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Trust income losses and capital gains

Learn about the tax treatment and rules for income, losses, distributions and capitals gains from trusts.

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Understand how the income of a trust is taxed.

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QC 105243

Trust income

Understand how the income of a trust is taxed.

Last updated 20 November 2026

Trust reform

The minimum tax on discretionary trusts measures announced in the 2026–27 Federal Budget don't apply to the 2026–27 income year. As the measures progress, we'll review and update the information on this page as necessary.

How income is treated

The **net income** of a trust (effectively its taxable income) is its assessable income for the year less allowable deductions worked out on the assumption that the trustee is a resident (even if the trustee is actually a non-resident).

Because the **income** of a trust is determined in accordance with the trust deed and its **net income** is determined in accordance with tax law, the two amounts are often different.

Generally, the net income of a trust is taxed in the hands of the beneficiaries (or the trustee on their behalf) based on their share of the trust's income (that is, the share they are 'presently entitled' to) regardless of when or whether the income is actually paid to them.

For example, if the beneficiary has a 50% share of the trust's income, they are assessed on a 50% share of the trust's net income. This is referred to as the proportionate approach.

Special rules apply to franked distributions and capital gains included in the trust's net income.

A beneficiary is **presently entitled** to trust income for an income year where they have, by the end of that year, a present or immediate right to demand payment from the trustee. The entitlement will depend on the trust deed and any discretion that the trustee has under the deed to allocate income between beneficiaries.

The trustee will need to provide each beneficiary with details of their share of the net income, so that the beneficiaries can include this amount in their tax returns.

See also

- Resolutions checklist

Tax rates

Adult and company beneficiaries pay tax on their share of the trust's net income at the tax rates that apply to them.

The trustee pays tax on behalf of non-resident beneficiaries and those who are minors, based on their share of the trust's net income. These beneficiaries may need to declare their share of the trust's net income

in their own income tax returns, and can claim a credit for the tax paid on their behalf by the trustee.

Higher rates of tax apply to most trust distributions to minors (see Your income if you are under 18 years old).

If there is any part of the trust's income for which no beneficiary is presently entitled, the trustee is taxed on the corresponding share of net income. If there is no trust income the trustee is taxed on any net income.

The trustee is generally taxed on the trust income at the highest marginal rate that applies to individuals except for some types of trusts (including deceased estates), which are taxed at modified individual rates.

Franked distributions

Unless prevented by the trust deed, a beneficiary may be made specifically entitled to a franked distribution, resulting in the beneficiary being taxed on the franked distribution. In this way, franked distributions can be streamed to particular beneficiaries for tax purposes.

If no beneficiary is specifically entitled to a franked distribution, it's taxed proportionately to all beneficiaries based on their entitlement to the trust income (with some modifications) – that is, in much the same way as the other net income of the trust.

If a beneficiary qualifies for a franking credit offset, they are also required to include the amount in their assessable income.

If the trust is not a family trust, a beneficiary without a fixed entitlement to the franked distribution is generally not entitled to use the associated franking credits unless their total franking credits from all sources for a year is $5,000 or less.

See also:

- Tax treatment of trust franked distributions
- Streaming trust capital gains and franked distributions
- Resolutions checklist

Losses

A loss made by a trust in an income year can't be distributed to beneficiaries. However, it can be carried forward and used to reduce the trust's net income in a later year.

See also:

- Trust loss provisions

QC 23087

Trustee resolutions

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

Last updated 20 November 2026

Trust reform

The minimum tax on discretionary trusts measures announced in the 2026–27 Federal Budget don't apply to the 2026–27 income year. As the measures progress, we'll review and update the information on this page as necessary.

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

Trust loss provisions

Information for trustees who want to use a tax loss to reduce the net income of their trust.

Last updated 25 February 2025

About trust loss provisions

Use of tax losses and debt deductions may be restricted where the tax benefits would be transferred to other entities.

Change in ownership or control – consequences

Find out about the consequences of changing ownership or control of a trust.

Income injection schemes – consequences

Find out about the consequences of income injection schemes.

Which tests to apply

Find out about what a trust needs to consider about all the tests that apply to that type of trust.

How we apply the trust loss test

Find out how to apply the 5 types of trust loss tests.

QC 18663

About trust loss provisions

Use of tax losses and debt deductions may be restricted where the tax benefits would be transferred to other entities.

