

NATIONAL SECRETARIAT

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**Trustee  
Corporations  
Association  
of Australia**

22 July 2011

Mr Paul McCullough  
General Manager  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Mr McCullough

**Capital Gains Tax**

The TCA is the peak representative body for the trustee corporations industry in Australia.

It represents 16 organisations, comprising all 8 regional Public Trustees and the great majority of the 11 private trustee company groups.

Each year our members:

- administer about 9,000 deceased estates.
- write about 60,000 wills and powers of attorney.
- manage assets under agency arrangements or Court and Tribunal orders for about 45,000 people.
- manage about 2,000 charitable trusts and 15,000 other personal trusts.
- prepare over 40,000 tax returns.

We appreciate the opportunity to comment on the Proposals Paper: *Minor amendments to the capital gains tax law*.

Our comments are restricted to section 5: *Deceased Estates*, specifically Issue 8 in section 5.3: *CGT event K3 – Amendment period*.

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Trustees

The Trust Company

## Comments

We are concerned that the proposed amendment in respect of Issue 8 dealing with the application of CGT to deceased estates will entail an enormous administrative burden on trustees.

We agree that CGT event K3 can be circumvented where an asset does not pass to an entity listed in that CGT event until after the deceased's standard amendment period has expired. However, we do not believe that K3 CGT event is being flaunted within our industry due to the amendment time frame limitations.

Importantly, we see great practical difficulties with the proposal that an embedded capital gain or loss be made subject to tax when an asset is transferred to an entity listed in CGT event K3 outside the deceased's standard amendment period by excluding CGT event K3 from the standard amendment period.

Giving a particular taxing event an unlimited time frame for amendments should not be an option.

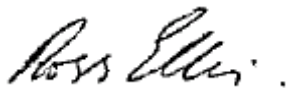
It would be an administrative nightmare for trustees and tax agents to access historical data, tax returns and software so as to make out of time amendments for an infinite period.

For example, will trustees need to amend date of death returns for all situations where a relevant CGT asset passes in favour of a non-resident and the deceased had passed away after 19 September 1985?

In a life interest situation, the period between the deceased's date of death and CGT event K3 could be so great such that it would be impossible for trustees to access the records that would be required to amend date of death tax returns.

We believe that there needs to be a solution that, in addition to protecting Government revenue, will provide administrative simplicity for trustees and an equitable outcome for beneficiaries.

Yours faithfully



Ross Ellis  
Executive Director