

# TABL3005/5505 TAXATION OF TRUSTS

## Course Outline Semester 2, 2017

### Course-Specific Information

The Business School expects that you are familiar with the contents of this course outline. You must also be familiar with the Course Outlines Policies webpage which contains key information on:

- Program Learning Goals and Outcomes
- Academic Integrity and Plagiarism
- Student Responsibilities and Conduct
- Special Consideration
- Student Support and Resources

This webpage can be found on the Business School website:

<https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

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# COURSE-SPECIFIC INFORMATION

## 1 STAFF CONTACT DETAILS



### Lecturer-in-charge (DIST)

**Dr Alex Evans** PhD (Tax), LLM (Tax), LLB (Hons), BA, Sydney

Email: [alex.evans@unsw.edu.au](mailto:alex.evans@unsw.edu.au)

Consultation times are by appointment

Alex Evans is a lecturer in Taxation Law in the School of Taxation and Business Law. Before joining the School in 2014, Alex taught undergraduate compulsory courses at Sydney Law School and Sydney Business School, and worked as a research assistant to several of the tax academics at the Ross Parsons Centre of Commercial, Corporate & Tax Law at Sydney Law School. Before academia, Alex practised as a tax lawyer for over four years with Ashurst (then Blake Dawson) in Sydney.

Alex holds a Bachelor of Laws with Honours, a Masters of Laws, specialising in taxation, and a PhD from Sydney Law School, The University of Sydney. Alex attended Harvard Law School in Spring 2013 under Sydney Law School's Harvard Law Doctoral Exchange program and Antonin Scalia Law School's 32<sup>nd</sup> Economics Institute for Law Professors in July 2016.

### Communication with Staff

When you contact staff by email, please:

- Use your University (not personal) email address
- Specify the course TABL3005/5505 as appropriate; and
- Sign off by using your name and student identity number.

## 2 COURSE DETAILS

### 2.1 Teaching Times and Locations

This course is taught in two modes – CBD and Distance. Please ensure you refer to the information for the correct mode that you have enrolled into. Your resources will be on-line via the University's learning management system, Moodle.

### 2.2 Units of Credit

The course is worth 6 units of credit.

### 2.3 Summary of Course

The trust is a major form of vehicle used for holding investment assets, for transferring family wealth to future generations and for income splitting. In addition, fixed public trusts, which are now commonly known as public unit trusts, funds or 'collective investment vehicles', have become a major form of public investment vehicle. Most superannuation funds are, in fact, trusts.

The trust is not a distinct legal entity and is not taxed as a separate entity. The primary rule is that the beneficiary under a trust is subject to tax. Only where the beneficiary is not subject to tax will the trustee be assessed to pay tax. This course is mainly concerned with establishing when the primary rule applies, and when it is displaced by the exceptional rules.

An understanding of the specific tax treatment of trusts is important to any student setting out to acquire, or refine, an understanding of the Australian tax system.

The study guide for *Taxation of Trusts* comprises five modules:

- Module 1 Introduction and overview of trust law
- Module 2 Taxation of income of trusts
- Module 3 Application of Parts 3–1 and 3–3 to trusts
- Module 4 The trust loss measures and family trust elections
- Module 5 General anti-avoidance and other integrity measures

## 2.4 Course Aims and Relationship to Other Courses

This course is an optional course offered in the Master of Taxation program.

The rules governing the taxation of trusts are largely peculiar to trusts, but a full understanding of their significance does require a complementary knowledge of the taxation of companies and partnerships. This complementary knowledge will largely be assumed.

As in many other areas of taxation, the analysis of the tax treatment of trusts necessarily involves a consideration of capital gains tax issues. You may, accordingly, benefit from undertaking the course *Taxation of Capital Gains* prior to, or concurrently with, this course.

## 2.5 Student Learning Outcomes

The Course Learning Outcomes are what you should be able to DO by the end of this course if you participate fully in learning activities and successfully complete the assessment items.