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A tax loss of a trust can be carried forward and used to reduce the trust's net income in a later year, subject to certain tests. These tests are contained in the trust loss provisions in Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936).

These tests restrict the use of tax losses and debt deductions. The tests apply to the following 2 types of arrangements:

- a change in the ownership or control of the trust
- use of an income injection scheme.

Under these arrangements the tax benefit of trust losses and debt deductions could otherwise be transferred to other entities.

Different tests apply to different types of trusts. The trust loss provisions generally don't apply to trusts that have validly elected to be a family trust, with the exception of the income injection test, which applies in certain circumstances.

The trust loss provisions don't apply to capital losses.

QC 103878

Change in ownership or control – consequences

Find out about the consequences of changing ownership or control of a trust.

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Trust tests

The tests dealing with changes in ownership or control include the:

- 50% stake test
- business continuity test
- pattern of distributions test
- control test.

These tests apply so that, if certain events occur, a trust may:

- be prevented from deducting its tax losses from earlier income years
- have to work out its net income and tax loss for the current income year in a special way
- be prevented from deducting certain amounts in respect of debts (for example, bad debts) incurred in the current or earlier income years.

This doesn't apply to excepted trusts, including trusts that validly elected to be family trusts.

Fixed trusts

For fixed trusts, the above consequences apply if there is no continuity of majority beneficial ownership in the income and capital of the trust, as determined by the 50% stake test.

Ordinary fixed trusts have to test ownership continuously – that is, on every day of the test period (from the beginning of the loss year until the end of the income year in which the trustee seeks to claim the relevant deduction).

Widely held unit trusts only have to test ownership when there is abnormal trading in their units or, in some cases, when an income year ends.

Where the 50% stake test is failed, listed widely held trusts can still avoid these consequences if they pass the business continuity test.

Non-fixed trusts

The above consequences will also apply to a non-fixed trust if either:

- there is a 50% or greater change in the pattern of distributions of the income or capital of the trust
- control of the trust changes during the test period.

The 50% stake test only applies to a non-fixed trust where, at any time in the test period, individuals have more than a 50% stake in the income or capital (or both) of the trust.

QC 81682

Income injection schemes – consequences

Find out about the consequences of income injection schemes.

Last updated 25 February 2025

Under these schemes, income is injected into trusts with tax losses or other deductions to reduce the trust's net income under subsection 95(1) of the ITAA 1936.

However, a trust that is involved in such a scheme to take advantage of tax losses or other deductions may be prevented from making full

use of them under the income injection test in Division 270 of Schedule 2F to the ITAA 1936.

QC 81683

Which tests to apply

Find out about what a trust needs to consider about all the tests that apply to that type of trust.

Last updated 25 February 2025

In using a tax loss or claiming a debt deduction, a trust needs to consider all the tests that apply to that type of trust, as shown in the following table.

Types of trusts and tests to apply

Type of trust	50% stake test	Business continuity test	Pattern of distributions test	Contro test
Non-fixed trust	Yes	n/a	Yes	Yes
Listed widely held trust	Yes	Yes	n/a	n/a
Unlisted widely held trust	Yes	n/a	n/a	n/a
Unlisted very widely held trust	Yes	n/a	n/a	n/a

Wholesale widely held trust	Yes	n/a	n/a	n/a
Fixed trust other than a widely held unit trust	Yes	n/a	n/a	n/a
Excepted trusts	n/a	n/a	n/a	n/a
Family trust	n/a	n/a	n/a	n/a
Excepted trust (other than a family trust)	n/a	n/a	n/a	n/a

Table notes:

- For non-fixed trusts
  - the 50% stake test only applies where, at any time in the test period, individuals have more than a 50% stake in the income or capital (or both) of the trust
  - the pattern of distributions test does not apply for current year loss purposes.
- For listed widely held trusts, the business continuity test can be applied if a listed widely held trust fails the 50% stake test.
- For fixed trusts other than a widely held unit trust, an alternative version to the 50% stake test is also available in certain cases where non-fixed trusts hold fixed entitlements in the fixed trust (section 266-45 of Schedule 2F).

- For family trusts, the income injection test does not apply where entities and individuals within a family group inject income into a family trust with tax losses or other deductions.
- Excepted trusts, other than family trusts include:
  - complying super funds
  - deceased estates within a 5 year administration period
  - unit trusts that are a fixed trust where all the unit holders are exempt from income tax.

