 6 of the Regulations, controlling trustees are also required to file accounts in accordance with section 175. The old form 33 has been replaced by form 2 which is identical to its predecessor.

## Realisations Charge

It is important to note that, until changes proposed in the 'estate charges' and associated bills are enacted, the fee payable under section 175 will remain at the old rate prescribed under Rule 179 (3% of the first \$50,000 and 2.5% of the next \$50,000 ... etc). However, the bills currently before the Parliament propose a realisations charge of 8% payable at the end of the 'charge period' to replace the charge previously imposed by Rule 179. Because the first 'charge period' is expected to commence on 1 November 1996, it would be prudent for trustees to reserve an amount equal to 8% of amounts realised since 1 November 1996. The bills propose that each charge period lasts for six months and the charge becomes payable within 21 days after the end of the charge period. However, as these bills are still before Parliament, the Commonwealth, or the Official Receivers and ITSA, have no authority to accept the full realisations charge of 8%.

Accordingly, if any accounts are lodged in accordance with section 175 after the commencement of BLAA, ie. on or after 16 December 1996, trustees are only required to pay the amount prescribed in Regulation 16.14 (3% on initial \$50,000 ... etc as per old Rule 179) accompanied by a form 2 (old form 33) at times prescribed in Regulation 8.14A (at the end of every six months after commencing to act as trustee, or 28 days after the trustee ceases to act as trustee). In relation to realisations made since 1 November 1996, trustees could retain the difference between the amount paid in accordance with Regulation 16.14 and 8%, in anticipation of any subsequent requirement to pay that amount to the Commonwealth once the relevant legislation is enacted.

The bills propose that the realisation charge (the 8%) be calculated by deducting, from the total amount received by the trustee, the following:

- amounts paid to the trustee by creditors under an indemnity in respect of costs;
- amounts received by the trustee under section 305 of the [Bankruptcy Act 1966](#);
- amounts paid by the trustee in carrying on a business; and
- amounts paid to secured creditors.

**The realisations charge will not apply to administrations under Part IX (Debt Agreements) and to administrations under Division 6 of Part IV of the *Bankruptcy Act 1966*.**

## Interest Charge

As advised in the leaflet to trustees on 17 October 1996, interest earned (net of bank charges) in relation to monies held in trust accounts under the [Bankruptcy Act 1966](#) will also become payable to the Commonwealth. Legislative changes obliging trustees to pay the 'interest charge' is also contained in the 'estate charges' bill currently before the Parliament and, when enacted, will become payable within 21 days after the end of each 'charge period'. However, as with the 8% realisations charge, the Commonwealth, or the Official Receivers and ITSA, have no authority to accept the 'interest charge' before the legislation takes effect.

As noted in the 17 October leaflet, registered trustees will be required to, where applicable and as soon as practicable, transfer monies from non interest bearing bank accounts to those that are interest bearing accounts once the legislation is passed.

*However, even though the first 'charge period' is expected to commence on 1 November 1996, as the relevant legislation is still before Parliament, the Inspector-General (through the Bankruptcy Regulation Units) cannot insist that trustees immediately transfer monies into interest bearing accounts. Even after the legislation passes a reasonable period will be allowed. The Australian Taxation Office has advised that when opening an account trustees should advise their bank that the interest earned on the account is exempt from income tax under proposed subsection 169(1D) of the BAB and no tax file number is required for the account not to be subject to withholding tax.*

## **Examples – What is required as from 16 December 1996**

1 Estates (including controlling trusteeships) finalised on or before 31 October 1996 but final accounts not lodged under the old section 175 (or section 211) with the Registrar in Bankruptcy:

(a) Lodge Form 2 (old form 33), under the amended section 175, with the Official Receiver (OSS office in ITSA) accompanied by the relevant charge as prescribed in Regulation 16.14 (old Rule 179).

