

NATIONAL SECRETARIAT

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**Trustee  
Corporations  
Association  
of Australia**

12 August 2011

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

Dear Sir

**Special Disability Trusts**

The Trustee Corporations Association 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 licensed trustee company groups.

Trustee corporations have been providing professional wealth management services for over 120 years.

Traditional services include estate planning, preparing wills, acting as executor of deceased estates and as trustee for various types of trusts.

In addition, members currently act as attorneys under 7,500 powers of attorney, involving \$5.5b of assets and manage over \$4b of assets under Court / Tribunal orders for about 36,000 clients who lack capacity to manage their own affairs.

We appreciate the opportunity to comment on the exposure draft package in relation to removing further tax barriers which impede the use of SDTs.

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Trustees

The Trust Company

## Comments

The TCA has been supportive, in principle, of the SDT initiative since its inception.

However, as you will be aware from our previous submissions, we were concerned that the very restrictive conditions applying to SDTs would limit their attractiveness and our members were reluctant to recommend them to potential users.

Past amendments, including addressing the issue of unexpended income of an SDT and relaxing the 'reasonable care and accommodation' guidelines, have gone some way to making SDTs more attractive to families of persons with severe disabilities.

We believe that the concessions set out in the exposure draft are further positive steps that could be expected to add to the attractiveness of SDTs.

As regards providing a CGT exemption for assets transferred into an SDT for no consideration, we note that if an asset is transferred into a trust that is not yet an SDT, a CGT exemption will still be available provided the trust becomes an SDT as soon as practicable after the asset is transferred into it.

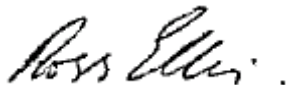
On a related point, it is with our understanding that it is not necessary that the model trust deed (or an acceptable variation of it) be recited in the will in order to for a disabled person and their family to enjoy the SDT concessions.

Rather, it is sufficient that the trustee has the power to create an SDT under the terms of the will.

Your confirmation of our view would be appreciated as our members feel that embedding an SDT deed into a will may not be an appropriate approach as the beneficiary's circumstances could change significantly by the time the testator dies.

A better approach appears to be to include a provision in the will giving the trustee the discretion to establish an SDT if this is seen as being in the disabled person's best interests after the death of the testator.

Yours faithfully



Ross Ellis  
Executive Director