The Learning Outcomes in this course also help you to achieve some of the overall Program Learning Goals and Outcomes for all students in the Business School. Program Learning Goals are what we want you to BE or HAVE by the time you successfully complete your degree (e.g. 'be an effective team player'). You demonstrate this by achieving specific Program Learning Outcomes - what you are able to DO by the end of your degree (e.g. 'participate collaboratively and responsibly in teams').

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

For more information on the Program Learning Goals and Outcomes, see: <https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

Program Learning Goals and Outcomes		Course Learning Outcomes	Course Assessment Item
<i>This course helps you to achieve the following learning goals:</i>		<i>On successful completion of the course, you should be able to:</i>	<i>This learning outcome will be assessed in the following items:</i>
1	Knowledge	Students will gain a working knowledge of the principles and policy considerations which have particular application to the taxation of trusts, and an independent capacity to resolve relevant tax issues.	Module Activities Discussant system Assignment Examination
2	Critical thinking and problem solving	Students will develop a critical approach to the manner in which trusts are taxed and analyse the implications of this for investors and the tax system. They will enhance skills of statutory interpretation and develop the ability to critically review legislative provisions in applying these provisions to specific problems.  Post graduate students will demonstrate an ability to conduct a literature survey to identify appropriate and relevant sources, and to effectively analyse and apply these sources in the construction of legal argument.  In Masters' research papers, students will demonstrate a critical approach to material presented and evidence of original and independent thought.	Module Activities Discussant system Assignment Examination
3a	Written communication	Students will recognise and resolve legal and tax problems and develop clear, effective and well-reasoned analysis of the tax consequences of practical scenarios using the conventions of legal essay writing. They will apply correct citation and referencing conventions in properly acknowledging all source material used.	Assignment
3b	Oral communication	Students will contribute to discussions by addressing the issues raised, applying the law to the facts and reaching conclusions to specific problems,  Students will address questions raised by the Lecturer.  Students will demonstrate the ability to build on the ideas and contributions of fellow students.	Discussant system
4	Teamwork	Not specifically addressed in this course.	
5a.	Ethical, social and environmental responsibility	Not specifically addressed in this course.	
5b.	Social and cultural awareness	Not specifically addressed in this course.	

### 3 LEARNING AND TEACHING ACTIVITIES

#### 3.1 Approach to Learning and Teaching in the Course

If you are new to flexible learning you should carefully read this Course Outline. It contains most of the relevant information about how this course will be run and the expectations of you as a student. You should also refer to the Suggested Study Schedule as a guide to completing your coursework. So as to get the most out of your study we recommend that you follow this study schedule through the course and fit various time demands into a well-organised diary. Systematic study through the Semester is the key to success in a flexible learning program.

The Study Guide (which includes this Course Outline and the individual Modules and is sometimes referred to as the study materials or course materials) can help you in three ways.

1. It sets out a clear path of study over the Semester and helps you plan your workload. It also identifies learning outcomes and key concepts at the start of each module and provides a series of activities to help you learn actively and manage your own progress through the course.
2. It contains the core content for the course (often with reference to legislation, textbooks and other relevant material). The structure and layout of the Study Guide is designed to highlight key points and assist your revision for assignments, research papers and examinations.
3. It tells you when to refer to textbooks, legislation and other readings, giving precise details of what you should read.

the assessment in this course is designed to test students' knowledge of the key principles that establish the framework of common law dealings in land, an important focus of the assessment regime is to test how well students can *apply* this knowledge in identifying legal and regulatory issues concerning land transactions.

#### 3.2 Learning Activities and Teaching Strategies

Each module includes a range of features to assist you in managing your learning and developing study skills. These features include:

- Overview page
- Heading levels
- Learning outcomes and key concepts
- Module text
- Activities and feedback
- Readings
- Margin notes
- Instructional icons

## Tax Distance Course Student Guide

The *Tax Distance Course Student Guide* is a vital source of information for students studying flexible learning courses. It provides administrative and other information specific to studying these courses and you should make a point of being familiar with its contents. You can access the 2017 Tax Distance Student Guide from your Moodle course website(s).

