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QC 37844

Trustee resolutions

A checklist for trustees who wish to make beneficiaries presently entitled to trust income by way of making resolutions.

Last updated 31 May 2023

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Overview

This information is for trustees who wish to make beneficiaries of a trust presently entitled to trust income for an income year by way of making resolutions. This includes where doing so, they also want to make beneficiaries specifically entitled to franked dividends and capital gains included in that income. It is also for trustees who wish to make beneficiaries specifically entitled to capital gains forming part of the trust capital.

You need to ensure resolutions meet the requirements explained below. If a resolution is not effective, other beneficiaries or you (as trustee) may instead be assessed on the relevant share of the trust's net (taxable) income. Where a trustee is assessed, that may be at the top rate of tax.

Do you have a complete copy of the trust deed?

Make sure you have a complete copy of the trust deed, including any amendments. You need to be sure that any resolution you make to distribute the trust's income or capital is consistent with the terms of the deed.

Who can you appoint income or capital to?

Check the trust deed to ensure that the intended beneficiaries are within the class of persons who can benefit from an appointment of trust income (or of trust capital, if you intend to stream a capital gain that is not income of your trust) and not listed as excluded beneficiaries. For example, some trust deeds specifically exclude the trustee of the trust from being a beneficiary.

If you make an appointment in error to someone who is not a beneficiary, the default beneficiaries (if any) or you as trustee may be assessed on a corresponding part of the trust's net (taxable) income.

Has the trust vested?

Check the trust deed to ensure that the trust has not yet vested. If it has, then entitlements to income will already have vested in those beneficiaries entitled to the trust fund on the vesting date and attempted appointments of income or capital that are inconsistent with those entitlements will be ineffective.

Is there a family trust election in force for the trust?

Eligible trusts can make a family trust election to access **certain tax concessions**. If the election has been made, check whether the beneficiaries to whom you intend to distribute trust income or capital are within the family group of the individual specified in the election.

Appointing trust income or capital to a person outside the family group will result in a family trust distribution tax liability to you (as trustee). The beneficiaries who would otherwise be assessable because of the resolution will not be assessable.

When do you have to make resolutions?

If you make beneficiaries entitled to trust income for an income year by way of a resolution, it will only be effective for determining who is assessed on the trust's net (taxable) income if it is made by the end of the income year (30 June).

Sometimes a trust deed will require a resolution to be made before the end of the income year. In this case you should comply with the deed. For example, if the trust deed requires your resolution to be made by 28 June, then you should make the resolution by that date.

If your trust deed requires an earlier resolution, all references below to 30 June should be read as the earlier date required by your deed.

If you are making beneficiaries specifically entitled to trust capital gains by way of appointing trust capital to them, that must be done within 2 months of the end of the income year (31 August).

Is there a standard format for a resolution?

No. As there are a wide variety of trust deeds with different requirements for trustee resolutions, we cannot provide a standard format.

The important thing is that your resolution makes one or more beneficiaries presently entitled to the trust income by 30 June.

Does a resolution have to be in writing?

Whether the resolution must be recorded in writing will depend on the terms of your trust deed. However, a written record will provide better evidence of the resolution and avoid a later dispute, for example with us or with relevant beneficiaries, as to whether any resolution was made.

A written record will be essential if you want to effectively stream capital gains or franked distributions for tax purposes. This is because a beneficiary can only be specifically entitled to franked dividends or capital gains if this entitlement is recorded in writing in the records of the trust either:

- by 30 June for franked dividends
- by 31 August for capital gains.

A beneficiary cannot be made specifically entitled to a capital gain included in the income of the trust estate after 30 June if, as a result of the operation of the trust deed, another beneficiary (including a default beneficiary) was presently entitled to it before that date.

Is the wording of your resolution clear and unambiguous?

Check that your resolution is unambiguous and robust enough to deal with all eventualities.

Example: allocation of income

A trustee resolves to distribute the trust income as follows:

A – the first $100

B – the next $100

C – the balance of the income

D – the balance of the income.

