



## Distributions

Detailed information about trust distributions.

### **Distributions to tax exempt beneficiaries: anti-avoidance rules**



Check the anti-avoidance rules in s100AA and 100AB preventing trustees from using tax-exempt entities to avoid tax.

### **Streaming trust capital gains and franked distributions**



A trust capital gain or franked distribution may be streamed to beneficiaries for tax purposes.

### **Receiving payments or assets from foreign trusts**



Learn what to do as an Australian resident if you receive a payment or asset from a foreign trust.

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Learn what to do as an Australian resident if you receive a payment or asset from a foreign trust.

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Reducing the amount taxed under section 99B

If you receive money or other assets from a foreign trust

Guidance material

## Payments and assets subject to section 99B

Section 99B of the *Income Tax Assessment Act 1936* (ITAA 1936) applies when amounts of foreign trust property are paid to you or applied for your benefit, and you are a beneficiary of the trust. Trust assets can include cash, land, shares and other assets.

The amount or value of the trust property is included in your assessable income in the income year that you receive it.

Amounts of trust property paid to you or applied for your benefit from a resident trust which was previously a foreign trust will also be subject to section 99B.

Trust property paid to you or applied for your benefit can include:

- loans to you by the trustee directly or indirectly through another entity
- amounts paid by the trustee to a third party on your behalf
- amounts that are described as gifts from family members, but are sourced from the trust
- distributions paid to you or trust assets (such as shares) transferred to you by the trustee.

## Reducing the amount taxed under section 99B

There are a number of ways in which the amount assessed under section 99B can be reduced. For example, you may not have to include a payment or other asset or benefit you receive from a foreign trust in your assessable income if it:

- has already been assessed to you (or the trustee) under another provision of the income tax law, or
- represents an amount of corpus which is not otherwise removed by the hypothetical taxpayer test.

We may ask you for further information to verify any reduction in your circumstances. *PCG 2024/3 Section 99B of the Income Tax Assessment Act 1936* provides guidance on documentation we may ask for.

You should seek further advice, including supporting documents, from the trustee of the foreign trust about any money or other assets you receive from the trust.

## **If you receive money or other assets from a foreign trust**

If you receive money or other assets from overseas or from an Australian trust which has been a foreign trust, you need to understand the nature and source of the money or other assets you receive.

If you receive money from a trust, either directly, or indirectly through another entity, you may need to ask further questions to determine whether the amount must be included in your assessable income.

Questions may include:

- whether you are a beneficiary of the trust
- where and how the foreign trust obtained the money or property (this will assist in determining the source of the money or property)
- why the money was paid to you – for example, is it payment for services, a gift, a distribution or a loan (this will assist in understanding the nature of the payment).


Similar questions are relevant if you receive other assets or benefits from a trust. **Section 99C** of the ITAA 1936 outlines the circumstances, including specific situations, in which amounts or assets will be

considered to have been applied for the direct or indirect benefit of a beneficiary.

Examples when section 99B needs to be considered include where:

- an Australian beneficiary receives money from a family member who received it from a foreign trust
- an Australian beneficiary receives a capital distribution from a foreign trust out of the trust's accumulated prior year income
- a family member provides an amount of money from their foreign family trust (or through another intermediary) and the recipient, who considers the amount a gift, is also a beneficiary of the trust
- an Australian beneficiary receives a loan from a foreign trust that is sourced from prior year income derived by the trust.

Where section 99B applies to include an amount in your assessable income, **section 102AAM** interest may also apply, resulting in an additional income tax liability.

We're often alerted to potential section 99B cases as a result of [AUSTRAC](#)  (Australian Transaction Reports and Analysis Centre) monitoring of payments to Australian residents from overseas. This data is matched with information reported in tax returns.

## Guidance material

- *PCG 2024/3 Section 99B of the Income Tax Assessment Act 1936 – ATO compliance approach*
- *TA 2021/2 Disguising undeclared foreign income as gifts or loans from related overseas entities*
- *TD 2017/24 Where an amount included in a beneficiary's assessable income under subsection 99B(1) of the ITAA 1936 had its origins in a capital gain from non-taxable Australian property of a foreign trust, can the beneficiary offset capital losses or a carry-forward net capital loss ('capital loss offset') or access the CGT discount in relation to the amount?*
- *TD 2024/9 Income tax: factors taken into account in applying the exceptions to section 99B of the Income Tax Assessment Act 1936 contained in paragraphs 99B(2)(a) and 99B(2)(b)*

## **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.

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