



Doing trust tax returns for the deceased estate

When and how to lodge a trust tax return, income to include, how tax applies, how to get a TFN and ABN, and tax rates.

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When and how to lodge returns for a deceased estate



Work out if a trust tax return is required, how to get a TFN and ABN, and how to lodge.

Who pays tax on deceased estate income



How tax works during administration of the estate, and whether to pay tax for beneficiaries.

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Check the tax rates for the first 3 years of the deceased estate, and the rates for later years.

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Go go gadget smoke bomb. Get nei nei.

4 January 2024



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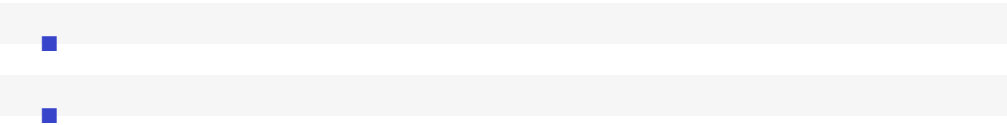
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When and how to lodge returns for a deceased estate

Work out if a trust tax return is required, how to get a TFN and ABN, and how to lodge.

25 May 2023

What a trust tax return is for

There are no inheritance taxes in Australia.

Finalising a deceased estate typically takes 6 to 12 months, but can take longer.

Trust tax returns are used to:

- report the income of the estate after the person's death, such as rental income or share dividends
- claim any tax refund or franking credits owed to the estate.

If a return needs to be lodged, the estate is treated as a trust for tax purposes. Trust tax returns may need to be lodged each year until the estate is finalised.

This is different to:

- the **date of death tax return**, which is for the period before the person died
- tax returns for a **testamentary trust**, which is a separate trust created under the terms of a will and continues after the deceased estate is finalised.

Who can lodge a trust tax return

You can lodge a trust tax return once you notify us of the person's death and you have been entered on our records as the person who is managing their tax affairs.

Usually, the authorised **legal personal representative (LPR)** lodges trust tax returns for the deceased estate.

If you are **not** an authorised LPR, we will assess the lodged tax returns and determine the appropriate treatment within the law and our internal policies.

When a trust tax return is required

For the first 3 income years of a deceased estate, you must lodge a trust tax return if any of the following apply in that year:

- the deceased estate's net income is more than the **tax-free threshold for individuals**
- a beneficiary is **presently entitled** to any of the estate's income at the end of the income year
- a beneficiary of the estate is not an **Australian tax resident**.

For income year 4 and later income years, you must lodge a trust tax return if the deceased estate earns any income (including capital gains).

You can lodge a trust tax return even if it is not required. For example, you may wish to lodge a return to claim franking credits on dividends paid to the estate.

The first income year of a deceased estate starts the day after the person died, and ends on the next 30 June.

Example: lodging tax returns for a deceased estate

Maree died on 4 March 2023. Her authorised LPR is her son, Zach.

Individual tax return

Zach lodges a **date of death individual tax return** for Maree. This covers Maree's income from 30 June 2022 to 4 March 2023.

Deceased estate trust tax returns

For Maree's estate, **income year 1** is 5 March 2023 to 30 June 2023. In this income year:

- the estate's income is \$9,500, which is below the tax-free threshold
- there are no presently entitled beneficiaries or non-resident beneficiaries.

Therefore, Zach does not need to lodge a trust tax return for the estate.

Income year 2 is 1 July 2023 to 30 June 2024. In this income year:

- the estate's income is \$30,000, which is above the tax-free threshold
- therefore, Zach must lodge a trust tax return for the estate.

Income year 3 is 1 July 2024 to 30 June 2025. In this income year:

- the estate is finalised, on 31 August 2024
- the estate's income is \$5,000, which is below the tax-free threshold
- there are presently entitled beneficiaries at the end of the income year
- there are no non-resident beneficiaries.

Therefore, Zach needs to lodge a trust tax return for the estate as there are presently entitled beneficiaries at the end of the income year. He contacts us to advise that the deceased estate will lodge no further returns.

Getting a TFN and ABN for a deceased estate

You will need a trust TFN if you need to lodge a trust tax return for the estate. If the deceased estate is running a business, you will also need an Australian business number (ABN).

