TD 2012/22 - Income tax: for the purposes of paragraph 97(1)(a) of the Income Tax Assessment Act 1936 is a beneficiary's share of the net income of a trust estate worked out by reference to the proportion of the income of the trust estate to which the beneficiary is presently entitled?

Taxation Determination

Income tax: for the purposes of paragraph 97(1)(a) of the *Income Tax Assessment Act 1936* is a beneficiary's share of the net income of a trust estate worked out by reference to the proportion of the income of the trust estate to which the beneficiary is presently entitled?

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Ruling

1. Yes. To determine the share of net income of a trust estate to be included in a beneficiary's assessable income under paragraph 97(1)(a) of the *Income Tax Assessment Act 1936* (ITAA 1936), the beneficiary must:

(i) calculate how much of the income of the trust estate they are (or are taken to be) presently entitled to, as percentage share of that income; and

(ii) apply that percentage to the net income of the trust estate.

This approach is often referred to as the 'proportionate approach' to the assessment of trust net income.

2. If, in the 2010–11 or a later income year, a trust has made a capital gain or received a franked distribution to which no beneficiary is specifically entitled, the proportionate approach may also be relevant to the application of Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997* (ITAA 1997).

3. The effect of the application of the proportionate approach in any particular case will depend on the facts and circumstances of that case, including the terms of the trust and, where relevant, any resolutions made by the trustee to appoint the income of the trust.

Definitions

4. In this Determination, unless context otherwise requires:

- **income** means the 'income of the trust estate' as that expression is used in Division 6 of Part III of the ITAA 1936 (Division 6) (see Taxation Ruling TR 2012/D1 *Income tax: meaning of 'income of the trust estate' in Division 6 of Part III of the Income Tax Assessment Act 1936 and related provisions* for a discussion of that meaning).
- **net income** means the net income of a trust estate calculated pursuant to subsection 95(1) of the ITAA 1936 as the total assessable income of the trust estate calculated as if the trustee were a resident taxpayer less all allowable deductions (except for certain deductions identified in the provision).
- a beneficiary's **present entitlement** to income means any income of the trust estate to which the beneficiary is, or is taken to be, presently entitled where the present entitlement arose by the last day of the relevant income year, but excludes any amount the beneficiary is treated by Division 6 as not being so entitled to.

5. Division 6E of Part III of the ITAA 1936 may modify what these terms mean for the purpose of applying Division 6 if, in the 2010–11 or later income year, a net capital gain or franked distribution is otherwise taken into account in working out a positive net income.

Examples

6. The following examples demonstrate the relevance of the trust deed and the wording of the trustee resolution to the outcome under the proportionate approach.

Example 1: entitlements expressed as a specific amount – no default clause

7. *Under the trust deed for the Riverdale Family Trust, 'income' is defined to be the same as the net income calculated for tax purposes. The deed does not contain any provision enabling the trustee to determine a different amount to be the income of the trust.*

8. *Prior to 30 June 2012, the trustee calculates the net income for the year as $120,000 consisting of interest and net rental income.*

9. The trustee resolved to distribute $40,000 to each of beneficiaries Ann, Ben and Cy and they were each assessed on that amount.

10. *Subsequently, the Commissioner determined on audit that the trustee had omitted $9,000 interest income in calculating the net income. The net income and consequently the trust income was therefore $129,000.*

11. *The deed contained no provisions dealing with the situation where the trustee failed to appoint some or all of the income of the trust estate by a particular time. As the trustee had distributed only $120,000, there is $9,000 trust income to which no beneficiary was presently entitled.*

12. *The corresponding share of net income ($9,000) is therefore assessed to the trustee*.

Example 2: entitlements expressed as a specific amount – default clause

13. *Assume the same facts as for Example 1, except that the trust deed provides that in the event of the trustee failing to appoint income by a particular time it is taken to be appointed to certain beneficiaries (commonly referred to as default beneficiaries) by 30 June. In this case, those beneficiaries would be entitled to the additional $9,000 trust income and they would be assessed proportionately on the corresponding share of net income ($9,000)*.

