

PCG 2024/3 - Section 99B of the Income Tax Assessment Act 1936 - ATO compliance approach

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Practical Compliance Guideline

Section 99B of the *Income Tax Assessment Act 1936* – ATO compliance approach

📌 Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this Guideline is about

1. With increasing globalisation and migration flows into and out of Australia, we have observed an increase in resident taxpayers who receive an amount of trust property (being a payment or a benefit) from non-resident trusts. The purpose of this Guideline is to support taxpayers in complying with section 99B of the *Income Tax Assessment Act 1936*. As per paragraphs 6 and 7 of this Guideline, when considering the application of section 99B our current focus is on trust property accumulated by a trust during any period that it was a non-resident of Australia for tax purposes.

2. All legislative references in this Guideline are to the *Income Tax Assessment Act 1936*.

3. This Guideline provides you with guidance on our approach to section 99B in respect of arrangements where property of a non-resident trust (or trust property accumulated while the trust was a non-resident) is paid to or applied for the benefit of a resident beneficiary. This Guideline aims to provide clarity on:

- common scenarios where section 99B may need to be considered
- the practical aspects of record keeping evidencing that a paragraph in subsection 99B(2) applies to reduce the amount that section 99B would otherwise include in assessable income

- our compliance approach to distributions and benefits which we consider to be low risk, and the record keeping expected to substantiate this.
4. Where your arrangement does not meet the low-risk criteria outlined in this Guideline, we may engage with you to better understand your arrangement. It does not mean of itself that section 99B necessarily applies.
5. This Guideline does not replace, alter or affect our interpretation of the law in any way. It does not relieve the parties of their obligation to comply with section 99B but is designed to give confidence on how we will have cause to dedicate our compliance resources to consider the application of section 99B.

Scope of this Guideline

6. This Guideline applies to trust property accumulated by a trust during any period that it was a non-resident of Australia for tax purposes. Under this Guideline, we will consider section 99B in respect of a payment or benefit to a resident beneficiary from a trust that accumulated property while the trust was a non-resident of Australia for tax purposes.¹
7. Unless otherwise stated, all references to a trust in this Guideline are to a non-resident trust, which for the purposes of this Guideline is taken to include a resident trust to the extent that it is dealing with amounts accumulated during a period while the trust was a non-resident of Australia.

Date of effect

8. This Guideline applies both before and after its date of issue.

Background

9. Section 99B may apply where a resident beneficiary receives an amount of trust property from a non-resident trust estate, including:
- distributions paid by the trustee to a beneficiary
 - assets transferred by the trustee to a beneficiary
 - use of trust property by a beneficiary
 - loans from the trustee to a beneficiary
 - amounts received from a deceased estate.
10. Where section 99B applies, subsection 99B(1) includes in the resident beneficiary's assessable income the amount of trust property paid to, or applied for the benefit of, that beneficiary reduced by amounts specified in subsection 99B(2). The reductions include amounts representing:
- corpus of the trust, except to the extent it is attributable to amounts derived by the trust that, if they had been derived by a taxpayer being a resident, would have been included in the assessable income of that taxpayer (paragraph 99B(2)(a))

¹ A trust is a non-resident trust when the trustee (or executor or administrator of a deceased estate) is a non-resident of Australia.

- an amount that, if it had been derived by a taxpayer, being a resident, would not have been included in their assessable income (paragraph 99B(2)(b))
- an amount that is, or has already been, included in the beneficiary's assessable income under section 97, or assessed to the trustee under section 98, 99 or 99A (paragraph 99B(2)(c)).

Application of section 99B – common scenarios

11. Section 99B may need to be considered in the following common scenarios.² In each scenario, information and documentation would need to be obtained where the resident beneficiary wants to determine if subsection 99B(2) applies to reduce the amount included by subsection 99B(1) in their assessable income.

Example 1 – non-resident migrates to Australia

12. *Marty migrates to Australia during the year ended 30 June 2024. After migrating to Australia, Marty begins the process of winding up his overseas interests, including a non-resident trust which holds listed shares. The trust continues to be a non-resident trust as the trustee is a non-resident of Australia.*

13. *Since the establishment of the trust, all income earned from the listed shares has been accumulated and reinvested in further shareholdings. During the year ended 30 June 2025, the trustee of the non-resident trust, distributes the listed shares to Marty.*

14. *As Marty is a resident beneficiary who has received trust property from a non-resident trust, he needs to consider the application of section 99B with respect to the 2025 income year, including whether one of the reductions in subsection 99B(2) apply.*

Example 2 – resident beneficiary receives a distribution

15. *XVB Trust is an Australian-resident discretionary trust and requires funds for investment purposes. Alice, an Australian resident, is the trustee of the XVB Trust and asks her parents for financial assistance.*

