

TREASURER



NO. 42

EMBARGO Budget. Not for release before 7.30 pm AEST, 13 May 1997.

TRUST LOSSES

Financial Implications (\$m)

1997-98	1998-99	1999-00	2000-01
5	15	20	20

Note: The estimates represent the impact on revenue against the forward estimates which are based on the original estimates of the trust loss measures provided in the 1995-96 Budget.

Explanation

On 10 February 1997, the Government released exposure draft legislation on trust loss measures. After receiving comments and submissions, the Government has decided to modify the draft legislation to restrict its application. The income injection test will not apply where entities and individuals within a family group inject income into a family trust with losses. This modification will have effect from 7.30 pm AEST, 9 May 1995 (the time of the 1995-96 Budget when the trust loss measures were first announced). For a family trust to access this concession, a family trust election must be made under the proposed legislation. The existing transitional rules in the exposure draft, which will allow family trust and interposed entity elections to be effective from times before they are actually made, will continue to have effect.

A modification will also be made to the definition of the 'family of an individual', with effect from 7.30 pm AEST, 13 May 1997, to ensure that the definition is appropriate in the light of the modifications made to the income injection test. The details of this modification are set out below.

The application of the definition of 'benefit' for the purposes of the test will be clarified, as set out below. This change will have effect from 7.30 pm AEST, 9 May 1995.

The income injection test will continue to apply, as set out in the exposure draft legislation, from 7.30 pm AEST, 9 May 1995, to a trust that is not a family trust, and also to a family trust where the relevant outsider, or associate of the outsider, is not a member of the family group. The trust loss measures that address the transfer of ownership or control of loss trusts will continue to apply to all trusts from 7.30 pm AEST, 9 May 1995.

The Government is currently examining other matters raised in representations on the exposure draft legislation and will announce its decisions on those later.

More detail on the modifications to be made to the exposure draft legislation released on 10 February 1997 is set out below.

Modified Definition of Outsider

The definition of 'outsider to the trust' in subsection 270-10(4) of the draft legislation will be replaced by a definition along the following lines:

An outsider to the trust will be a person who is not:

(a) if the trust is a family trust:

- the individual specified in the trust's family trust election and a member of his or her family;
or
- a company, partnership or trust (entity) that is a member of the family group of the individual specified in the trust's family trust election, provided the entity is such a member before the scheme referred to in paragraph 270-10(1)(b) of the draft legislation commenced.

(b) in the case of any trust: the trustee of the trust or a person with a fixed entitlement to a share of the income or capital of the trust.

However, if any person becomes a person covered by paragraph (b) as a result of the carrying out of the scheme referred to in paragraph 270-10(1)(b) of the draft legislation, that person will be an outsider to the trust.

Modified Definition of Family Member

The people who are the family of an individual (the test individual) (currently in section 272-95 of the draft legislation) will be replaced by the following:

- (a) the test individual's spouse;
- (b) a child, grandchild, parent, grandparent, brother, sister, nephew or niece of:
 - (i) the test individual; or
 - (ii) the test individual's spouse;
- (c) the spouse of any individual covered by paragraph (b).

Modified Application of the Definition of Benefit

Paragraph 270-10(1)(c) of the draft legislation will be modified to make it clear that the connection between the derivation of scheme assessable income, or the provision of any of the benefits, and the availability of the deduction must be more than merely incidental.

The above material is a full extract of the description of the measure as contained in *Budget Paper No 2: Budget Measures 1997-98*. This paper explains all outlays and revenue measures, and is available from Australian Government Bookshops or from the Treasury Internet site at <http://www.treasury.gov.au/budget>