Example 3: entitlements expressed as a specific amount and balance

14. *Assume the same facts as for Example 1, except that the trustee resolved to distribute $40,000 to each of Ann, Ben and Cy and the balance to David*.

15. *On the basis of this resolution, David would be entitled to $9,000 income and would be assessed on the corresponding share of net income ($9,000).*

Example 4: entitlement expressed as a proportion

16. *Assume the same facts as for Example 1, except that the trustee resolved to distribute one-third of the trust income to each of Ann, Ben and Cy*.

17. *On the basis of this resolution, each beneficiary is presently entitled to one-third of the trust's income. Each beneficiary is therefore assessed on $43,000 (one-third of the net income) and no amount of the trust's net income is assessed to the trustee*.

Example 5: income determined to be a particular amount – adjustment to net income with no impact on trust income

18. *Under the trust deed for the Farmer Trust, 'income' is defined to be the amount determined by the trustee or, if no determination is made, it is the same as the net income calculated for tax purposes.*

19. *Prior to 30 June, the trustee determined pursuant to the trust deed that the income of the trust for the year was $120,000*.

20. *The trustee resolved to distribute $40,000 to each of beneficiaries Ed, Fred and Greg*.

21. *The trustee's determination that the income of the trust was $120,000 had the effect of fixing the income of the trust at $120,000.*

22. *Although the trustee believed at the time of the determination that the net income would also be $120,000, the net income was actually $129,000 – the trustee had mistakenly believed that $9,000 related to a later income year.*

23. *Unlike the result in Example 1, each beneficiary in this Example was presently entitled to one-third of the trust's income, and each is assessed on $43,000 being one-third of the net income of the trust. No amount of the trust's net income is assessed to the trustee.*

Example 6: entitlements expressed as a percentage – ineffective further resolution

24. [Omitted.]

25. [Omitted.]

26. [Omitted.]

27. [Omitted.]

Example 7: entitlements expressed as a specified amount –ineffective further resolution

28. [Omitted.]

29. [Omitted.]

30. [Omitted.]

Example 8: income different from net income: capital gain

31. *The trustee of the Efficient Family Trust resolved to distribute the income of the trust for the year ended 30 June 2010 as follows*:

> *The first $30,000 to Don*
>
> *The next $30,000 to Ed*
>
> *The balance (if any) to Fi.*

32. '*Income' is defined under the trust deed to include all receipts other than capital gains. Although the trustee has a power to characterise other receipts as income the trustee did not exercise that power in the 2010 year. The income of the trust for the year was $100,000 comprised of interest and net rental income.*

33. *The trustee also made a (non-discount) capital gain of $20,000. The net income of the trust for the income year was therefore $120,000.*

34. *Each of the beneficiaries is assessed on the same percentage share of the net income of the trust as their entitlement to the income of the trust bears to the total trust income as follows*:

Don $30,000 ÷ $100,000 × $120,000 = $36,000

Ed $30,000 ÷ $100,000 × $120,000 = $36,000

Fi $40,000 ÷ $100,000 × $120,000 = $48,000

35. *To the extent that the amount assessed to each of the beneficiaries is attributable to the $20,000 (non-discount) capital gain made by the trustee, they will each be taken to have made an extra capital gain (as shown below) and allowed a corresponding deduction so as to avoid double tax*: [1]

Don $30,000 ÷ $100,000 × $20,000 = $6,000

Ed $30,000 ÷ $100,000 × $20,000 = $6,000

Fi $40,000 ÷ $100,000 × $20,000 = $8,000

Note: *The outcome would be practically the same had the relevant income year ended 30 June 2011 or later. As no beneficiary is specifically entitled to any part of the capital gain, each beneficiary would still be taken to have made an extra capital gain in the amount described above. Rather than being allowed a corresponding deduction, the amount upon which they would be assessed under section 97 of the ITAA 1936 would instead be adjusted to take out the capital gain (so that in addition to being taken to have made an extra capital gain Don and Ed would each only be assessed on $30,000 of the net income of the trust estate and Fi on $40,000*).