16. *During the year ended 30 June 2025, Alice's parents, in their capacity as trustees of a non-resident trust, appoint an amount totalling \$500,000 to Alice in her capacity as trustee for the XVB Trust. The trustees advise Alice that the XVB Trust is a beneficiary of the non-resident trust and that the amount has been paid from the non-resident trust. However, the trustees do not advise whether the amount was sourced from accumulated profits.*

17. *As Alice in her capacity as trustee for the XVB Trust receives a distribution from a non-resident trust, Alice as trustee for the XVB Trust will need to consider the application of section 99B with respect to the 2025 income year, including whether one of the reductions in subsection 99B(2) apply.*

Example 3 – resident beneficiary receives a gift

18. *Jack is a resident of Australia and during the year ended 30 June 2025, he receives a gift of \$200,000 from his grandmother who resides overseas. Upon receiving the gift,*

² If amounts are included in the assessable income of a beneficiary under section 99B, that beneficiary may also be liable to pay interest under section 102AAM.

Jack's grandmother advises that the money was paid from a non-resident trust that she controls and of which Jack is a beneficiary.

19. *As Jack has received an amount from a non-resident trust and is a beneficiary of the trust, he needs to consider the application of section 99B with respect to the 2025 income year, including whether one of the reductions in subsection 99B(2) apply.*

Example 4 – resident beneficiary receives a loan

20. *Vicky is an Australian-resident taxpayer and needs funds to renovate her property. During the year ended 30 June 2025, Vicky receives a \$500,000 loan from her father, a non-resident of Australia.*

21. *The funds are lent by Vicky's father as trustee of a non-resident trust of which Vicky is a beneficiary.*

22. *As Vicky has received a benefit from a non-resident trust, she needs to consider the application of section 99B with respect to the 2025 income year, including whether one of the reductions in subsection 99B(2) apply.*

Example 5 – trustee allows resident beneficiary to use non-resident trust property

23. *A non-resident trust has a rare artwork collection. Adam is a resident of Australia, and his uncle controls the non-resident trust. Adam asks his uncle if he can borrow one of the artwork pieces to hang in his business for a 2-year period.*

24. *Adam's uncle agrees, and the trustee allows Adam to borrow the artwork. Adam's uncle also advises him that he is a beneficiary of the trust.*

25. *As Adam has received a benefit from a non-resident trust, he needs to consider the application of section 99B, including whether one of the reductions in subsection 99B(2) apply.*

Example 6 – beneficiary receives amount from a deceased estate

26. *Amanda is a resident beneficiary of a non-resident deceased estate. Amanda's grandfather was a non-resident and recently passed away.*

27. *At the time of her grandfather's death, the assets included in his estate consisted of cash and listed shares. During the 2025 income year, the non-resident trustee, as permitted by the will of the deceased, liquidates the listed shareholdings, and makes a payment in US dollars to Amanda.*

28. *As Amanda has received an amount of trust property from a non-resident trust, she needs to consider the application of section 99B with respect to the 2025 income year, including whether one of the reductions in subsection 99B(2) apply.*

Example 7 – beneficiary changes residency and receives an amount from a non-resident trust

29. *During the 2025 income year, Christine migrates to Australia and becomes a resident for tax purposes. A week before Christine migrates, her father in his capacity as trustee of a non-resident trust, distributes \$500,000 to Christine to assist her with the move.*

30. *The non-resident trust has been in existence for many years and the profits generated are normally reinvested in the trust assets.*

31. *As Christine has received an amount of trust property from a non-resident trust during a year of income in which she is a resident of Australia for tax purposes (at any point during the income year), she needs to consider the application of section 99B with respect to the 2025 income year, including whether one of the reductions in subsection 99B(2) apply.*

Record keeping for the hypothetical resident taxpayer tests

32. Evidence is required to substantiate that paragraph 99B(2)(a) or (b) applies to reduce the amount included in assessable income under subsection 99B(1).

33. The hypothetical resident taxpayer tests contained in paragraphs 99B(2)(a) and (b) and factors taken into account in applying the tests are considered in Taxation Determination TD 2024/9 *Income tax: factors taken into account in applying paragraphs 99B(2)(a) and (b) of the Income Tax Assessment Act 1936*.

34. The corpus reduction excludes an amount representing corpus from the amount assessable under subsection 99B(1), except to the extent to which it is attributable to amounts derived by the trust that, if they had been derived by a hypothetical resident taxpayer, would have been included in the taxpayer's assessable income (paragraph 99B(2)(a)).

35. In most instances, capitalised income or gains accumulated by the trust are taxed under subsection 99B(1) and are not further reduced by paragraph 99B(2)(a).

36. For the 'corpus' reduction in paragraph 99B(2)(a), TD 2024/9 provides that corpus, in the context in which it is used in section 99B and Division 6 more broadly refers to trust capital which is represented by the assets of the trust, excluding income which has not been accumulated.³

37. Similarly, the 'non-taxable' reduction in paragraph 99B(2)(b) excludes amounts from being assessable under subsection 99B(1), but only to the extent that they would not have been assessable to a hypothetical resident taxpayer if they had instead been derived by such a taxpayer.

