

# ***PS LA 2002/11 - Issues concerning fixed entitlements to a share of the income or capital of a trust***

! This cover sheet is provided for information only. It does not form part of *PS LA 2002/11 - Issues concerning fixed entitlements to a share of the income or capital of a trust*

! From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This Practice statement contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This LAPS continues to apply in relation to the remade Regulations.

A [comparison table](#) which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this LAPS is available.

! This document has changed over time. This version was published on 9 July 2015



# Issues concerning fixed entitlements to a share of the income or capital of a trust

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This Law Administration Practice Statement advises the circumstances in which issues relating to fixed entitlements to a share of the income or capital of a trust must be escalated to the Trust Technical Network and Trust Risk Manager

*This practice statement is an internal ATO document, and is an instruction to ATO staff.*

*Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

## 1. What this practice statement is about

Among other things, the rules contained in Schedule 2F of the *Income Tax Assessment Act 1936* (ITAA 1936):

- Establish when a beneficiary has a fixed entitlement to a share of the income or capital of a trust (and thus when the trust is a fixed trust), and
- Provide that the Commissioner may exercise a discretion to deem that a person has a fixed entitlement.

The concepts of 'fixed entitlement' and 'fixed trust' are also incorporated in other areas of the tax legislation.

These concepts must be interpreted and applied consistently. This practice statement therefore outlines when requests for advice should be escalated to the [Trust Technical Network](#) and the [Trust Risk Manager](#) for consideration.

## 2. What requests for advice must I escalate to the Trust Technical Network and Trust Risk Manager?

You must escalate to the Trust Technical Network and Trust Risk Manager any requests for advice that concern:

- Persons having fixed entitlements to income or capital of a trust under subsection 272-5(1) of Schedule 2F to the ITAA 1936, or
- The exercise of the discretion to deem a fixed entitlement under subsection 272-5(3) of Schedule 2F to the ITAA 1936.

You must also escalate any requests for advice in relation to the legislative sections outlined in Attachment A, where that request requires consideration of the terms 'fixed entitlement' and 'fixed trust'.

## 3. More information

To find out more, contact the [Trust Technical Network](#) or the [Trust Risk Manager](#).

**Date issued** 9 May 2002

**Date of effect** 19 September 2001

## Attachment A

| <b>Income Tax Assessment Act 1936</b>                             |   |
|---|---|
| Schedule 2F   | Trust loss provisions   |
| Section 102UC   | Trustee beneficiary reporting   |
| Sections 160APA; 160APHD  | Franking of dividends   |
| <b>Income Tax Assessment Act 1997</b>                             |   |
| Section 104-72  | Capital gains tax event E4 and trusts   |
| Section 115-50  | Discount capital gains  |
| Section 115-110   | Foreign or temporary residents – individuals with trust gains                               |
| Section 116-35  | Capital proceeds – market value substitution rule   |
| Section 118-510   | Capital gains tax and venture capital   |
| Section 124-781   | Capital gains tax and scrip-for-scrip rollover  |
| Subdivision 165-F   | Company tax losses – ownership of a company by non-fixed trusts                             |
| Section 170-265   | Company as a member of a linked group   |
| Section 207-128   | Franked distributions - reinvestment choice   |
| Section 415-20  | Designated infrastructure entity  |
| Section 703-40  | Consolidation: treating entities held through non-fixed trusts as wholly-owned subsidiaries |
| Section 707-325   | Consolidation: modified market value of an entity becoming a member of a consolidated group |
| Section 713-50  | Consolidation: determining destination of distribution by non-fixed trust                   |
| Section 719-35  | Consolidation: treating entities held through non-fixed trusts as wholly owned subsidiaries |
| Section 725-65  | Direct value shifting: cause of the value shift   |
| Section 727-110   | Indirect value shifting: common ownership nexus test  |
| Sections 727-360; 727-365; 727-400; 727-410                       | Indirect value shifting: control, common ownership and ultimate stake tests                 |
| Section 855-40  | Capital gains or losses of foreign residents  |
| <b>A New Tax System (Goods and Services Tax) Regulations 1999</b> |   |
| Regulations 48-10.01 and 48-10.03A                                | Approval of GST groups  |
| <b>Schedule 1 to the Taxation Administration Act 1953</b>         |   |
| Section 45-287  | Trust income included in instalment income of a beneficiary                                 |