Example 9: income different from net income: non-deductible expenses

36. *The trustee of the Bus Family Trust resolved to distribute the income of the trust for the year ended 30 June 2011 as follows*:

The first $30,000 to Cane

The next $30,000 to Alex

The balance (if any) to Russ.

37. '*Income' is not defined under the trust deed so takes its ordinary trust law meaning. As originally determined by the trustee, the income of the trust for the year was $100,000 (after expenses) being income from carrying on a transport business*.

38. *The net income of the trust as determined by the trustee was also $100,000 and was assessed as follows*:

Cane – $30,000

Alex – $30,000

Russ – $40,000.

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[1] See Subdivision 115-C of the ITAA 1997 as it applied prior to the amendments made to it by *Tax Laws Amendment (2011 Measures No. 5) Act 2011.*

39. *The trustee later realised that the net income of the trust had been incorrectly calculated because a total of $10,000 spent on entertainment and political contributions (being expenditure which is not deductible for tax purposes) had been claimed as a deduction. The income of the trust was however correctly determined because although non-deductible, the expenditure was properly chargeable against income for trust law purposes in working out the income of the trust available for distribution*.

40. *As the income of the trust is $100,000 whereas the trust's net income is $110,000, the proportionate approach will have the effect that the net income will be included in the assessable income of each of the beneficiaries as follows*:

Cane $30,000 ÷ $100,000 × $110,000 = $33,000

Alex $30,000 ÷ $100,000 × $110,000 = $33,000

Russ $40,000 ÷ $100,000 × $110,000 = $44,000

Example 10: income equated to net income

41. *Assume the same facts as for Example 9 except that, in this example, the income of the trust is defined to equal its section 95 net income*. *The effect of this definition is to treat non-deductible trust outlays (such as entertainment expenses) as chargeable against capital.*

42. *Both the income and net income of the trust are, and always were*, *$110,000*.

43. *In this case, the amended net income of the trust would be assessed to each of the beneficiaries as follows*:

Cane $30,000 ÷ $110,000 × $110,000 = $30,000

Alex $30,000 ÷ $110,000 × $110,000 = $30,000

Russ $50,000 (being the balance) ÷ $110,000 × $110,000 = $50,000

Example 11: specific entitlement to franked dividends

44. *The trust deed for the Walnut Trust defines income to mean* '*the amount worked out under section 95 of the tax law' unless otherwise determined by the trustee. The deed allows the trustee to maintain separate categories of income in the trust accounts and to appoint income of a particular type to designated beneficiaries*.

45. *During the 2010–11 income year, the trustee received fully franked dividends of $70,000 and interest income of $50,000. The trustee calculated the trust's section 95 net income for the year as $150,000 (being $70,000 franked dividends plus $30,000 franking credits plus $50,000 interest income*).

46. *By 30 June 2011 the trustee determined that the income of the trust estate was its net income as defined in section 95 of the ITAA 1936 (without stating what the dollar figure of that amount was), less any franking credits*.

47. *Dividends and interest were recorded as separate categories of income in the trust accounts*.

48. *The trustee resolved that the income for the 30 June 2011 year be distributed to the following beneficiaries*:

- *Franked dividends*
  - *Pecan Pty Ltd 100%*
- *Other income*
  - *Pecan Pty Ltd $20,000*
  - *Laura – balance*

49. *The Commissioner later determined that the interest income was understated by $10,000. This meant that the section 95 net income of the trust was $160,000 rather than $150,000 as the trustee had calculated. The trust's distributable income as at 30 June 2011 was therefore $130,000 (that is*, $ *160,000 less $30,000). In accordance with the trustee's resolution, Laura (being the balance beneficiary) was entitled to an additional $10,000 interest income*.