### Webinars

Throughout this course, you will have the opportunity to attend live webinars (conducted over the Internet). Instructions on preparing for and participating in webinars are available on the Taxation & Business Law website and in your course Moodle website.

These webinars provide an opportunity for you to clarify and extend your understanding of the material in this course. They are designed to try out new ideas and give you a forum to ask questions and discuss issues with your lecturer and other students. Do not be afraid to participate—it is only by trying out new ideas and exploring their dimensions that you will learn in any real depth.

Thorough preparation is essential if you are to gain maximum benefit from a webinar. You can only start to come to grips with material if you work on it actively. As a general rule, each webinar will cover the module/s between the previous webinar and the week it falls within on the Suggested Study Schedule. However, more specific information on material to be covered in each webinar may be provided via Moodle throughout the Semester. Exact dates and times for webinars will be advised via a timetable that you will find on Moodle and on the TBL Website (under Timetables).

**There are six webinars scheduled for this course during the Semester. Each webinar is of approximately one and a half hours' duration.**

Remember webinars are not lectures—your active participation is an important part of the learning experience and preparation for examinations!

## 4 ASSESSMENT

### 4.1 Formal Requirements

All assessment items must be submitted electronically through Moodle. Please refer to the *Assignment Preparation and Submission* section for guidelines.

In order to pass this course, you must obtain:

- 50% or more of the total marks available in the course **and**
- at least 40% of the marks available for the final examination in the course.

### 4.2 Assessment Details

Assessment Task	Weighting	Length	Due Date
Discussant System	15%	NA	Various
Assignment 1	35%	3,200 words	Tuesday, <b>3 October 2017</b> (AEDT)
Take Home Exam	50%	TBA	TBA

### 4.3 Assessment Format

#### Discussant System – 15%

This part of the assessment is compulsory. The general idea is that every student will be allocated to be a discussant for a topic.

You will be (at a minimum) expected to contribute to the discussion by addressing the issues raised, applying the law to the facts and reaching conclusions to problems that are set for you to work through. You may also be required to address questions raised by the Lecturer. You will maximise your marks in this component if your contributions build on the ideas and contributions of your fellow students.

#### Assignment 1 – 35%

Due date: **3 October 2017 (Midnight AEDT)**

Word limit: 3,200 words (plus or minus 10%)

The assignment will be posted to Moodle in early August.

Both Undergraduate and Postgraduate students will do the same assignment. Your Lecturer will take your level into account in the marking process.

#### Take Home Exam – 50%

The final assessment for this course will be a take-home exam which will be made available on Moodle during the University exam period (3 November 2017 to 20 November 2017). The final examination timetable is published prior to the examination period via the Atax Weekly Bulletin and on the School's website at: <https://www.business.unsw.edu.au/about/schools/taxation-business-law/student-support/examinations>.

You should check this timetable to find the dates of your take-home exams. **This is not a negotiable schedule.**

Exams will be released at 9am at regular intervals throughout the exam period. Submissions are due at 7am on the third day after the release date. For example, an exam released at 9am on 3 November 2017 will be due at 7am on 6 November 2017. All times are based on Sydney time.

Submissions will be made online through a Turnitin submission link on Moodle. Students will be permitted to use a range of resources and materials to prepare responses. Students will be required to state that they have not consulted any other person in relation to the content of the exam or responses to questions during the date of the exam's release on Moodle and the closing time for submissions of responses via Turnitin.

### 4.4 Assignment Submission Procedure

The following guidelines are offered as a general indication of what is expected in terms of the presentation of both assignments and research papers in flexible distance (Atax) courses.

Each assessment task may also have particular requirements not covered here. Where information here is in conflict with information provided by the course lecturer, you should follow the advice of your lecturer.



## **Assignment cover sheets**

You must ensure that you include a cover page with each of your assignments that has the following information:

- your name
- your student ID
- the course code
- the course name
- the due date
- number of words

You should also include your name, ID and course code in the footer of your assignment document along with page numbers. A sample cover sheet can be found on Moodle in the Assessments section.