Example 8 – identification of amounts removed by the hypothetical resident taxpayer tests

38. *The trustee of a non-resident trust purchases a property for \$1 million. This is solely funded from the settled trust sum. The trustee sells this property several years later for \$1.1 million. Following the sale of the property and pursuant to a power in the trust deed, the trustee appoints and pays \$1.1 million to Chris, a resident of Australia and beneficiary of the non-resident trust.*

39. *Upon receiving the funds from the non-resident trust, Chris obtains confirmation from the trustee that the amount paid is sourced entirely from the sale of the property.*

40. *The \$1.1 million amount distributed to Chris is initially included in his assessable income under subsection 99B(1). However, in applying the hypothetical resident taxpayer tests, that amount is reduced to \$100,000 because the \$1 million cost base of the property is corpus and is not otherwise assessable to a hypothetical resident taxpayer. Therefore,*

³ See paragraph 19 of TD 2024/9.

Chris is required to include \$100,000 in his assessable income in the year in which he receives the payment.

41. We recognise that it can be challenging to obtain the relevant documents and information from a non-resident trustee to evidence or substantiate that an amount or benefit received from a non-resident trust that would be assessable under subsection 99B(1) is reduced in part or in full by either paragraphs 99B(2)(a) or 99B(2)(b).

42. We also acknowledge that the ability for a resident beneficiary to obtain documents and information from a non-resident trustee can be hindered depending on the relationship between the resident beneficiary and the non-resident trustee, and the relevant laws in the overseas jurisdiction.

43. However, the onus is on the resident beneficiary to provide information and documentation to us to evidence that a relevant reduction is satisfied. Where the onus is not discharged, we will administer section 99B on the basis that the full amount should be included in the beneficiary's assessable income.

44. The core documents and information that a resident beneficiary should obtain to demonstrate that the source of an amount received from a non-resident trust is attributable to corpus and which satisfies the corpus reduction includes:

- the signed and executed trust deed or will of the deceased
- the signed trustee minutes, resolutions or distribution statements confirming an amount was paid or applied for the benefit of a beneficiary from the trust's corpus
- copies of the trust's financial accounts for the relevant years, prepared in accordance with the accounting principles of the relevant country.

45. Further documentation and information required to support that the corpus reduction or non-taxable reduction applies will be determined on a case-by-case basis and includes, but is not limited to, any one or more of the following:

- records detailing the property used to settle the trust, such as payment records or documents demonstrating the transfer of property
- for a deceased estate, a document setting out the assets owned by the deceased at their date of death, or a valuation of their assets at the date of death
- documents showing property being contributed to the trust
- other records or working papers prepared by the trustee or their professional advisers, for example, accounting working papers
- bank statements or payment records
- copies of all trustee minutes, resolutions or distribution statements confirming the payment of capital amounts
- accounting records, for example, general ledgers
- correspondence from the executors or their legal advisers setting out the terms of the will
- advice from professional advisers, including foreign advisers, to support the evidence provided

- foreign legal advice
- tax distribution statements
- foreign country tax returns of the beneficiary where the beneficiary is required to lodge in the foreign jurisdiction
- foreign resident withholding tax statements from the foreign jurisdiction.

46. All information and documentation provided to us should be in English or be accompanied with an English translation.

Example 9 – records to substantiate the corpus reduction applies

47. *A non-resident trust is settled with \$500,000 cash. Shares are acquired for \$100,000 and real property is acquired for \$400,000.*

48. *The trustee makes a resolution to transfer the shares to a resident beneficiary, Steven, who is the son of the controller of the non-resident trust.*

49. *Upon receiving the shares, Steven obtains the following documents from the trustee:*

- *the signed trustee resolution to transfer the shares*
- *a copy of the trust deed which confirms the trustee can distribute corpus to the resident beneficiary*
- *a copy of the trust's financial accounts for the relevant year confirming the historic cost and allocation of the shares and the subsequent change to the net assets of the trust*
- *copies of bank statements confirming the purchase of the shares using the trust's settled funds, and*
- *a copy of the share transfer forms or agreements and evidence of the market value at the date of transfer.*

50. *In this example, Steven is able to provide documents that evidence the amount he receives is sourced from the trust corpus and that the corpus reduction applies.*

Example 10 – records to substantiate the corpus reduction applies

51. *We receive information from AUSTRAC that Lisa, a resident of Australia, received funds totalling \$300,000 from an overseas source. Upon commencing our review of Lisa's affairs, Lisa informs us that the amount is a payment sourced from trust corpus of a non-resident deceased estate and that she received the amount as a beneficiary under the will. The trustee of the deceased estate is an independent third party.*

52. *Lisa advises us that she is a distant relative of the deceased and cannot obtain all the core documents listed in paragraph 44 of this Guideline from the independent trustee. Lisa provides us with evidence of the communications with the independent trustee as well as a letter from the trustee confirming the amount of the bequest, and a copy of the deceased estate's financial accounts confirming that the amount has not been paid from income or gains made on the realisation of assets.*

53. *In this example, Lisa provides sufficient evidence that the amount she receives was from trust corpus and that the corpus reduction applies.*

Example 11 – insufficient records to substantiate a relevant reduction applies

54. We receive a private ruling request. The particulars of the request include that John, a resident of Australia, received funds totalling \$500,000 from a non-resident trust, of which he is a beneficiary. John also informs us that the non-resident trust is controlled by his grandmother and that the amount is a payment sourced from trust corpus.

