

Complaints Handling Procedures

The following sets out the approach the Bankruptcy Regulation Section will adopt in respect of any complaint it receives in relation to a bankruptcy trustee. The same procedure will be adopted whether the trustee is a registered trustee or the Official Trustee.

There are commonly two types of issues. Those that relate to the conduct of the trustee and those that relate to fees or charges. In many cases the complainant has a remedy provided under the Bankruptcy Act. In these cases the complainant will be advised of those remedies and he or she will be advised to use them. The Inspector-General will only take action where he has the power to do so and another remedy is not available.

If in the course of examining the complaint it appears the trustee could have conducted the administration better, e.g. to limit costs, Bankruptcy Regulation staff will consider these complaints to have been justified even though there has not necessarily been a breach of the law.

When a complaint is received, a member of the Bankruptcy Regulation staff will contact the trustee to let him or her know and a copy of the written complaint will be provided to the trustee.

A report on the issues and facts will be prepared, based on information provided by the trustee, or from inspecting his or her files, or both.

Once an initial view has been formed, an opportunity to comment upon any initial findings will be given to the trustee before the complainant is advised.

If the complaint is found to be justified, a copy of the final report will be forwarded to the trustee and, if necessary, a meeting will be arranged to discuss resolution of any matters with the trustee concerned.

If the complaint is found not to be justified, a copy of the final report will be provided to the trustee for information.

The target is to report on findings to the complainant within 28 days of the receipt of the complaint. In any event, a progress report will be provided to him or her every 28 days.

Interest Charge and Withholding Tax Deductions

Further to the *IMPORTANT NOTICE TO TRUSTEES* (No. 1 of 1998, dated 20 May 1998) the Australian Taxation Office was approached to seek a solution to the need for trustees to provide tax file numbers in respect of their accounts held under

subsection 169(1). At present, if a trustee does not provide a bank with a Tax File Number (TFN) then the bank is required to withhold an amount from all interest paid by it in respect of an account operated by a trustee. The fact that the income is exempt from income tax does not, of itself, relieve the bank of its obligation to deduct this amount.

This procedure operates as a collection mechanism in relation to possible future tax liabilities. To the extent that such a liability does not exist, amounts deducted may be refunded. The Australian Taxation Office cannot direct a bank not to deduct these amounts where the law clearly requires these deductions to be made.

However, given the intention behind section 169 of the [Bankruptcy Act 1966](#) and section 5 of the [Bankruptcy \(Estate Charges\) Act 1997](#), together with the objects of the TFN provisions as set out in section 202 of the *Income Tax Assessment Act 1936*, the Australian Taxation Office has proposed an interim solution which may be acceptable to any bank involved until the matter is resolved either by legislation or otherwise.

The Australian Taxation Office's proposal is that trustees complete and forward the attached letter to their bank. The letter sets out the undertaking of the Australian Taxation Office that it will not take any action against the bank for failing to deduct an amount from interest that is paid on an account operated in accordance with section 169 of the [Bankruptcy Act 1966](#). If a bank agrees, a TFN will not have to be provided by a trustee for a section 169 account.

Applications for refunds in respect of amounts deducted in earlier financial years should be directed to the Interest and Withholding section of the Australian Taxation Office.

The Interest and Withholding section can be contacted on 132 867 for the cost of a local call.

When making an application for a refund of tax, trustees must include documentary evidence of the amounts paid and a copy of the proforma advice letter referred to above.

An application can not be made where a trustee has claimed a credit in an assessment or has otherwise already obtained a refund or credit.

Office of the Inspector-General in Bankruptcy
Canberra
6 October 1998



Australian Taxation Office

The Manager

Name of Bank: _____

Address of Bank: _____

Interest bearing account number: _____

Account name: _____

The trustee operating the above account declares below that the account is operated in accordance with section 169 of the *Bankruptcy Act 1966*. That section and section 5 of the *Bankruptcy (Estate Charges) Act 1997* (the Charges Act) operate to require trustees of bankrupt estates:

- to deposit all moneys received on account of a bankrupt estate to the credit of a single interest bearing bank account; and
- to pay interest credit to the account to the Commonwealth as a charge.

The requirement to pay the interest to the Commonwealth under the Charges Act makes the interest income exempt from income tax. Consequently, the quoting of a Tax File Number (TFN) becomes redundant for income tax purposes.

Until this redundancy can be reflected in taxation law, the Australian Taxation Office will not take action against the bank for acknowledging the exempt status of the income and deeming a TFN to be quoted.

This letter applies in relation to interest paid on the above account until the redundancy is reflected in taxation law or the ATO's undertaking is otherwise withdrawn.

for David Butler
Deputy Commissioner of Taxation
Small Business

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Declaration by trustee:

I, _____, declare that I am a trustee appointed under section 157 of the *Bankruptcy Act 1966* and that the above mentioned account is operated by me in accordance with section 169 of the *Bankruptcy Act 1966*.

Signed: _____ / /

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