



IT 286 - Income tax: averaging of income - beneficiaries of trust estates section 157(3)

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TAXATION RULING NO. IT 286

INCOME TAX: AVERAGING OF INCOME - BENEFICIARIES OF TRUST ESTATES SECTION 157(3)

F.O.I. EMBARGO: May be released

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AVERAGING PROVISIONS 157(3)
PRIMARY PRODUCTION
TRUSTS
DISCRETIONARY TRUSTS

FACTS

A review has been made of the operation of section 157(3) in relation to beneficiaries of trust estates engaged in primary production activities.

RULING

2. Section 157(3) was inserted into the Income Tax Assessment Act to overcome the effect of the decision of the High Court in *Doherty v FC of T* (1933) 48 CLR 1 where it was held that a beneficiary in a trust estate did not carry on the business of the estate. It is not without significance that the beneficiary in the *Doherty* case was seeking to claim a deduction for her share of the loss incurred by the trust estate. What section 157(3) does is to extend the benefit of the averaging provisions to a beneficiary who is presently entitled to all or part of the income of a trust estate in a business of primary production.

3. It is to be noticed that sub-section (3) does not require that a beneficiary be presently entitled to a share of the net income of a trust estate calculated in accordance with section 95. Present entitlement relates to the income of a trust estate. It is not necessary to dwell on what is involved in a beneficiary being presently entitled to a share of the income of a trust estate. That expression was considered by the Federal Court in *FC of T v Totledge Pty Ltd*, 82 ATC 4169; 12 ATR 830. It is quite consistent with the authorities that a beneficiary may be presently entitled to income of a trust estate notwithstanding that the trust may have incurred a loss in a year.

4. Furthermore, the application of section 157(3) must be considered in the whole context of Division 16. Section 153 provides that any year in which a taxpayer was carrying on a business of primary production but had no taxable income shall be capable of being an average year. It is a reasonable inference to draw that, had it been intended that section 153 would not apply to beneficiaries in trust estates, the legislation would have expressly provided for this result.

5. For these reasons it should be accepted that, where a beneficiary is presently entitled, under the terms of a trust deed, to the income or part of the income of a trust estate which carries on a business of primary production, any year in which the trust estate incurs a loss is capable of being an average year.

6. On the other hand in a discretionary trust engaged in a business of primary production, a beneficiary would not, as a general rule, be deemed to be carrying on a business of primary production in any year in which the trustee does not exercise the discretion in favour of the beneficiary. It would seem most unlikely that the trustee would exercise the discretion where the business activities resulted in a loss. There may be cases arising in discretionary trusts, however, where there is a loss for income tax purposes, but income for general trust purposes, e.g. as a result of a substantial investment allowance deduction. Should the trustee exercise his discretion in such a case in favour of a beneficiary the beneficiary should be treated as carrying on a business of primary production for the purposes of Division 16.

7. The instructions in the preceding paragraphs are subject, of course, to section 157(3A).

COMMISSIONER OF TAXATION