55. John provides us with a copy of the trustee resolution which confirms that an amount of \$500,000 was to be paid to him from trust corpus.

56. John advises us that he is unable to obtain additional records from the trustee, including a copy of the trust deed or relevant financial accounts, and that no further documentation or information can be provided.

57. John is unable to provide enough evidence to substantiate that the amount he receives from the non-resident trust is attributable to trust corpus or otherwise reduced due to the hypothetical resident taxpayer tests. This means that neither the corpus reduction, nor the non-taxable reduction applies. As John cannot establish that a reduction applies, we will administer section 99B on the basis that the full amount should be included in his assessable income.

Example 12 – insufficient records to substantiate a relevant reduction applies

58. We receive information from AUSTRAC that Kate, a resident of Australia, has received \$800,000 from an overseas source. Upon commencing our review of Kate's affairs, Kate informs us that the amount is a payment sourced from trust corpus of a non-resident trust, of which she is a beneficiary. Kate also confirms that the controller of the non-resident trust is her brother.

59. Kate provides us with a copy of the trustee resolution which confirms that an amount of \$800,000 was to be paid to her from trust corpus. Kate also provides a copy of the trust deed and the trust's financial statements to support her assertion.

60. Kate advises us that she is unable to obtain additional records from the trustee, such as general ledger accounts, bank statements or information showing the property used to settle the trust, and that no further documentation or information can be provided.

61. Kate is unable to provide enough evidence to establish that the amount she receives from the non-resident trust is attributable to trust corpus or otherwise reduced due to the hypothetical resident taxpayer tests. This means that neither the corpus reduction, nor the non-taxable reduction applies. As Kate cannot establish that a reduction applies, we will administer section 99B on the basis that the full amount should be included in her assessable income.

Compliance approach for low-risk arrangements

62. Our compliance approach considers 2 common scenarios where section 99B may apply. Where an arrangement meets the outlined criteria, that arrangement will be considered low risk.

63. Where an arrangement does not meet the outlined criteria, this does not mean that section 99B applies, but we may engage with you to better understand the arrangement, including whether a reduction to section 99B applies.

64. Where an arrangement satisfies the outlined criteria and is considered low risk, we will not have cause to dedicate compliance resources to consider the application of

section 99B, other than to confirm that the low-risk features of the relevant arrangement are present in the circumstances.

65. To confirm that an arrangement meets the criteria outlined in each low-risk arrangement detailed, you will need to provide to us the information and documentation outlined for those criteria.

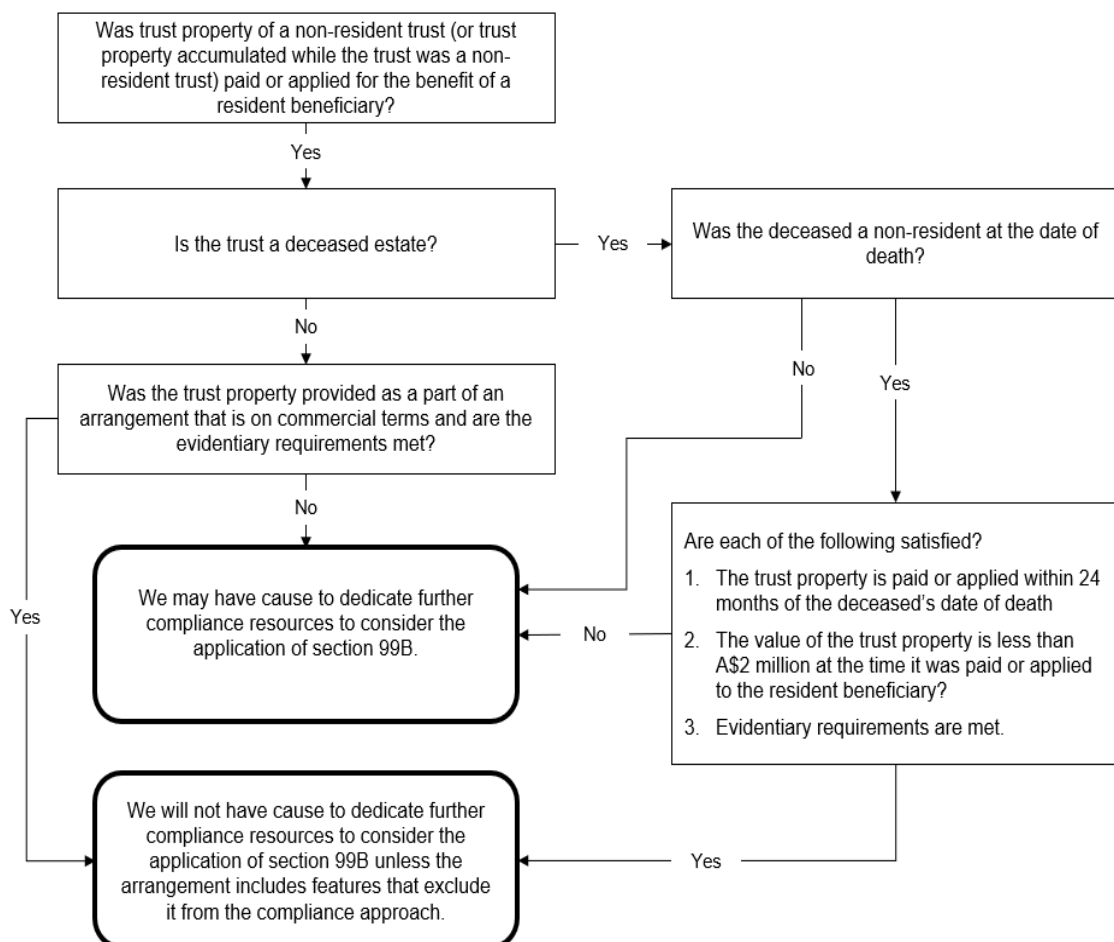
66. Where you cannot provide the required information and documentation, this does not mean that section 99B applies, but the arrangement will not be considered low risk, and further compliance resources may be dedicated to understanding the arrangement.