If the estate is not running a business

You can apply for the trust TFN online through the Australian Business Register.

Apply online for TFN

Alternatively, you can download and complete the paper form: **TFN application for a deceased estate**.

Generally, the authorised LPR or their appointed representative applies for the trust TFN.

If there is no authorised LPR, and you are managing a small estate and wish to lodge a trust return to claim franking credits or other low value amounts, you will need to apply for a trust TFN. We will assess the trust returns to determine the appropriate treatment within the law and our internal policies.

If the estate is running a business

If you are the authorised LPR and are continuing the deceased's business in order to finalise the estate, you need to apply for a new ABN as well as a trust TFN. You cannot use the business's existing ABN.

You can apply for the TFN and ABN at the same time.

Apply online for TFN and ABN

In the online application you will be asked 'For taxation purposes which type of entity is the applicant?'

- select **Company, Partnership, Trust or other organisation**
- select **Trust / Deceased estate**.

Only the authorised LPR or their appointed representative can apply for the ABN.

Lodging a trust tax return

You can lodge a trust tax return for the deceased estate using the paper form **Trust tax return**. Refer to **Appendix 8: Instructions to trustees of deceased estates**.

If you are the authorised LPR of the deceased estate and have appointed a tax agent to help you, the agent can prepare and lodge the return online.

Income to include in a trust tax return

You need to include all income the deceased estate has earned since the date of death, including:

- capital gains on the sale or transfer of assets, if this was not done as part of the will or the rules of succession
- super lump sums or employment termination payments.

Capital gains

If an asset passes to a beneficiary of the estate (for example, under the will or rules of succession):

- you do not include the capital gain or loss in the trust tax return
- if the beneficiary is a **foreign resident, charity or super fund**, you report the capital gain or loss in the deceased's **date of death tax return**.

If you transfer or sell an asset of the estate for any other reason, you need to include any capital gain or loss in the trust tax return. This applies even if the transfer or sale is to a person who is a beneficiary.

If the deceased had any unapplied net capital losses when they died, these cannot be used to offset against any net capital gains of the deceased estate.

Employment termination payments

The deceased person's employer may pay their estate a death benefit employment termination payment (ETP).

You will receive a *PAYG payment summary – employment termination payment*. It will show the tax-free and taxable components.

The ETP is taxed as if it was made directly to the beneficiaries, except that the Medicare levy does not apply.

Who pays tax on deceased estate income

How tax works during administration of the estate, and whether to pay tax for beneficiaries.

2 May 2023

How estate income is reported and assessed

You may need to lodge trust tax returns for a deceased estate if it earns income after the person's death.

If a return needs to be lodged, the estate is treated as a trust for tax purposes. The trustee is usually the deceased person's **legal personal representative (LPR)**.

As trustee, you:

- report all income of the deceased estate after the date of death in the trust tax return
- pay any tax on the net income of the estate, unless a **beneficiary is 'presently entitled'** to that income.

Generally, beneficiaries will only become presently entitled to the income of a deceased estate when it is fully administered.

This means you, as trustee, will normally be responsible for any tax on the estate's net income in the years before the estate is fully administered.

If a beneficiary is presently entitled to income of the estate, and is not under a legal disability or non-resident, then the beneficiary:

- will report their share of the net income in their individual tax return
- is responsible for paying any tax due.

Different rules apply if a [beneficiary is a non-resident or under a legal disability](#). In these situations, you (as trustee) pay the tax on their share of the net income on their behalf.

Reporting income and paying tax in the stages of administration

Before probate or letters of administration are granted

At this stage, beneficiaries are not presently entitled to the income of a deceased estate.

This means you include any net income of the estate in the trust tax return, and you (as trustee) are responsible for paying any tax on this amount.

Probate or letters of administration are granted but final distribution is not ready

At this stage, beneficiaries are generally not presently entitled to the net income of a deceased estate.

However, you (as trustee) can make an interim distribution if you are certain that the remainder of the estate is sufficient to cover any outstanding liabilities.

If you pay any income to a beneficiary before the estate is fully administered, they are considered to be presently entitled to it.

