



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

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

This 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.

*This Practice Statement is an internal ATO document and an instruction to ATO staff.*

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## 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 of Taxation 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](#) for consideration.

## 2. Requests for advice that must be escalated to the Trust Technical Network

You must escalate 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 the Attachment to this Practice Statement, 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](#).

**Date issued:** 9 May 2002

**Date of effect:** 19 September 2001

**Business line:** PW

## Attachment

Table 1: *Income Tax Assessment Act 1936*

Provision	Contends with
Schedule 2F	Trust loss provisions
Section 102UC	Trustee beneficiary reporting
Sections 160APA and 160APHD	Franking of dividends

Table 2: *Income Tax Assessment Act 1997*

Provision	Contends with
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 and 727-410	Indirect value shifting: control, common ownership and ultimate stake tests
Section 855-40	Capital gains or losses of foreign residents

Table 3: *A New Tax System (Goods and Services Tax) Regulations 2019*

Provision	Contends with
Sections 48-10.03A and 196-1.01	Approval of GST groups

Table 4: *Schedule 1 to the Taxation Administration Act 1953*

Provision	Contends with
Section 45-287	Trust income included in instalment income of a beneficiary

## Amendment history

### 24 October 2024

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

### 9 July 2015

Part	Comment
All	Update to new LAPS format and style.

### 27 June 2013

Part	Comment
Throughout	Omitted all occurrences of 'Trust Community of Practice'; substituted 'Trust Technical Network'.

### 28 June 2012

Part	Comment
Throughout	Updated to reflect the changed responsibilities for the administration of Trust loss measures.

### 21 May 2012

Part	Comment
Contact details	Updated.

### 6 August 2008

Part	Comment
Contact details	Updated.

## References

<b>Legislative references</b>	ITAA 1936 Sch 2F ITAA 1936 Sch 2F 272-5(1) ITAA 1936 Sch 2F 272-5(3) ITAA 1936 102UC ITAA 1936 160APA ITAA 1936 160APHD ITAA 1997 104-72 ITAA 1997 115-50 ITAA 1997 115-110 ITAA 1997 116-35 ITAA 1997 118-510 ITAA 1997 124-781 ITAA 1997 Subdiv 165-F ITAA 1997 170-265 ITAA 1997 207-128 ITAA 1997 415-20 ITAA 1997 703-40 ITAA 1997 707-325 ITAA 1997 713-50 ITAA 1997 719-35 ITAA 1997 725-65 ITAA 1997 727-110 ITAA 1997 727-360 ITAA 1997 727-365 ITAA 1997 727-400 ITAA 1997 727-410 ITAA 1997 855-40 ANTS(GST)R 2019 48-10.03A ANTS(GST)R 2019 196-1.01 TAA 1953 Sch 1 45-287
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## ATO references

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