67. An arrangement will not be considered low risk where:

- There are elements of a contrived nature that seek to enable you to fall within the compliance approach.
- The arrangement was entered into for the purpose of enabling the resident beneficiary to provide a benefit to another resident beneficiary of the trust.

68. Diagram 1 of this Guideline provides an outline of the compliance approach for low-risk arrangements.

Diagram 1: Compliance approach for low-risk arrangements



Compliance approach – deceased estates

69. The corpus of a non-resident deceased estate is typically comprised of the assets that had been owned by the deceased individual. Section 99B may apply to distributions or benefits provided from the deceased estate where the estate has derived income and gains after the date of death.

70. We acknowledge that a period of time is required to properly administer a deceased estate. Where a short amount of time has lapsed between the date of death and the distribution being paid or applied for the benefit of a resident beneficiary, we will consider the arrangement to be low risk provided that the requirements in paragraph 71 of this Guideline are met.

71. An arrangement will be considered low risk where the trustee⁴ distributes an amount or benefit of trust property from a non-resident deceased estate of a deceased who was a non-resident at their date of death, to a resident beneficiary and both of the following criteria are satisfied:

- The trust property, including cash or proceeds from the sale of trust assets, is distributed to the resident beneficiary within 24 months of the date of death.
- The total value of trust property received, whether in multiple payments or in one lump sum payment, by the resident beneficiary does not exceed A\$2 million at the time the amount is paid or applied to the resident beneficiary.

72. The compliance approach outlined in this Guideline is confined to a non-resident deceased estate of a non-resident deceased and does not extend to any testamentary trust established under the will of the deceased.

73. The beneficiary should obtain all relevant information and documentation to evidence that the amount received meets the criteria in paragraph 71 of this Guideline. The type of documentation and information that may be provided to substantiate the criteria includes:

- a document confirming the date of the deceased's death
- the will of the deceased, letter of wishes or correspondence from executors or their legal advisers stating the terms of the will
- documentation confirming that the assets were owned or held by the deceased at the time of death
- documentation setting out the distribution to the Australian-resident beneficiary and the assets of the deceased used to fund this distribution.

Example 13 – beneficiary receives amount from a deceased estate that is within scope of the compliance approach

74. *Simon is a resident beneficiary of his father's estate. Simon's father passes away on 1 December 2023 and is a non-resident at the time of his death. Upon his death, the assets included in his estate are cash, shares in listed entities and artwork. On 1 September 2025, the non-resident trustee, as permitted by the will, sells the listed shares and transfers the proceeds to Simon.*

⁴ A reference to the trustee of a non-resident deceased estate also includes an executor or administrator of a non-resident deceased estate.