The trustee may have been intending to appoint to C and D 50% of the income remaining after the specific appointments to A and

B. But on one reading, all of that income was appointed to C, so that there is nothing that can be distributed to D.

Example: description of income

A trustee simply resolves to distribute all of the trading income to a beneficiary. But the trustee, in carrying on a business, has derived some interest income – this interest income would not be dealt with by the resolution. Depending on the wording of the particular trust deed, the result would be that some of the net (taxable) income of the trust would be assessed to the trustee or default beneficiaries.

Is the entitlement vested?

A beneficiary's entitlement must be vested by 30 June. An entitlement that will only arise on the happening of an event in the future, is not vested

For example, a resolution may not be effective to create a vested entitlement to income if it stated that an entitlement of a beneficiary would arise in the event of a future adjustment to the trust's net (taxable) income by the ATO. Such variation of income resolutions are discussed in more detail below.

Can the entitlement be taken away?

For a beneficiary to be presently entitled to trust income, their right to the income must be indefeasible. That is, the entitlement must not be capable of being taken away. If an entitlement to trust income can be taken away from a beneficiary, then the trustee may be assessed on the corresponding part of the trust's net (taxable) income.

Variation of income resolutions

Variation of income resolutions are resolutions made by a trustee that attempt to deal with situations where there is a change to the net income of the trust after the end of the income year.

These resolutions are discussed in Taxation Determination **TD 2012/22** *Income tax: for the purposes of paragraph 97(1)(a) of the Income Tax Assessment Act 1936 (ITAA 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?*.

Trustees have previously sought to use these resolutions as an attempt to control who bears the tax if a subsequent review or audit by us, or an amendment by the trustee, results in an adjustment to the net income of the trust.

A variation of income resolution may be in a similar format to the following example, which is based on one of the resolutions considered in the Full Federal Court case of *Lewski v FCT* [2017] FCAFC 145. The trustee first resolves to distribute 100% of the trust income to a named individual beneficiary, and then resolves that, should the Commissioner of Taxation disallow any amount as a deduction or include any amount in the assessable income of the trust, 100% of such amount or amounts are to be deemed to be distributed on 30 June 20XX to Corporate Beneficiary Pty Ltd.

Resolutions like these give rise to considerable uncertainty and often don't achieve the outcomes sought by the trustee. They may result in a range of possible interpretations that cause genuine doubt as to who is presently entitled.

The tax outcome in each case will depend on the legal effect of the particular resolutions. This is a matter of trust law, not tax law, and the Commissioner is not able to conclusively determine this.

Where there are a range of possible interpretations, we will consider raising **alternative assessments** where the correctness of each assessment depends upon the proper legal effect of the resolutions. This may include assessments to beneficiaries (including default beneficiaries) as well as an assessment to the trustee under section 99A of the *Income Tax Assessment Act 1936* on the highest amount that they could be assessed on under any of the alternative views.

Example: variation of income resolution

On 30 June 2023, the trustee of the Cashew Family Trust resolved to distribute 100% of the trust income to Andy.

The trustee further resolved (variation of income resolution) that should the Commissioner later include any amount in the assessable income of the trust, or disallow a deduction in calculating the net income of the trust, that amount shall be distributed to Bouquet Pty Ltd.

The trust deed of the Cashew Family Trust equates the income of the trust estate with its section 95 net income unless the trustee determines it to be a different amount. The trustee resolutions did not make explicit reference to the trustee making a determination of trust income.

The trust deed of the Cashew Family Trust provides that Edna Pty Ltd is the default beneficiary who will be entitled to any trust income that the trustee has not dealt with effectively by 30 June each year.

The trust tax return lodged by the trustee for the year ended 30 June 2023 shows the net income as $100,000 consisting of business income.

We later determined that the income from the business carried on by the trustee was understated by $20,000. That is, the net income of the trust was not $100,000 as calculated by the trustee but rather $120,000 and likewise the trust income as defined by the deed was $120,000.

No variation of income resolution

If there was no ‘variation of income’ resolution, Andy would be presently entitled to 100% of the income of the trust estate and therefore assessed on $120,000 because of the Commissioner’s adjustment of net income.

Effect of a variation of income resolution

The inclusion of a variation of income resolution gives rise to a range of different possible outcomes, depending on the legal question of whether it is authorised by the trust deed and the subsequent effects on the validity of the resolutions made by the trustee.