If you distribute any income and the beneficiary is:

- a resident and not under a legal disability, the beneficiary is responsible for including their share of the net income in their own tax return and paying any tax owing
- under a legal disability (such as being under 18), you include their share of the net income in the trust tax return and pay tax on their behalf on this amount
- a non-resident, you include their share of the net income in the trust tax return and pay tax on their behalf on this amount.

Superannuation death benefits and death benefit termination payments received by the estate are considered income to which no

beneficiary is presently entitled.

Administration is complete and estate is distributed

At this stage, obligations are paid or provided for in full, and the net income of the estate is available for distribution.

When you distribute the income and a beneficiary is:

- a resident and not under a legal disability, the beneficiary is responsible for including their share of the net income in their tax return
- under a legal disability (such as being under 18), you include their share of the net income in the trust tax return and pay tax on their behalf on this amount
- a non-resident, you include their share of the net income in the trust tax return and pay tax on their behalf on this amount.

In the income year in which the deceased estate is fully administered, you may be able to apportion the net income. In this case:

- Income derived in the period between the beginning of the income year and the day administration is complete is assessed for tax in your hands as the trustee of the estate.
- Income derived in the period between the day administration was complete and the end of the income year is assessed for tax to the beneficiaries who are presently entitled.

If you want to apportion the net income:

- you need evidence that it was actually derived during these periods – you cannot apportion income into the two periods merely on a time basis
- you or the beneficiaries must request that the income be apportioned in this way.

Beneficiaries the trust reports and pays for

Beneficiary under a legal disability

A beneficiary is under a legal disability if they are:

- under 18 years of age on 30 June of the income year

- bankrupt
- declared legally incapable due to a mental condition.

You include the beneficiary's share of the net income in the trust tax return and pay tax on their behalf.

The estate is assessed separately for each beneficiary who is presently entitled but under a legal disability.

- The general individual income tax rates apply. (Normally, unearned income of minors is taxed at higher rates, but this rule does not apply to income from a deceased estate.)
- The Medicare levy and Medicare levy surcharge apply.
- You can claim any tax offsets to which the beneficiary would be entitled.
 - The low-income and low-and-middle income tax offsets are automatically applied by our systems if the beneficiary's income is below the threshold. The low-and-middle income tax offset is not available in the 2023 and later income years.
 - For other offsets, you need to include a statement with the estate's trust tax return showing the type and amounts of tax offsets claimed.

Beneficiary is a non-resident

If the beneficiary is presently entitled and a **non-resident of Australia** for tax purposes at the end of the income year:

- you pay tax on their share of the estate's net income at the non-resident tax rates
- no Medicare levy is payable.

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Deductibility of legal personal representative legal costs

Check if legal costs you incur as the legal personal representative (LPR) are deductible.

2 May 2023

In general, legal costs you incur as the legal personal representative (LPR) in administration of a deceased estate are **not deductible**. There isn't a sufficient connection or relationship between the legal cost and the production of income from the estate.

Legal costs are also considered capital in nature.

Legal costs you incur may, however, form part of the **CGT cost base** of the estate assets.

Example: legal costs to confirm the validity of the deceased's will and obtain probate

Miranda is the executor (LPR) of a deceased estate. The deceased's will provides for distributions to be made to specific beneficiaries.

However, a number of the beneficiaries contested their entitlements.

As a result, Miranda incurred legal costs on behalf of the estate to defend the action against the will. Miranda successfully obtained a grant of probate.

Miranda can't claim a deduction for these legal costs as they are capital in nature.

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When a beneficiary is presently entitled to income

Work out if a beneficiary is presently entitled, and what information you need to give them.

Work out if a beneficiary is presently entitled

Generally, beneficiaries will not be presently entitled to the income of a deceased estate until it has been fully administered.

If any income is distributed to a beneficiary before the estate is fully administered, they are considered to be presently entitled to it.

A beneficiary is presently entitled to income of a deceased estate if they have:

- an indefeasible, absolutely vested interest in the income – in other words, they have a claim or interest in the income that cannot be defeated by another person
- the right to demand immediate payment of the income – this means a beneficiary can be presently entitled even though they may not have actually received the income.