75. *Simon obtains a copy of a document which confirms the date of death of his father and the will which confirms Simon's entitlement to the proceeds from the sale of the listed shares. These documents meet the evidentiary requirements outlined in paragraph 73 of this Guideline.*

76. *The proceeds from the sale of the shares are equal to A\$950,000.*

77. *This arrangement is considered low risk under the compliance approach as the transfer of trust property from the non-resident deceased estate occurs within 24 months of the death of Simon's non-resident father, and the value of the property received by Simon is A\$2 million or less.*

Example 14 – multiple beneficiaries receive an amount from a deceased estate that is within scope of the compliance approach

78. *Three resident individuals, Tim, Sally and Leo, are beneficiaries of their mother's estate. Their mother passes away on 1 March 2023 and is a non-resident at the time of her death. Upon her death, the assets included in her estate consist of cash and real property situated overseas. On 30 July 2024, the non-resident trustee, as permitted by the will of the deceased, makes separate payments to Tim, Sally and Leo.*

79. *Tim, Sally and Leo obtain all the relevant information and documentation to substantiate that they meet the evidentiary requirements outlined in paragraph 73 of this Guideline.*

80. *Tim, Sally and Leo each receive a payment equal to A\$800,000 from the deceased estate.*

81. *This arrangement is considered low risk under the compliance approach as each beneficiary receives an amount from the non-resident deceased estate within 24 months of the death of their non-resident mother and the amount received by each resident beneficiary is A\$2 million or less.*

Example 15 – multiple beneficiaries receive an amount from a deceased estate that is outside the scope of the compliance approach

82. *Catherine, Harry and their 2 children, George and Sophia, are resident beneficiaries of Harry's mother's estate. Harry's mother passes away on 1 July 2022 and is a non-resident at the time of her death. Upon her death, the assets in her estate consist of substantial real estate situated overseas as well as listed shares and cash. As permitted by the will, the non-resident trustee sells the assets in the estate and makes a substantial gain.*

83. *On 1 February 2023, the non-resident trustee, as permitted by the will of the deceased, makes separate payments of A\$2 million each to Catherine, Harry, George and Sophia. The beneficiaries obtain all the relevant information and documentation to substantiate that they meet the evidentiary requirements outlined in paragraph 73 of this Guideline.*

84. *During our review, we identify that upon receiving the payments from the deceased estate, both George and Sophia transferred their payment to their parents' joint bank account. The funds were then used at the discretion of Catherine and Harry.*

85. *This arrangement does not meet the criteria to be considered low risk under the compliance approach. The overall arrangement is contrived to facilitate Catherine and Harry each receiving the equivalent of a trust distribution that is in excess of A\$2 million. We may dedicate compliance resources to consider the application of section 99B.*

Example 16 – beneficiary receives amount from a deceased estate more than 24 months after the date of death

86. Jason is a resident beneficiary of his aunt's estate. Jason's aunt passes away on 30 July 2022 and is a non-resident at the time of her death. Upon her death, the assets included in her estate consist of cash and real property situated overseas. Following her death and as permitted by the will, the non-resident trustee sells the property, invests the cash and proceeds from the sale and makes a substantial profit. On 30 June 2025, the non-resident trustee, as permitted by the will of the deceased, makes a payment to Jason.

87. Jason obtains the relevant information and documentation to confirm the date of death of his aunt, that the payment is sourced from funds and the realisation of assets held by his aunt at the time of death, and that the distribution has been paid, in accordance with the will, out of the assets of the deceased estate.

88. The amount received by Jason from the deceased estate is equal to A\$750,000.

89. The arrangement does not meet the criteria to be considered low risk under the compliance approach. The transfer of trust property from the non-resident deceased estate occurs more than 24 months after the death of Jason's aunt. We may dedicate compliance resources to consider the application of section 99B.

Example 17 – beneficiary receives amount from a deceased estate, and evidentiary requirements not met

90. Mary is a resident beneficiary of her brother's estate. On 1 May 2024, the non-resident trustee as permitted by the will, makes a payment to Mary.

91. Mary advises us that her brother passed away on 1 August 2023 and was a non-resident at the time of his death. However, she can only obtain a letter from the executor outlining her entitlement. No other information or documentation can be obtained to confirm the date of death of Mary's brother, or whether the payment was sourced from assets owned by her brother at the date of his death.

92. The amount received by Mary from the deceased estate is equal to A\$500,000.

93. This arrangement does not meet the criteria to be considered low risk under the compliance approach. Mary cannot obtain the relevant information and documentation required to substantiate that the arrangement falls within the compliance approach. We may dedicate compliance resources to consider the application of section 99B.

Example 18 – beneficiary receives amount from a deceased estate in excess of A\$2 million

94. Denise is a resident beneficiary of her aunt's estate. Denise's aunt passes away on 1 February 2023 and is a non-resident at the time of her death. Upon her death, the only asset included in her estate is real property situated overseas. Following her death, and as permitted by the will, the non-resident trustee sells the property, invests the proceeds and makes a substantial profit. On 1 January 2025, the non-resident trustee, as permitted by the will of the deceased, makes a payment to Denise.

95. Denise obtains all the relevant information and documentation to evidence that she meets the evidentiary requirements outlined in paragraph 73 of this Guideline.

96. The amount received by Denise from the deceased estate is equal to A\$2,500,000.

97. This arrangement does not meet the criteria to be considered low risk under the compliance approach. The trust property received by Denise exceeds A\$2 million. We may dedicate compliance resources to consider the application of section 99B.