There are 3 possible ways in which the validity of the variation of income resolution may be interpreted under trust law. These are that the resolution is:

- not authorised by the trust deed and cannot be severed from the other parts of the resolutions, therefore the income distribution resolutions are wholly invalid
- not authorised by the trust deed, but may be severed without invalidating the remaining income distribution resolutions, therefore the resolutions are partially valid
- authorised by the trust deed and the income distribution resolutions are fully valid.

These 3 possibilities then give rise to further different outcomes, depending on the precise terms of the trust deed and the resolutions.

The following scenarios give a high-level summary of the range of trust law interpretations that could be reached by a court if the matter were litigated, and step through the consequent tax outcomes.

Neither the trustee nor the Commissioner can have certainty as to the interpretative outcome.

In these circumstances, we will consider raising alternative assessments to Andy, Bouquet Pty Ltd, the trustee, and Edna Pty Ltd.

Scenario 1 – variation of income resolution results in income distribution resolutions being wholly invalid

Where the income distribution resolutions are wholly invalid, they will not operate to make any beneficiaries entitled to any income.

Andy will therefore not be required to include any amount in his assessable income under section 97 of the ITAA 1936.

As the default beneficiary, Edna Pty Ltd would be liable to tax on $120,000 under section 97.

If there was no default beneficiary, the trustee would be taxed on $120,000 under section 99A at the top marginal rate.

Scenario 2 – variation of income resolution is invalid, but the remaining income resolution remains valid

Where the variation of income resolution is not authorised, but is able to be severed, Bouquet Pty Ltd would not be presently entitled to any income. The following 3 outcomes are possible.

- The resolutions may operate to make Andy presently entitled to 100% of the income of the trust estate, being the adjusted net income of $120,000. Andy would then be assessable on $120,000.
- The resolutions may be construed as an implicit determination by the trustee that trust income is equal to $100,000.

  Andy would then be presently entitled to 100% of trust income, and therefore be taxed on 100% of taxable income (i.e. $120,000) under section 97.

  As all income has been distributed for trust law purposes, Edna Pty Ltd will not be taxable, as the default beneficiary clause will have no work to do.
- The resolution to distribute 100% of the trust income to Andy may apply to make him presently entitled to a specific amount of $100,000 (being 100% of the trust income amount known by the trustee at the date of the resolution).

  Andy must therefore include $100,000 of net income in his assessable income under section 97.

  The remaining $20,000 of trust income would represent an amount to which no beneficiary was presently entitled at 30 June 2023. It would therefore be assessed to the trustee under section 99A, or potentially the default beneficiary (Edna Pty Ltd) under section 97. This would depend on the construction of the default beneficiary clause in the context of the resolutions which were made.

Scenario 3 – the variation of income resolution is valid

Where the 'variation of income' resolution is authorised by the trust deed and is valid, the following 3 outcomes are possible.

- The resolutions make Andy presently entitled to $120,000, being 100% of the trust income, and the variation of income resolution has no work to do.
- The resolutions make Andy entitled to 100% of the trust income (whatever that turns out to be) but he is not presently

entitled to that income for tax purposes, because his interest is contingent on whether certain future events occur.

Because Andy's entitlement is valid for trust law purposes but does not confer present entitlement, it is unlikely that the default beneficiary clause would be triggered. The full amount of $120,000 would likely be assessed to the trustee under section 99A.

- The resolution to distribute 100% of the trust income to Andy may apply to make him presently entitled to a specific amount of $100,000 (being 100% of the trust income amount known by the trustee at the date of the resolution). Andy would therefore be assessable on $100,000 under section 97.

  The variation of income resolution could then be interpreted as dealing with the remaining $20,000 of trust net income in any of the 3 following ways.

  – The variation of income resolution has no work to do, because the trustee has made an implicit determination that the trust income is equal to the amount of $100,000 known at 30 June.

    Under this interpretation, all the trust income has been distributed by the trustee, and any additional income is not dealt with by the resolution.

    As all income has been distributed for trust law purposes, Edna Pty Ltd will not be taxable as the default beneficiary clause will have no work to do.

    Consequently, Andy would be required to include $120,000 in his assessable income.