2 Estates (including controlling trusteeships) finalised on or after 1 November 1996 but final accounts not lodged under the old section 175 (or section 211) with the Registrar in Bankruptcy:

(a) No realisations made on or after 1 November 1996, then as per paragraph 1(a) above;

(b) There are realisations (including voluntary or compulsory contributions) made prior to and after 1 November 1996, then lodge Form 2 (old form 33), under the amended section 175, with the Official Receiver (OSS office in ITSA) accompanied by the relevant charge as prescribed in Regulation 16.14 (old Rule 179) in relation to all realisations.

*However, in anticipation of passage of the 'estate charges' legislation, it would be prudent to reserve the difference between the amount paid under Regulation 16.14, and 8% in relation to realisations made on or after 1 November 1996. Such reserved amounts will become payable to the Commonwealth when the proposed changes become law.*

3 On-going estates (including controlling trusteeships) where there are realisations (including voluntary or compulsory contributions) made prior to and after 1 November 1996, then as per paragraph 2.(b) above but at times prescribed in section 175 and Regulation 8.14A, ie. 'forthwith after the final dividend' or at the end of every six months after commencing to act as trustee, or 28 days after the trustee ceases to act as trustee of the administration.

4 On-going estates (including controlling trusteeships) where realisations (including voluntary or compulsory contributions) are made only on or after 1 November 1996, then as per paragraph 3 above with the amount reserved in relating to all realisations.

*It is proposed that regulations will be made providing trustees with a credit for amounts paid under Regulation 16.14 so only the difference between the amount paid and 8% will be owing. Once an amount has been paid in respect of an amount realised no additional amounts are payable (no double dipping) - for example, when the realisations charge has been paid during the controlling trustee period, such a charge is not payable again after the funds are transferred to a subsequent Part X estate or to a bankrupt estate.*

5 All interest, net of bank charges, accrued during each of the charge periods will become payable to the Commonwealth through the Official Receiver (via the OSS office in ITSA) within 21 days after the end of each charge period. Each charge period lasts for six months with the first period commencing on 1 November 1996. *However, as the bill proposing this change is still before Parliament, the Commonwealth or the Official Receivers and ITSA have no authority to accept the 'interest charge' until the relevant bills become law.*

***Cheques should be made in favour of the Commonwealth of Australia and lodged with the ITSA office in your State or Territory.***

## **What happens after the 'Estate Charges' and associated Bills are passed?**

Registered trustees will no longer be required, under section 175, to lodge form 2's (old form 33) or provide accounts to the Official Receiver in relation to administrations under the Bankruptcy Act;

Instead, it will be the responsibility of trustees to maintain full and proper records to enable the Inspector-General (through Bankruptcy Regulation staff), upon inspection of records, to be satisfied that the appropriate amounts have been paid in relation to the realisations charge and interest charge;

*A penalty may be imposed for the failure to maintain proper records.*

Trustees will be required to hold estate monies in interest bearing bank accounts and will not be required to pay tax on the interest;

Interest earned, net of bank charges, will be payable to the Commonwealth (interest charge);

Trustees will no longer be required to maintain a separate bank account for each administration;

Trustees will be required to pay the 'realisation charge' (8%) and the 'interest charge' within 21 days of the end of each charge period. However, if an estate is finalised, the realisation charge and interest charge may be paid immediately upon finalisation.

*Failure to pay the realisations or interest charge within 21 days of the end of the charge period will attract a 20% per annum penalty on the outstanding amount and the trustee will be personally liable for the penalty (this is not recoverable from estate funds).*

If the amount of interest charge or realisations charge is less than \$50 in any charge period, the trustee may defer payment subsequent to notifying the Inspector-General (local Bankruptcy Regulation Unit) in writing of that fact before the expiration of 21 days after the charge period; and

All payments should be made payable to the "Commonwealth of Australia" and lodged with your local ITSA office. To enable proper processing, a remittance slip identifying the relevant estate/s and the type of payment (realisations charge and/or interest charge) will have to be lodged with the payment. Trustees will be provided with stocks of these forms once the legislation is passed and before the end of the first charge period.

OFFICE OF THE INSPECTOR-GENERAL IN BANKRUPTCY  
CANBERRA

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