50. *Disregarding the modifications to Division 6 of the ITAA 1936 effected by Division 6E, each of the beneficiaries would be assessed under section 97 of the ITAA 1936 on a share of the amended net income of the trust estate as follows*:

> *Pecan Pty Ltd: $90,000 ($70,000 franked distributions + $20,000 other income) ÷ $130,000 × $160,000 = $110,769*
>
> *Laura: $40,000 ÷ $130,000 × $160,000 = $49,231*

51. *However, because the net income includes a franked distribution, operation of section 97 of the ITAA 1936 is modified by Division 6E of the ITAA 1936. Broadly, this Division requires that the franked distribution and franking credit be disregarded in calculating the section 97 assessable amounts, with the following result*:

> *Pecan Pty Ltd: $20,000 (the other income to which it was entitled) ÷ $60,000 ($130,000 income − $70,000 franked distributions) × $60,000 ($160,000 net income − both $70,000 franked distributions and $30,000 franking credits) = $20,000*
>
> *Laura: $40,000 ÷ $60,000 (as for Pecan Pty Ltd) × $60,000 (as for Pecan Pty Ltd) = $40,000*

52. *As Pecan Pty Ltd is entitled to all of the $70,000 franked distribution received by the trustee, Subdivision 207-B of the ITAA 1997 will additionally operate to include in its assessable income for 2010–11*:

> *its 100% share of the distribution ($70,000*), *and*
>
> *its 100% share of the franking credit on the franked distribution ($30,000*).

Example 12: net income less than income of trust estate

53. Under the trust deed for the Merthyr Family Trust 'income' is not defined and so takes its ordinary meaning. The trustee does have a power to treat receipts as being on revenue or capital account.

54. *In the 2011–12 income year the trustee made a $110,000 operating profit against which it charged general expenses of $10,000 and depreciation of $10,000. The trust income for the year was $90,000. For tax purposes, the depreciation was instead $40,000. The net income of the trust was therefore $60,000.*

55. *The trustee resolved to distribute the income of the trust to each of Gwen, Bryn and Owen in equal shares. As they were each entitled to one-third of the income of the trust ($30,000), they are each assessable under section 97 on one-third of the section 95 net income ($20,000).*

Date of effect

56. This Determination applies to years of income commencing both before and after its date of issue. However, Examples 6 and 7 will not apply from 31 May 2023. Further, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10). See Appendix 2 of this Determination which sets out the Commissioner's compliance approach on 'variation of income' resolutions.

Commissioner of Taxation
24 October 2012

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Explanation

57. Where a beneficiary is presently entitled to a share of the income of a trust estate, paragraph 97(1)(a) of the ITAA 1936 requires the beneficiary to include in their assessable income that share of the trust's net income. In *Commissioner of Taxation v. Bamford*,[2] the High Court endorsed the proposition that beneficiaries can only be presently entitled to whatever is generally regarded as the distributable income of the trust (that is, the amount which can be distributed to beneficiaries or accumulated by the trustee). Further, the Court held that the reference to '*that* share' meant the income to which the beneficiary was presently entitled as a proportion of the total trust income.

58. Under the proportionate approach, the amount to be included in a beneficiary's assessable income under paragraph 97(1)(a) of the ITAA 1936 is the product of a two-step mathematical calculation.

59. The first step of that calculation involves determining the amount of income to which a beneficiary is presently entitled and converting that amount into a percentage share of the total trust income available for distribution. The second step involves applying that percentage to the net income of the trust.

60. The terms of a trust deed and the trustee's actions pursuant to it, including the way in which resolutions to distribute income are worded, are critical in determining the outcomes under the proportionate approach: see Examples 1, 2, 3 and 4.

Amended assessments

61. In the context of an amended assessment, it is important to consider whether an increase to the net income of a trust also affects the calculation of the income of the trust estate. That is, if the thing that necessitates the change to the net income does not result in a change to the income of the trust, there will be no change to the beneficiaries' proportionate shares of that income – the step 1 percentage remains the same. That percentage is applied to the revised net income (step 2). However if the thing that necessitates a recalculation of the net income also affects the calculation of the trust income, the beneficiaries' proportionate shares of that recalculated income needs to be determined (step 1) and applied to the recalculated net income (step 2).