QC 81684

How we apply the trust loss test

Find out how to apply the 5 types of trust loss tests.

Last updated 25 February 2025

50% stake test

The 50% stake test is contained in Subdivision 269-C of Schedule 2F to the ITAA 1936.

The 50% stake test is used to determine whether there has been a change in the underlying ownership of a trust with fixed entitlements. An alternative version applies where 50% or more of fixed entitlements to the income or capital of an ordinary fixed trust are held by non-fixed trusts – other than family trusts.

The 50% stake test doesn't apply to family trusts and other excepted trusts.

The 50% stake test only applies to a non-fixed trust where, at any time in the test period, individuals have more than a 50% stake in the income or capital (or both) of the trust.

The 50% stake test applies by determining if there are individuals who between them have, directly or indirectly, and for their own benefit, fixed entitlements to:

- a greater than 50% share of the income of the trust
- a greater than 50% share of the capital of the trust.

The individuals with fixed entitlements to income and those with fixed entitlements to capital don’t have to be the same individuals.

The 50% stake test applies independently to both income and capital.

50% stake test – alternative version

The alternative version of the 50% stake test applies where 50% or more of fixed entitlements to the income or capital of an ordinary fixed trust (which is governed by Subdivision 266-B of Schedule 2F) are held by non-fixed trusts (other than family trusts).

In this situation, the 50% stake test can’t be satisfied by the fixed trust (as it is impossible to trace through to individuals), and an alternative version of the 50% stake test must be applied.

The alternative version of the 50% stake test also applies to an ordinary fixed trust (which is governed by Subdivision 266-B of Schedule 2F). This applies where non-fixed trusts (other than family trusts) hold fixed entitlements to 50% or more of the income or capital of a company or a fixed trust (the holding entity), and the holding entity holds, directly or indirectly, all of the fixed entitlements to income and capital of the ordinary fixed trust that is seeking to pass the 50% stake test.

These fixed entitlements must have been held at all times during the test period (that is, the test period for the 'normal' 50% stake test).

The alternative version of the 50% stake test is passed where:

- interests in the fixed trust are held directly by non-fixed trusts. There are no changes in the individuals directly holding fixed entitlements to the income and capital of the fixed trust or the percentage of their interests
- interests in the fixed trust are held, directly or indirectly, by a holding entity, and there are no changes in the individuals directly holding fixed entitlements to the income and capital of the holding entity
- at the beginning of the test period, individuals have not had more than a 50% stake in the income or capital of the fixed trust

- every non-fixed trust (that is not a family trust or other type of excepted trust) that holds fixed entitlements in the fixed trust, directly or indirectly, satisfies the relevant tests that apply to non-fixed trusts as if they stood in place of the fixed trust that is seeking to deduct a tax loss or other amount.

Business continuity test

The business continuity test is contained in Subdivision 269-F of Schedule 2F to the ITAA 1936.

The business continuity test applies to listed widely held trusts where the 50% stake test in relation to a tax loss or debt deduction has been failed after abnormal trading in a trust's units.

The business continuity test consists of two separate parts:

- same business test
- similar business test.

Same business test

A listed widely held trust passes the business continuity test during a period (the business continuity test period) in relation to a time (the test time) if throughout the business continuity period it carries on the same business as it carried on immediately before the test time.

However, the trust will not pass the business continuity test if any of the following apply:

- At any time during the business continuity test period, it derives assessable income from either
  - a business of a kind that it did not carry on before the test time
  - a transaction of a kind that it had not entered into in the course of its business operations before the test time.
- Before the test time, it did one of the following for the purpose of being taken to have carried on throughout the business continuity test period the same business as it carried on immediately before the test time. It either
  - began to carry on a business it had not previously carried on

  - in the course of its business operations, entered into a transaction of a kind that it had not previously entered into.
- At any time during the business continuity test period, it incurs expenditure
  - in carrying on a business of a kind that it did not carry on before the test time
  - as a result of a transaction of a kind that it had not entered into in the course of its business operations before the test time.

Similar business test

The similar business test applies to a tax loss or a debt incurred in an income year starting on or after 1 July 2015.

A listed widely held trust passes the business continuity test during a period (the business continuity test period) in relation to a time (the test time) if throughout the business continuity period it carries on a business that is similar to the business it carried on immediately before the test time.