  – The variation of income resolution might make Bouquet Pty Ltd entitled to the additional trust income coming to the trustee's notice because of the Commissioner's amendment.

    Bouquet Pty Ltd would therefore be entitled to trust income of $20,000, and the default beneficiary clause would have no effect.

However, as the entitlement is contingent on an event occurring after 30 June (i.e. the Commissioner’s adjustment) it's possible that Bouquet Pty Ltd has not been made presently entitled to this income.

Consequently, the trustee would be assessed and liable to pay tax on the $20,000 under section 99A.

– Bouquet Pty Ltd is entitled to a non-contingent amount which is merely to be ascertained with reference to events after 30 June. In that case, Bouquet Pty Ltd would be presently entitled to $20,000 and required to include that amount in its assessable income.

How should you calculate and report the income of the trust?

Make sure you understand how the income of your trust is calculated and that your resolution reflects this. For example, if the deed defines the income of the trust to be an amount equal to the trust's net (taxable) income, your resolution should not then seek to appoint accounting income.

If your trust deed equates the trust's income with its net (taxable) income, you should note our view (set out in Draft Taxation Ruling TR 2012/D1) that income cannot generally include notional amounts such as franking credits.

The income of the trust needs to be reported on the trust tax return, along with each beneficiary’s share of that income. This requirement is in addition to reporting the net (taxable) income of the trust and each beneficiary's share of that net (taxable) income. We use this additional information to check each beneficiary’s share of the trust’s net (taxable) income and to consider whether anti-avoidance provisions may apply.

Are you ‘streaming’ capital gains or franked distributions?

If you are ‘streaming’ capital gains or franked distributions (seeking for their character to be retained as capital gains or franked distributions in the hands of beneficiaries), check that:

- you are not prevented from doing so under the terms of the deed
- you have complied with the relevant legislative requirements relating to the creation and recording of these entitlements.

For example, if a trustee wants to stream a capital gain to a particular beneficiary so that the gain is assessed only to that beneficiary, the beneficiary must be entitled to all of the financial benefits referable to the capital gain. In a trust where income is equated with the trust's net (taxable) income, a resolution distributing that part of the income attributable to a discount gain will only create an entitlement to 50% of the financial benefits that arise from the capital gain – that is, the discount component of the capital gain being non-assessable will not form part of the income of the trust.

To create an entitlement to all of the financial benefits referable to the capital gain, the trustee would also need to distribute that part of the trust capital attributable to the discount component of the gain.

While tax law allows until 31 August to record the specific entitlements relating to capital gains, such entitlements cannot be created over any amount that has already been dealt with – for example, any capital gains forming part of trust income that was already dealt with by 30 June.

Are you seeking to ‘stream’ other types of income?

The tax attributes of other types of income cannot be separately streamed to different beneficiaries in the way that capital gains and franked distributions may be streamed. Under the general trust-assessing provisions in tax law, each beneficiary is taxed on a proportionate share of each component of the trust's net (taxable) income and cannot be treated as having a share of net income that consists of one category of income (for example, foreign income).

Will records created after 30 June be accepted as evidence of the making of the

resolution by that date?

Yes. If a resolution is validly made by 30 June, we will accept records created after 30 June as evidence of the making of a resolution by that date. The following examples show the types of records and circumstances in which we will accept them.

Example: Individual trustee

On 29 June, an individual trustee writes a note, dated 29 June, stating that they have resolved to distribute the trust income in a certain way. On 15 July, the trustee types the note reflecting the resolution of 29 June and provides a copy to the beneficiaries. We will accept the handwritten or typed notes as evidence of the making of the resolution on 29 June.

Example: Corporate trustee

The corporate trustees of a larger trust group map out where distributions are to be made, with appropriate percentages. This 'map' is signed by the relevant trustees on 26 June to evidence the resolutions that have been made. On 25 July, the resolutions are recorded in the minutes book maintained by the trustees. We will accept the signed 'map' or minutes book as evidence of the making of the resolutions on 26 June.

Do you have to prepare the trust accounts by 30 June to make beneficiaries presently entitled to trust income?

No. Your resolution does not need to specify an actual dollar amount for the resolution to be effective in making a beneficiary presently entitled, unless the trust deed specifically requires it.