62. In considering whether the income of the trust needs to be recalculated, the definition of income in the trust deed must be carefully considered. Importantly, some deeds provide the trustee with a power to determine the income of the trust. If before 30 June the trustee determines that the trust income is a particular amount and creates entitlement to that income – the step one percentage is set. This is demonstrated in Example 5.

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[2] [2010] HCA 10.

63. Even if the income of the trust needs to be recalculated, that is not to say that beneficiaries could not have been made entitled to all of that recalculated income as at 30 June. For example, the trustee may have made beneficiaries presently entitled to percentage shares of that income totalling 100% or may have made specific distributions to named beneficiaries, with the 'balance' of that income to one or more named beneficiaries; or the deed may have provided that beneficiaries were entitled to any part of that income not otherwise specifically dealt with by the trustee. Examples 2, 3, 4 and 10 illustrate this.

64. [Omitted.]

65. If the trustee (or the deed) has failed to deal with all of the trust income (as recalculated where relevant) by the end of the income year, there will be some income to which no beneficiary is specifically entitled, and the trustee will be assessed on that corresponding share of the net income of the trust estate (see Example 1).

Income variation resolutions

65A. Broadly, income variation resolutions arise where, in formulating resolutions to distribute income, the trustee has made further resolutions which are intended to deal with the situation where there is a change to the income of the trust at a later time.

65B. While trustees have sought to use these resolutions to specify which beneficiaries are presently entitled to trust income where there is an adjustment made by the Commissioner, often these resolutions are not effective in achieving what the trustees sought.

65C. The validity and effect of these resolutions (including their effect on other income resolutions and, consequently, any outcomes under the proportionate approach) will depend on the facts and circumstances of each case – in particular, the specific terms of the trust and the wording of the resolutions. This includes:

- how the income of the trust is defined
- whether the variation of income resolution is authorised by the trust deed
- whether the variation resolution could be severed if found to be invalid
- the existence of default beneficiaries, and other relevant terms of the trust deed
- the wording of the income variation resolution
- any other resolutions made by the trustee for that income year.

65D. For income tax purposes, the relevant question to be determined is whether the resolutions were effective in conferring present entitlement on any beneficiaries by the end of the income year.

65E. In *Lewski v Commissioner of Taxation* [2017] FCAFC 145 *(Lewski)*, the Court determined the validity and effect of variation of income resolutions. It held that the effect of the resolutions was that the distribution of income to the beneficiary was contingent on the occurrence of an event, being the Commissioner's disallowance of a deduction or inclusion of an amount in the assessable income of the trust estate. Consequently, the beneficiary was not presently entitled to any income.

65F. However, the Commissioner considers that the existence of a variation of income resolution will not necessarily result in ineffective conferral of present entitlement on all named beneficiaries. Rather, the outcome in any case will depend on the precise terms of the trust deed and resolutions. In some cases, there will be a range of possible interpretations of the relevant trust deed and resolutions and therefore genuine doubt about where the liability to tax rests. In those circumstances, the Commissioner will consider issuing alternative assessments.

2010–11 and later income years

66. For the 2010–11 and later income years, capital gains and franked distributions included in the net income of a trust are brought to tax in accordance with Subdivisions 115-C and 207-B of the ITAA 1997 respectively.[3]

67. As a result of modifications under Division 6E of Part III of the ITAA 1936 (Division 6E), the balance of the net income (that is the net income excluding amounts attributable to capital gains and franked distributions) of the trust is still assessed under Division 6 effectively in the manner described in paragraphs 57 to 59

68. Division 6E adjusts the rules in Division 6 to ensure that capital gains and franked distributions are not taxed twice (that is, once as a result of the operation of Subdivisions 115-C or 207-B of the ITAA 1997 and again by reason of Division 6). In broad terms the effect of Division 6E is to carve out net capital gains and franked distributions from the operation of Division 6 by excluding net capital gains and franked distributions from the trust's net income, and any amount relating to these things is excluded from the income of the trust estate. Example 11 illustrates this.