## **Abstract**

An abstract is used to summarise the subject of a research paper. Abstracts are only required for research papers and should contain 100 to 200 words. Do not write an abstract for a problem-type assignment.

## **Margins**

You should allow the following standard margins in your assignments to allow space for the lecturer's comments: Left and right margins — 3.5 cm; Top and bottom margins — 2.5 cm.

## **Headings/Table of contents**

Headings should be typed in bold. Only capitalise the first letter of the heading. Do not capitalise the entire heading. If you have written a long essay with many parts, a table of contents should be used. Otherwise, do not include one.

## **Style of presentation**

Your assignment should be typed using an 11 or 12 point font. Single line spacing should normally be used, unless your lecturer tells you otherwise. Leave a line after each paragraph. Do not indent the first line of the paragraph. You should number each page of the assignment.

## **Footnotes and citation system**

You should use footnotes as your referencing tool. Use end notes only if your computer cannot produce footnotes. Use the rules set out in a recognised citation and style guide such as the *Australian Guide to Legal Citation*. Footnotes are not normally included in the word limit, unless you include substantial commentary or discussion in the footnotes.

## **Bibliography**

Details of works cited in the text are provided in a bibliography which is placed at the end of the document on a new page under the heading 'Bibliography'. The bibliography is not included in the word limit.

All publications (books, articles, theses etc.) are included in the bibliography. Legal cases and legislation are not included in the bibliography. If a list of cases is considered necessary due to the large number used, it should be in alphabetical order under a separate heading 'Legal cases'. A similar separate list, headed 'Legislation', is used if needed for legislation.

Your bibliography must be presented in the following format:

1. Items in the bibliography are listed alphabetically by author or source.
2. The citation style of the item should be in accordance with a recognised and appropriate citation and style guide, except that specific page references are not included.

### **Assignment submissions and deadlines**

This course uses UNSW Moodle for the electronic delivery and submission of assignments.

Please check your submission link – you may only be entitled to submit an assignment once in which case additional and subsequent submissions will not be accepted.

Step-by-step guides have been produced to assist students through the assignment submission process, and are available for download from the UNSW Teaching Gateway at <https://student.unsw.edu.au/moodle>.

### **Due date and time**

Each assignment should be submitted via Moodle by midnight AEST (or AEDT, Australian Eastern Daylight Time, where applicable) on the specified due date unless otherwise stipulated. You are advised to submit your assignment early if possible, and to allow at least 15 minutes for the Moodle submission process. Most assignments will be parsed through Turnitin which will check the originality of your work. If you are given the opportunity to resubmit your assignment up until the due date you should be aware that even though you can submit more than once each day, Turnitin will only produce one originality report every 24 hours so there may be a delay on receiving your updated originality report after the first submission. The version of your assignment that is submitted at the due date will be the version that is accepted for marking.

For information on submitting assignments via Turnitin please see <https://student.unsw.edu.au/turnitin>. For information on how to interpret originality reports please see: <http://www.turnitin.com/static/training/student.php>.

### **Name and save your assignment documents**

For identification purposes, you are required to name all of your assignment files that you are submitting using the following naming convention:

Surname\_GivenName\_Course Code format.

For example: 'Lawson\_Henry\_TABL1001As1.doc'

You must also retain both an electronic and hard copy of every assignment. No mark can be given or concession awarded should an assignment be lost and no evidence of completion is able to be provided by the student.

### **Problems with Moodle assignment submission**

If you encounter technical difficulties while attempting to access Moodle, and are unable to submit your assignment, please contact the IT Service Desk by email to [ITServiceCentre@unsw.edu.au](mailto:ITServiceCentre@unsw.edu.au) or by telephone on +61 (2) 9385 1333. Your lecturer will not be able to assist with assignment submission issues, and cannot accept assignments emailed direct to him/her.