A resolution is effective if it prescribes a clear methodology for calculating the entitlement – for example, the entitlement can be expressed as a specified percentage of the income, whatever that turns out to be.

Alternatively, if you know that the income of the trust will be at least a certain amount, you may choose to make one or more beneficiaries presently entitled to the certain amount, and other beneficiaries entitled to the balance, whatever that turns out to be.

What happens if you make a resolution after 30 June?

If no beneficiary (including a default beneficiary) was presently entitled to trust income as at 30 June, and no beneficiary was made specifically entitled to trust capital gains (if any), then you (the trustee) will be assessed on the trust's net (taxable) income.

Have all entitled beneficiaries quoted their tax file number (TFN) to you?

If not, **TFN withholding rules** apply to closely held trusts, including family trusts.

QC 25912

Streamlined trust tax return for custodians with non-resident beneficiaries

Certain custodians can lodge a single trust tax return for the separate net incomes of multiple trust estates with non-resident beneficiaries.

Last updated 27 January 2021

On this page

This information is for trustees who are:

- 'custodians' – that is, they provide a predominantly custodial or depository service (as defined in subsection 12-390 (9) in Schedule 1 to the *Taxation Administration Act 1953*)
- assessable under subsections 98(3) or 98(4) of the *Income Tax Assessment Act (ITAA) 1936* for trust income that relates to non-resident beneficiaries.

These custodians can include in a single trust tax return the separate net incomes of multiple trust estates with non-resident beneficiaries.

The practical benefit is that when the resident custodian holds separate accounts for multiple unrelated clients of a non-resident global custodian (each of which may represent a separate trust estate), it will not be necessary to lodge a separate return for every trust estate.

How the streamlined arrangement works

If a custodian with subsections 98(3) or 98(4) liabilities has not previously lodged a return under this arrangement, please contact us via LargeServiceTeam@ato.gov.au to request a specific identifier to be issued.

We will establish sub-accounts for each separate trust estate, based on the information provided by the custodian about their trustee relationships involving non-resident beneficiaries.

The custodian lodges a single tax return for what may comprise multiple trust estates. The return must include a separate statement of distribution for each beneficiary, but only with the information specified below.

This streamlined approach means that we may require additional information from time to time for our compliance assurance activities. This would be obtained under separate arrangements.

Completing the trust tax return

Use the trust tax return for the relevant income year but complete only the following items (based on the Trust tax return 2020):

- **Tax file number (TFN)** or specific identifier in lieu of TFN to identify the custodian in its capacity as trustee. This is created by request us at LargeServiceTeam@ato.gov.au
- **Name of trust**: name identifying the cluster of trusts (for example, 'X Custodian Co as trustee for non-resident beneficiaries')
- **Current postal address**: of custodian, as trustee
- **Full name of the trustee to whom notices should be sent**
- **Daytime contact phone number**: of custodian, as trustee
- **Type of trust**: 'F' for fixed trusts
- **Is any tax payable by the trustee?**
- **Final tax return**.
- **14 Other Australian income – give details**: The total of all assessable income derived by the custodian in its trustee capacity for the non-resident beneficiaries shown in the return, including from capital gains. This is a specific departure from the usual requirement to report capital gains at a separate label.
- **15 Total of items 5 to 14**: under the streamlined arrangement this must be the same as the value at item 14.
- **20 Net Australian income or loss – other than capital gains**: under the streamlined arrangement this must be the same as the values at items 14 and 15.
- **26 Total net income or loss**: this item is auto-filled by the system based on previous labels. Under the streamlined arrangement, the values at items 14, 15, 20 and 26 must be the same.
- **56 Statement of distribution**: Complete a statement of distribution for each separate trust estate. Typically, these would relate to a global custodian in its separate capacities regarding different

clients, or to direct non-resident individual or company beneficiaries.