Example 19 – multiple payments from a deceased estate in excess of A\$2 million

98. Arthur is a resident beneficiary of his sister's estate. Arthur's sister passes away on 2 April 2024 and is a non-resident at the time of her death. Upon her death, the assets included in her estate consist of real property situated overseas, listed shares and cash. As permitted by the will, Arthur is entitled to receive the proceeds from the sale of the listed shares and the cash. The non-resident trustee, as permitted by the will, sells the listed shares and makes a substantial gain. The proceeds from the sale of the shares are equal to A\$2,500,000 and the cash is equivalent to A\$1,500,000.

99. As permitted by the will, the non-resident trustee transfers the amount to Arthur in multiple payments, within 24 months of the deceased's date of death. Each payment is less than A\$2 million.

100. This arrangement does not meet the criteria to be considered low risk under the compliance approach. Although the amounts are received within the 24 months following the death of Arthur's non-resident sister, Arthur receives an aggregated amount or benefit in excess of A\$2 million. We may dedicate compliance resources to consider the application of section 99B.

Compliance approach – provision of trust property on commercial terms

101. Section 99B may apply where a trustee of a non-resident trust allows a resident beneficiary to use or borrow trust property, including loans of monetary amounts.

102. Examples include where a resident beneficiary has a short-term agreement to use real property owned by the trust or borrow an amount from the trust.

103. We will consider an arrangement to be low risk where the trustee of a non-resident trust provides trust property to a resident beneficiary as part of an agreement for the beneficiary to borrow, hire or use that property on commercial terms and each of the following are satisfied:

- The borrowing, hire or use of the trust property is subject to an agreement, whether written or verbal.
- The agreement is made on commercial terms.
- The resident beneficiary makes a physical payment to the trustee equal to the interest, hire or use per the commercial terms.

104. We will accept that an agreement is on commercial terms where the resident beneficiary is able to provide documentation objectively evidencing that at the time of entering into the agreement:

- the rate applied for the interest, use or hire is consistent with market rates in the same or similar circumstances, and
- the terms of the agreement are consistent with terms available in the market in the same or similar circumstances.

105. To further reduce compliance costs, a safe harbour option is available for monetary amounts loaned from a trustee of a non-resident trust, for the purposes of this compliance approach to section 99B to objectively evidence that an agreement is on commercial terms. Under the safe harbour option, the resident beneficiary and trustee of the non-resident trust can rely upon:

- the rate prescribed for Division 7A purposes in subsection 109N(2) in respect of the interest rate, and

- the term prescribed for Division 7A purposes in subsection 109N(3) in respect of the loan term.

106. The safe harbour option cannot be relied on for any other purposes and use of the terms does not of itself result in the application of Division 7A to the arrangement.

107. The beneficiary should retain all contemporaneous evidence that an agreement exists, which may include:

- written agreements
- written or electronic correspondence between the beneficiary and the trustee, including emails and electronic messaging
- memorandums
- trustee minutes.

108. Where a beneficiary and trustee only have a verbal agreement, evidence to substantiate the commercial terms of the agreement will still be required. This can include:

- bank statements or payment transfer documents confirming the amounts paid to the trustee
- contemporaneous relevant market data and information
- calculations of repayments identifying the terms applied to the arrangement.

109. The beneficiary should also retain any other documentation to evidence that the agreement was made on commercial terms, and that they have complied with those terms. This includes supporting documentation to evidence the payment of the interest, hire or use amount to the trustee of the non-resident trust in each of the relevant income years during the agreement period.

Example 20 – renting a house owned by the trust as part of an agreement on commercial terms

110. *Chris is a resident beneficiary of a non-resident trust. The trustee allows Chris to occupy a house that is trust property for an 18-month period. The trustee enters into a written agreement with Chris, on commercial terms.*

111. *Chris provides a copy of the written agreement, a copy of the market rental appraisal from a local licensed real estate agent confirming the rent included under the agreement is market rent, and bank statements to confirm the rental amount is paid to the trustee.*

112. *This arrangement is considered low risk under the compliance approach. The agreement is on commercial terms and the rent on the property is fully paid to the trustee of the non-resident trust.*

Example 21 – loan from a trust as part of an agreement on commercial terms

113. *Anthony is a resident beneficiary of a non-resident trust. The trustee allows Anthony to borrow \$500,000 from trust property. The trustee and Anthony enter into a verbal agreement on commercial terms.*

114. *Anthony provides evidence confirming that the interest is paid at a rate equal to the rate prescribed under Division 7A and provides emails between him and the trustee confirming the term of the loan is consistent with the term prescribed for Division 7A.*

Anthony also provides bank statements to confirm the interest amount is paid to the trustee.