## Assignment return

Assignments may be marked electronically or on paper. Feedback for electronically-marked assignments will be made available electronically, usually through Moodle. Feedback for assignments marked by paper will be returned in hard copy format to the mailing address you have recorded on myUNSW. It is therefore important that you keep your address details up-to-date on myUNSW (<https://my.unsw.edu.au>). Lecturers will make every effort to return assignments (which are submitted on time) within two weeks with appropriate comments and feedback.

## 4.5 Late Submission and Penalties

An assignment is not considered to be late if it has been submitted via Moodle on or before the due time and date. Posted, faxed or e-mailed assignments will NOT be marked and should not be sent.

If you submit an assignment after the due date, please be aware that the following penalties will be applied.

- Where assignments are up to one week (i.e. 1–5 working days) late: 10% of the maximum marks available for the assessment item will be deducted.
- Where assignments are more than one week late and up to two weeks (i.e. 6–10 working days) late: 20% of the maximum marks available for the assessment item will be deducted.
- Where assignments are more than two weeks (i.e. 11 or more working days) late: the assignment can be perused, but no marks will be awarded. Assignments will be recorded only as having been submitted.

Please note that the penalties are applied to the maximum marks available for the assignment, not the actual mark awarded. For example, a student is due to submit an assignment by 16 August 2017. The assignment is in fact submitted on 30 August 2017 (10 working days late).

The penalty for lateness will be 20% of the maximum marks for the assessment. If the student's mark before the imposition of the penalty was a credit mark of 65%, after taking the penalty into account this mark will fall to 45%—a failure.

If illness or other verified circumstances beyond your control have a significant effect on your ability to submit an assignment by the due date, the normal penalty may be remitted. Doctor's reasons must be sufficiently detailed and specifically address the effect of the medical condition on your ability to complete assignments. For information on applying for penalty remissions through myUNSW Special Consideration portal, please visit: <https://www.business.unsw.edu.au/about/schools/taxation-business-law/student-support/penalty-remissions>

## General points

- The School's Administration Team supervises all penalty remission requests. Lecturers are not permitted to grant penalty remissions and you should not approach lecturers for this purpose.
- You should not anticipate that a Penalty Remission will be granted, and should endeavour to submit all assignments as soon as possible.

- If you require academic assistance contact your lecturer or the School's Administration Team ([tbl@unsw.edu.au](mailto:tbl@unsw.edu.au)) during the period that you are preparing assignments.
- You have only 13 weeks in the Semester, during which time all assignments must be completed. You also need to prepare for the final examination in all courses. Therefore, your time management is very important.

**The following is very important:**

If your assignment is up to one week (i.e. 1–5 working days) late, your penalty remission request must clearly show that you are seeking a one week penalty remission and you must clearly state your reasons and provide all relevant documentation. If your reasons are judged insufficient you will receive no remission of penalty.

If your assignment is more than one week late but less than two weeks (i.e. 6–10 working days) late, your penalty remission request should indicate whether you are seeking a 10% or a 20% remission. You must clearly show why the penalty remission you are seeking is valid and provide all relevant documentation. If you have requested remission of a 20% penalty and your reasons are judged insufficient, you may receive either a 10% remission or no remission depending on the judged validity of your request. If you requested 10% and your reasons are judged insufficient you will receive no remission of penalty.

**Quality Assurance**

The Business School is actively monitoring student learning and quality of the student experience in all its programs. A random selection of completed assessment tasks may be used for quality assurance, such as to determine the extent to which program learning goals are being achieved. The information is required for accreditation purposes, and aggregated findings will be used to inform changes aimed at improving the quality of Business School programs. All material used for such processes will be treated as confidential.

## 5 COURSE RESOURCES

### Prescribed Textbook/s

Woellner RH, Barkoczy S, Murphy S, Evans C and Pinto D, 2016 *Australian Taxation Law* (Sydney: Oxford University Press, 27th edition 2017).

### Act/s

You must purchase or have access to the following publication/s:

- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*

### Citation and Style Guide

In presenting written work for assessment in this course you must use an appropriate and consistent style for referencing and citation. The following is a selection of acceptable citation and style guides, which you may use as the basis for your written work. You must purchase or have access to one of the following publications.