- **Name identifying the beneficiary of each trust estate**: for example, 'Y Co global custodian as trustee for [name of non-resident client or group of clients]'.
- **Business address of global custodian trustee**: non-resident individual or non-resident company beneficiary.
- **Assessment calculation code** (label **V**): Code 138, 139 or 140 as applicable to the beneficiary type. Appropriate tax rates will be applied based on the codes. The streamlined arrangement will not affect the applicable tax rates relevant to section 98, with subsection 98(4) applying for each non-resident trustee beneficiary.
- **Share of income** from **Primary production** (label **A**) and/or **Non-primary production** (label **B**): Under the streamlined arrangement, the total of all labels **A** and/or **B** in the statements of distribution in the return should equal the total net income or loss figure at item 26.
- **Non-resident beneficiary additional information** (labels **J** and **K**).
- **TB statement**: for each trustee beneficiary (TB), indicate if you will be making a TB statement.

- **Taxpayer's Declaration** and/or **Tax Agent's Declaration**.

Lodging the return

Lodge the return with your usual client relationship contact, who will liaise with our investment trusts team.

QC 46531

Public unit trust: statement of distribution

How to aggregate reporting of income for trustees of public unit trusts.

Last updated 27 January 2021

This information is for trustees of public unit trusts who are required to lodge an Annual Investment Income Report (AIIR).

When completing the statement of distribution in their trust tax return, these trustees can aggregate reporting of certain amounts, such as most distributions to resident beneficiaries.

This arrangement is intended to minimise duplicated reporting for trustees that must lodge an AIIR for the same year of income, while still providing sufficient information for the ATO to determine whether an assessment should issue to the trustee.

Trustees that are not required to lodge an AIIR must complete the tax return statement of distribution in full.

How to complete the statement of distribution

The trustee must:

- fully report amounts for which the trustee is to be assessed
- aggregate amounts where beneficiaries are non-resident companies
- aggregate amounts for which the trustee is not to be assessed.

Fully report amounts for which the trustee is to be assessed

Where a trustee is to be assessed on amounts of trust income, the trustee must fully complete the statement of distribution for the amounts to be assessed, as described in the **trust tax return instructions.**

This applies where the trustee is to be assessed:

- on an amount of net income where there is income of the trust estate to which no beneficiary is presently entitled
- under subsection 98(1) of the *Income Tax Assessment Act* (ITAA) 1936 for beneficiaries that are resident or non-resident individuals under a legal disability

- under subsection 98(3) of the ITAA 1936 for beneficiaries that are non-resident individuals not under a legal disability (see the exception below for non-resident companies)
- under subsection 98(4) of the ITAA 1936 for non-resident trustee beneficiaries.

Aggregate amounts where beneficiaries are non-resident companies

Where the trustee is to be assessed under subsection 98(3) of the ITAA 1936 for beneficiaries that are non-resident companies, the beneficiary companies can be aggregated into one entry in the statement of distribution using the appropriate assessment calculation code. Aggregation is permitted because a flat rate of tax applies to companies.

Use the same process (including name and address details) as described below for aggregated reporting.

Aggregate amounts for which the trustee is not to be assessed

Where a trustee will not be assessed on any net income of the trust for a year of income, the trustee must:

- aggregate these beneficiary distributions on the statement of distribution – for example:
  - aggregate resident individual beneficiaries under the assessment calculation code (30)
  - aggregate resident company beneficiaries under the assessment calculation code (34)
  - aggregate resident trust beneficiaries under the assessment calculation code (35).
- provide the following name and address details for the aggregated information:
  - in the **Non Individual Name** field enter: '[trustee's name] – Aggregated for [insert assessment code]'
  - trustee's address.

Aggregated reporting of beneficiary distributions is required to allow reconciliation of the trust's net income.

Completion of the name and address fields is necessary for electronic lodgment purposes.

See also

To check if your trust is required to lodge an AIIR, see:

- About investment income reporting for investment bodies.

QC 42295

Tax issues for trusts – tips and traps

You should read this if you are a trustee or beneficiary of a trust.

Last updated 27 January 2021

On this page

Trustee resolutions

To ensure discretionary beneficiaries are:

- presently entitled to trust income, trustees of discretionary trusts must make a resolution by 30 June of that income year
- specifically entitled to franked distributions, trustees of discretionary trusts must make a resolution in writing, specifically dealing with the franked distributions (as opposed to trust income) by 30 June
- specifically entitled to a capital gain
  - trustees of discretionary trusts must make a resolution in respect of that capital gain by 31 August following the income year in which the capital gain is made
  - where some or all of a capital gain forms part of the income of the trust estate, the trustee will often need to specifically deal with it by 30 June, when all of the income of the trust estate is otherwise being dealt with – this is because any capital gain forming part of the income of the trust estate cannot be specifically dealt with after a beneficiary has already been made presently entitled to it.