Subdivision 115-C of the ITAA 1997

69. Capital gains of a trust are allocated to beneficiaries and/or the trustee in accordance with the rules in Subdivision 115-C of the ITAA 1997. These rules differentiate between entities with a specific entitlement to all or part of a capital gain and other entities.

70. Both a beneficiary and a trustee may have a specific entitlement to an amount of capital gain. Trustees will only be treated as having such an entitlement if they choose to be assessed on the capital gain under section 115-230 of the ITAA 1997.

71. If no entity (beneficiary or trustee) is specifically entitled to a trust capital gain, a beneficiary will be taken to have a share of the capital gain equal to that gain multiplied by their 'adjusted Division 6 percentage' of the income of the trust estate in the relevant income year.[4] A beneficiary's 'adjusted Division 6 percentage' is simply the proportionate share of the income of the trust estate to which they are presently entitled (called their 'Division 6 percentage'), calculated on the assumption that any capital gain or franked distribution to which any beneficiary or the trustee is specifically entitled were disregarded in working out the income of the trust estate.[5]

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[3] Note that franked distributions included in the net income of a trust are assessed directly under Subdivision 207-B as amended. Capital gains reflected in the net income of a trust are taken into account in determining a beneficiary's own net capital gain under section 102-5 of the ITAA 1997.

[4] Paragraph 115-227(b) of the ITAA 1997.

[5] Division 6 percentage and adjusted Division 6 percentage are defined in subsection 95(1) of the ITAA 1936.

72. Therefore, where no entity is specifically entitled to any capital gain or franked distribution of the trust, each beneficiary will generally be taken to have extra capital gains equal to their proportionate share of each trust capital gain (grossed-up for any CGT discount or small business 50% reduction applied by the trustee).[6]

73. Where there is no income of the trust estate, or income of the trust estate to which no beneficiary is presently entitled, the trustee may also have an adjusted Division 6 percentage share of a capital gain.

Subdivision 207-B of the ITAA 1997

74. Franked distributions of a trust are allocated to beneficiaries and the trustee in accordance with the rules in Subdivision 207-B of the ITAA 1997. These rules differentiate between entities with a specific entitlement to all or part of a franked distribution and other entities. Trustees cannot be specifically entitled to a franked distribution.

75. If there is some part of a franked distribution to which no beneficiary is specifically entitled, a beneficiary or the trustee will be taken to have a share of the franked distribution equal to that franked distribution multiplied by their 'adjusted Division 6 percentage' of the income of the trust estate in the relevant income year.[7]

76. Similarly to capital gains, this means that where no entity is specifically entitled to any capital gain or franked distribution of the trust, each beneficiary will generally be assessable on their proportionate share of the net franked distributions of the trust and attached franking credits, and the trustee will generally be similarly assessed where there is no income of the trust estate or income of the trust estate to which no beneficiary is presently entitled.[8]

Exclusions from the 2010–11 and later year modifications

77. The changes described in paragraphs 66 to 68 do not apply for the 2010–11 and 2011–12 income years in respect of a managed investment trust (MIT) (or an entity treated in the same way as a MIT for the purposes of Division 275 of the ITAA 1997) if the trustee has not chosen to apply them. Nor do they apply in respect of a trust that is an early balancer for the 2010–11 income year unless the trustee chose that they apply.[9]

78. To the extent that the changes do not apply in respect of a trust, the rules in Subdivisions 115-C and 207-B of the ITAA 1997 do not apply in the manner described above. Instead, those Subdivisions operate in respect of those trusts in the form in which they existed prior to the amendments made by the *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

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[6] See subsection 115-215(3) of the ITAA 1997. The extra capital gain taken to have been made by the beneficiary will be different to this if losses and concessions applied against the gain at the trustee level resulted in only a part of that gain, or no part of that gain, being included in the trust's net capital gain (paragraph 115-225(1)(a) of the ITAA 1997) or if the net income of the trust is less than the trust's net capital gains and assessable franked distributions, for example, because of deductions (subsection 115-225(2) of the ITAA 1997).