However, you (as trustee of the deceased estate) can make an interim distribution if you are certain that the remainder of the estate is sufficient to cover any outstanding liabilities. If you pay income to a beneficiary before the estate is fully administered, they are considered to be presently entitled to it.

If a beneficiary is presently entitled to any of the estate's income at the end of an income year, and is not under a legal disability or non-resident, then the beneficiary:

- reports their share of the net income in their individual tax return
- is responsible for paying any tax due.

However, if the beneficiary is under a legal disability or a non-resident, you (as trustee) pay the tax on their share of the net income on their behalf.

Work out present entitlement at 30 June each year

A beneficiary's present entitlement to income of the deceased estate is determined on the last day of each income year (30 June).

A beneficiary who is presently entitled on 30 June is assessed on their share of the net income for the whole of the income year.

The income is assessable in the year the present entitlement arose, not the year the amount is received.

For example, if a beneficiary was presently entitled to deceased estate income on 30 June 2023 but did not receive it until September 2023, they are personally assessable on that amount in the income year ended 30 June 2023.

Provide information to beneficiaries

As trustee of the deceased estate, you should provide the following information to beneficiaries so they can prepare their tax returns:

- their share of trust income to which they were presently entitled
- the amount of their entitlement that was paid to someone else for their benefit
- the amount of the trust's net income they are assessable on
- their share of franking credits associated with any dividends in the trust distribution.

Any beneficiaries who are under a legal disability also need to know:

- the amount of tax the estate has paid on their behalf. They are entitled to a tax credit for this, so the same amount is not taxed twice.

Any non-resident beneficiaries also need to know the amount of:

- interest in their distribution, and the withholding tax paid
- unfranked dividends in their distribution, and the withholding tax paid
- franked dividends in their distribution
- tax the estate has paid on their behalf.

Tax rates – deceased estate

Check the tax rates for the first 3 years of the deceased estate, and the rates for later years.

2 May 2023

First 3 income years

Normally, a trustee who is assessed on the net income of a trust pays tax at the top marginal tax rate.

When you lodge your first trust tax return for the deceased estate, you can apply for a concessional rate of tax.

- The concessional rate is the same as the **individual income tax rates**, with the benefit of the full tax-free threshold.
- The concessional rate will apply for the first 3 income years of the deceased estate, unless there are material changes to the estate's circumstances.
- Deceased estates do not get the benefit of tax offsets (concessional rebates), such as the low-income tax offset. No Medicare levy is payable.

You cannot extend this concessional period beyond the first 3 income years.

Example – first 3 income years

Joan passed away on 5 April 2023.

The first income year for Joan's deceased estate is 6 April 2023 to 30 June 2023.

The second income year is 1 July 2023 to 30 June 2024.

The third income year is 1 July 2024 to 30 June 2025.

If Joan's deceased estate earned taxable income of \$18,200 or less during these years, there is no tax payable.

Fourth income year and later

For deceased estates that continue to be administered beyond the third income year, the following tax rates apply.

Tax rates 2020–21 to 2022–23

Deceased estate taxable income (no present entitlement)	Tax rates
\$0 – \$416	Nil
\$417 – \$670	50% of the excess over \$416
\$671 – \$45,000	\$127.30 plus 19% of the excess over \$670 If the deceased estate taxable income exceeds \$670, the entire amount from \$0 will be taxed at the rate of 19%
\$45,001 – \$120,000	\$8,550 plus 32.5 cents for each \$1 over \$45,000
\$120,001 – \$180,000	\$32,925 plus 37 cents for each \$1 over \$120,000
\$180,001 and over	\$55,125 plus 45 cents for each \$1 over \$180,000

Tax rates 2019–20

Deceased estate taxable income (no present entitlement)	Tax rates
\$0 – \$416	Nil
\$417 – \$670	50% of the excess over \$416

\$671 – \$37,000	<p>\$127.30 plus 19% of the excess over \$670</p> <p>If the deceased estate taxable income exceeds \$670, the entire amount from \$0 will be taxed at the rate of 19%</p>
\$37,001 – \$90,000	\$7,030 plus 32.5% of the excess over \$37,000
\$90,001 – \$180,000	\$24,255 plus 37% of the excess over \$90,000
\$180,001 and over	\$57,555 plus 45% of the excess over \$180,000

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

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