- *Australian guide to legal citation* (Melbourne University Law Review Association & Melbourne Journal of International Law, 3rd ed, 2010). Available from <http://mulr.law.unimelb.edu.au/go/aglc>.

(This is free to download and is the citation style guide used by the majority of Australian legal journals.)

- Rozenberg P, *Australian guide to uniform legal citation* (Sydney: Lawbook Co, 2nd ed, 2003).
- Stuhmcke A, *Legal referencing* (Sydney: LexisNexis, 4th ed, 2012).

## Recommended References

Below is a list of further references that you may find useful in this course. Purchase of recommended references is not required.

- Woodley M (ed), *Osborn's Concise Law Dictionary* (London: Sweet & Maxwell, 12th ed, 2013).

This is the classic, concise dictionary of legal terms which is very useful for students of law based subjects.

- Marks B, *Trusts & Estates: Taxation and Practice* (Sydney: Taxation Institute of Australia, 2nd ed, 2009).
- Cooper GS and Evans C, *Cooper & Evans on CGT* (Sydney, Thomson Reuters, 7th ed, 2015 - 2016).
- Dal Pont G *Equity and Trusts in Australia* (Sydney: Thomson Reuters, 6th ed 2014).
- Deutsch, Friezer, Fullerton, Plummer, Hanley and Snape, *Australian Tax Handbook 2016* (Sydney: Thomson Reuters, 2016).
- Gilders F, Taylor CJ, Walpole M, Burton M and Ciro T, *Understanding Taxation Law 2016—An Interactive Approach* (Sydney: LexisNexis Butterworths, 2016).
- Heydon JD & Leeming MJ, *Jacobs' Law of Trusts in Australia* (Sydney: LexisNexis Butterworths, 8th ed, 2016).
- Hughes P, Kolliou G, Pennell R and Coombes D, *Australian Trusts Tax Handbook 2015 - 2016* (Sydney: Thomson Reuters, 2015)

## 6 COURSE EVALUATION AND DEVELOPMENT

The School of Taxation & Business Law's quality enhancement process involves regular review of its courses and study materials by content and educational specialists, combined with feedback from students. Towards the end of the semester, you will be asked to complete an online myExperience survey via Moodle to evaluate the effectiveness of your course lecturer and the actual course content. Your input into this quality enhancement process through the completion of these surveys is extremely valuable in assisting us in meeting the needs of our students and in providing an effective and enriching learning experience. The results of all surveys are carefully considered and do lead to action towards enhance the quality or course content and delivery.

## 7 COURSE SCHEDULE

### SUGGESTED COURSE SCHEDULE – DISTANCE STUDENTS

Wk	Beginning	Module	Topic	Events / Submissions
1	24 July	1	Introduction and overview of trust law	
2	31 July	1	Introduction and overview of trust law	Webinar 1
3	7 August	2	Taxation of income of trusts	
4	14 August	2	Taxation of income of trusts	Webinar 2
5	21 August	3	Application of Parts 3–1 and 3–3 to trusts including streaming of capital gains	
6	28 August	3	Application of Parts 3–1 and 3–3 to trusts including streaming of capital gains	Webinar 3
7	4 September	3	Application of Parts 3–1 and 3–3 to trusts including streaming of capital gains	
8	11 September	4	The trust loss measures and family trust elections	
9	18 September	4	The trust loss measures and family trust elections	Webinar 4
<b>Mid-semester break from Saturday, 23 September to Monday, 2 October 2017</b> <b>(NOTE: Daylight saving begins on Sunday, 1 October 2017)</b>				
10	3 October	5	General anti-avoidance and other integrity measures	Webinar 5 Assignment due
11	9 October	5	General anti-avoidance and other integrity measures	
12	16 October		Revision	Webinar 6
13	23 October		Revision	
<b>Examination period from Friday 3 November to Monday 20 November 2017</b>				