The resolution establishes which beneficiaries are assessed on the trust's net income.

See also:

- Requirements for trust resolutions
- TD 2012/22 (includes examples of the tax consequences of effective and ineffective resolutions)
- Streaming trust capital gains and franked distributions

Lodging trust income tax returns

Generally, all trusts that derive income during the year must lodge an income tax return. Ensure you lodge by the due date. There are exceptions for certain deceased estates.

See also:

- LODGE 2020/1 Table O outlines exceptions for deceased estates

Amounts at income of the trust estate labels

The income of the trust estate labels of the trust tax return require details of the income of the trust estate, which is the amount to which beneficiaries can be made presently entitled or can be accumulated by the trust, and each beneficiary's share of that income.

The amount to include at the label headed **income of the trust estate** is the total income of the trust that is available for distribution to trust beneficiaries for the income year (distributable income). Generally, that amount is calculated in accordance with the trust deed. In some cases, it will be different to the taxable income.

The label headed **share of income of the trust estate** records the amount of the trust's distributable income that each beneficiary was presently entitled to by 30 June of that year.

Generally, a beneficiary is assessed on the same portion of the trust's net income as the portion of distributable income to which it is entitled to.

Distributable income

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* gives guidance on the meaning of distributable income. Under self-assessment, you can follow the meaning as set out in the ruling or, if you disagree with aspects of that ruling, you can apply what you understand the term to mean for the purpose of present entitlement and completing the income of the trust estate labels.

At the **income of the trust estate** label you must show the trustee's honest determination of the trust's distributable income. The trustee may think that the trust's distributable income is calculated based on one of the alternative views in TR 2012/D1 – for example, according to a so-called income equalisation clause. If so, you can include this amount at this label.

Even if we later consider the trust's distributable income is a different amount, the trustee won't have made an error in completing the **income of the trust estate** label.

Zeroes at income of the trust estate label

If the income of the trust estate is a loss amount, then a zero should be entered at the **income of the trust estate** label. The label headed **share of income of the trust estate** should be left blank, as trusts cannot distribute losses to their beneficiaries. Where the trust has income to distribute, the amount at the **income of the trust estate** label needs to include the total of all the amounts at the **share of income of the trust estate** label for income distributed to beneficiaries. It must also include any amounts to which no beneficiary is entitled.

Do not leave the labels blank

The information in these labels helps us administer the trust assessing provisions.

We use these two labels to identify what may be contrived differences between the income of the trust estate and the net income of the trust – for example, to obtain tax benefits. If these labels are incomplete, it increases the likelihood we will review you and may lead to a penalty for making a false or misleading statement.

Exempt entities as beneficiaries

Anti-avoidance rules may apply if a trustee makes a tax-exempt beneficiary presently entitled to trust income.

See also:

- Distributions to tax exempt entities: anti-avoidance rules

Property development trusts incorrectly claiming CGT discount

We've noticed that some trusts in the property development industry are characterising their business income as capital rather than revenue to take advantage of the 50% CGT discount.

In many circumstances, the trust should not be characterising the profits from the sale of a developed property as a capital gain because the trust is either carrying on a business or is involved in a profit-making undertaking involving the development.

See also:

- TA 2014/1*Trusts mischaracterising property development receipts as capital gains*

Distributions to self-managed super funds

Distributions by trusts to complying super funds (particularly self-managed super funds) are considered 'non-arm's length income' and taxed in the fund at the top rate of tax if the distribution either:

- does not arise as a result of a fixed entitlement to trust income
- arose due to a fixed entitlement but it is part of a non-arm's length arrangement

See TR 2006/7 for guidance on what constitutes a fixed entitlement.

When you complete label **11M** of the self-managed super fund annual return (Gross trust distributions), you should consider whether all or part of the amount is non-arm's length income and, if so, report it at label **U2** of that return (Net non-arm's length trust distributions).

See also:

- Trust tax return instructions
- Trust tax return

QC 44411

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.