[7] Subsection 207-55(4) of the ITAA 1997.

[8] See paragraph 207-35(4)(b) and subsection 207-35(6) of the ITAA 1997. The franked dividends assessed to the beneficiary will be different to this if it is reduced by directly related deductions (subsection 207-37(1) of the ITAA 1997) or if the net income of the trust is less than the trust's net capital gains and assessable franked distributions, for example, because of deductions (subsection 207-37(2) of the ITAA 1997).

[9] See item 51 of *Tax Laws Amendment (2011 Measures No. 5) Act 2011.*

79. Example 8 illustrates how Subdivision 115-C of the ITAA 1997 applied prior to the 2011 amendments where the trustee has not attempted to stream capital gains made by the trust to particular beneficiaries. The decision of the Full Federal Court in *FC of T v. Greenhatch* [2012] FCAFC 84 indicates that even where a trustee has specifically made a beneficiary presently entitled to a capital gain that is included in the income of a trust, Division 6 will assess every beneficiary presently entitled to a share of the income of the trust on a proportionate share of the totality of the net income (including any net capital gain). Subdivision 115-C of the ITAA 1997 as it applied prior to the 2011 modifications will then operate to treat each such beneficiary as having made a relevant capital gain.

Appendix 2 – Compliance approach

This Appendix sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow the advice in this appendix in good faith and consistently with the Ruling section, the Commissioner will administer the law in accordance with this approach.

80. Examples 6 and 7 of this Determination will not apply from 31 May 2023.

81. For income variation resolutions which were made before 31 May 2023, the Commissioner will not devote compliance resources to identifying and examining the resolutions where all of the net income of the trust estate has been brought to tax either by inclusion in the assessable income of a beneficiary or by assessment to the trustee, and there is no evidence of tax avoidance, evasion or fraud.

82. Where it is necessary to conclude on the tax liabilities flowing from an income variation resolution and there are a range of possible interpretations as to the validity and effect of the resolution which have a substantial possibility of being correct (including the potential application of Examples 6 and 7 of this Determination), the Commissioner will consider raising alternative assessments.

References

Previous draft:
TD 2012/D5

Related Rulings/Determinations:
TR 2006/10; TR 2012/D1

Legislative references:
- ITAA 1936 Pt III Div 6
- ITAA 1936 Pt III Div 6E
- ITAA 1936 95
- ITAA 1936 95(1)
- ITAA 1936 97
- ITAA 1936 97(1)(a)
- ITAA 1997 102-5
- ITAA 1997 Subdiv 115-C
- ITAA 1997 115-215(3)
- ITAA 1997 115-225(1)(a)
- ITAA 1997 115-225(2)
- ITAA 1997 115-227(b)
- ITAA 1997 115-230
- ITAA 1997 Subdiv 207-B
- ITAA 1997 207-35(4)(b)
- ITAA 1997 207-35(6)
- ITAA 1997 207-37(1)
- ITAA 1997 207-37(2)
- ITAA 1997 207-55(4)
- ITAA 1997 Div 275
- TAA 1953
- Tax Laws Amendment (2011 Measures No. 5) Act 2011 Sch 2 Item 51

Case references:
- *Commissioner of Taxation v. Bamford; Bamford v. Commissioner of Taxation* [2010] HCA 10; (2010) 240 CLR 481; 2010 ATC 20-170; (2010) 75 ATR 1
- *FC of T v. Greenhatch* [2012] FCAFC 84; 2012 ATC 20-322
- *Lewski v Commissioner of Taxation* [2017] FCAFC 145; 254 FCR 14; 106 ATR 566; 2017 ATC 20-630

ATO references

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