115. *This arrangement is considered low risk under the compliance approach. Although a verbal agreement was made between Anthony and the trustee, Anthony is able to provide evidence that the agreement is on commercial terms using the safe harbour option. An amount of interest, equal to interest calculated using Division 7A rates, is also paid to the trustee of the non-resident trust.*

Example 22 – use of trust property as part of an agreement on commercial terms

116. *Belinda is a resident beneficiary of a non-resident trust. The trust property includes a rare collection of artworks. The trustee allows Belinda to hang the artwork in her place of business for a 3-year period.*

117. *The trustee and Belinda enter into an agreement on commercial terms where the hire amount is equivalent to the rate the trustee could obtain from leasing the artwork to an independent third party. Belinda pays the hire amount to the trustee.*

118. *Belinda provides a copy of the trustee minute evidencing the agreement to hire the artwork, documentation from artwork dealers confirming the hire rate applied is equal to the market rate, and bank statements to confirm the hire amount is paid to the trustee.*

119. *This arrangement is considered low risk under the compliance approach. The agreement is on commercial terms and the amount equal to the hire of the artwork is paid to the trustee of the non-resident trust.*

Example 23 – use of trust property outside of an agreement on commercial terms

120. *Andrew is a resident beneficiary of a non-resident trust. The trust property includes a yacht. The trustee allows Andrew to hire the yacht for a period of 6 months.*

121. *The trustee and Andrew enter into an agreement on commercial terms where the hire amount is equivalent to the rate the trustee can obtain from leasing the yacht to an independent third party. Andrew pays the hire amount to the trustee.*

122. *The yacht is ordinarily moored at a marina near Andrew's home. At the conclusion of the lease period, the beneficiary continues to have control of and access to the yacht for his enjoyment.*

123. *This arrangement does not meet the criteria to be considered low risk under the compliance approach. The trust property continues to be available for the benefit of the beneficiary outside of the agreed hire period and no hire amount is paid to the trustee for the period beyond the agreed hire period. We may dedicate compliance resources to consider the application of section 99B.*

Example 24 – record keeping insufficient to evidence a commercial arrangement

124. *Sarah is a resident of Australia and receives \$10,000 from the trust property of a non-resident trust estate, of which she is a beneficiary. The trustee documents a written resolution setting out the decision to lend the \$10,000 from trust property to Sarah. Sarah asserts that payments for interest are made as and when funds permit but has no records to substantiate her claims.*

125. *This arrangement does not meet the criteria to be considered low risk under the compliance approach. There is no evidence confirming that an agreement on commercial terms has been put in place and complied with. We may dedicate compliance resources to consider the application of section 99B.*

Example 25 – artwork valued below market value

126. *Rachel is a resident beneficiary of a non-resident family trust. The trust property includes artwork. The trustee allows Rachel to display the artwork at her place of residence for a period of 12 months.*

127. *The trustee and Rachel enter into a written lease agreement. The lease agreement is not on commercial terms as the lease payments are below commercial rates due to the artwork being undervalued.*

128. *This arrangement does not meet the criteria to be considered low risk under the compliance approach. The terms of the lease agreement are not commercial. We may dedicate compliance resources to consider the application of section 99B*

Example 26 – forgiveness of loan due to extenuating circumstances

129. *Charlotte is a resident and receives \$10,000 from the property of a non-resident trust estate, of which she is a beneficiary.*

130. *Charlotte has supporting documentation to confirm that the payment of \$10,000 from trust property is a loan from the trustee, and all relevant loan terms are consistent with it being on commercial terms.*

131. *During our review, we identify that the loan is subsequently forgiven by the non-resident trust as Charlotte is unable to repay it due to extenuating circumstances.*

132. *This arrangement does not meet the criteria to be considered low risk under the compliance approach. Charlotte's obligation to pay the debt is released or waived or is otherwise extinguished other than by repaying the debt in full. We may dedicate compliance resources to consider the application of section 99B.*

Example 27 – loan to a beneficiary with interest payments returned to the beneficiary

133. *Louis is a resident beneficiary of a non-resident family trust. The trustee allows Louis to borrow \$500,000 from trust property for a 5-year period.*

134. *The trustee and Louis enter into a written agreement on commercial terms. Apart from the written agreement, Louis has evidence confirming the interest rate is the market rate, and bank statements to confirm the interest amount is paid to the trustee.*

135. *During our review, we identify a round robin arrangement whereby the trustee applies the funds received in respect of the interest to make payments back to Louis. The payments to Louis are not treated by the trustee or Louis as a trust distribution. The effect of this is that no interest is being paid in accordance with the written agreement.*

136. *This arrangement does not meet the criteria to be considered low risk under the compliance approach. There are elements of a contrived nature that seek to enable the*

resident beneficiary to fall within the compliance approach. We may dedicate compliance resources to consider the application of section 99B.

Commissioner of Taxation

27 November 2024

References

Previous draft:

PCG 2024/D1

- ITAA 1936 99A
- ITAA 1936 99B
- ITAA 1936 99B(1)

Related Ruling/Determination:

TD 2024/9

- ITAA 1936 99B(2)
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Legislative references:

- ITAA 1936 Div 7A
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- ITAA 1936 98
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 - ITAA 1936 109N(2)
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ATO references

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