


# ***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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 This document has changed over time. This version was published on *24 October 2024*



# 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.*

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

|                     |                                     |
|---------------------|-------------------------------------|
| <b>ISSN</b>         | 2651-9526                           |
| <b>File</b>         | 2002/006208; 1-1440QBJC             |
| <b>ATOlaw topic</b> | Administration ~~ Other obligations |

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