However, the trust does not pass the business continuity test if, before the test time, it did one of the following for the purpose of being taken to have carried on throughout the business continuity test period a business that is similar to the business it carried on immediately before the test time. It:

- began to carry on a business it had not previously carried on
- in the course of its business operations, entered into a transaction of a kind that it had not previously entered into.

A trust can pass the business continuity test through the similar business test, even if it fails the same business test, so long as the tax loss or the debt was incurred in an income year starting on or after 1 July 2015.

A trust's business activities may have changed due to COVID-19. For example, a trust may have commenced a new business activity or closed a business. For more information on the business continuity test and the closing of a business or the receipt of the JobKeeper payments, refer to How to claim a tax loss – Companies.

For more information, see:

- LCR 2019/1 *The business continuity test – carrying on a similar business*
- TR 1999/9 *Income tax: the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132.*

Pattern of distributions test

The pattern of distributions (POD) test is contained in Subdivision 269-D of Schedule 2F to the ITAA 1936.

The test, which applies to non-fixed trusts, is applied independently to both income and capital.

The test applies if the non-fixed trust has distributed income or capital in the income year in which the deduction is claimed (or within 2 months after its end), and in at least one of the 6 earlier income years.

If income or capital was not distributed in any one of the 6 earlier income years, the trust doesn't have to pass the POD test.

A trust passes the POD test for an income year if, within 2 months after the end of the income year:

- the trust distributed directly or indirectly to the same individuals, for their own benefit, more than 50% of every 'test year distribution of income' (see section 269-65)
- the trust distributed directly or indirectly to the same individuals, for their own benefit, more than 50% of every 'test year distribution of capital' (see section 269-65).

The individuals who meet the test in respect of capital distributions don't have to be the same individuals that satisfy the test in respect of income distributions.

The actual commencement of the period depends on when the trust has distributed income. If the trust distributed income before the loss year, the income year before the loss year that is closest to the loss year will be the commencement of the period, provided this is within the 6 year period mentioned above.

Where different percentages are distributed to individuals over the relevant test years, the smallest percentage distributed in any one income year becomes the distribution percentage for the calculation.

The total of the minimum distribution percentages of income or capital for each individual over the relevant years must be greater than 50% in order to pass the POD test.

Example: income distributed during prior 6 years

A tax loss was incurred by the Ray Non-fixed Trust in the 2014–15 income year. The trust is seeking to deduct the tax loss in the 2015–16 income year. The trustee distributed income in the 2013–14 and 2015–16 income years as follows:

Ray Non-fixed Trust distributions

Trustee	2014	2016	Minimum percentage
Mum	80%	20%	20%
Dad	10%	50%	10%
Ray	10%	30%	10%
Total of minimum test year distributions	**n/a**	**n/a**	**40%**

As income has been distributed in the income year, and in at least one of the 6 earlier income years, the condition of having to pass the POD test applies.

The 2013–14 income year is the closest income year before the loss year in which distributions were made. It is also within 6 years of the 2015–16 income year in which the trust seeks to deduct the tax loss.

The total of the minimum percentage of test year distributions of income is 40%. As this is not greater than 50%, the tax loss

incurred in the 2014–15 income year can't be deducted by the trustee of the Ray Non-fixed Trust.

For more information, see:

- section 269-75 of Schedule 2F to the ITAA 1936 – for incomplete distributions where distributions are made to companies, partnerships or trusts that don't distribute the income but in which individuals have fixed entitlements to income and capital of these entities
- section 269-80 of the Schedule 2F of the ITAA 1936 – where an individual dies, or there is a breakdown in the marriage or relationship.

Control test

The control test is contained in Subdivision 269-E of Schedule 2F to the ITAA 1936.

The control test applies to non-fixed trusts. Where a group begins to control a trust between the beginning of the loss year and the end of the income year in which it seeks to claim the deduction (the test period), the trust's tax losses and debt deductions can't be deducted.

Whether a group begins to control a trust in the test period is a question of fact, depending on the circumstances of each individual trust – particularly taking into account the powers conferred on various entities under the trust deed.

The following factors should be checked when determining whether there has been a change in the group controlling the trust in the test period:

- changes in trustees
- changes in the appointor or guardian
- changes in the shareholders or directors of the corporate trustee
- the appointment of new beneficiaries
- the amendment of the trust deed
- a change in unit holdings
- other unusual changes.

Special circumstances where control won't be taken to have changed

Where a group (the original group) ceases to control a non-fixed trust only because of the death, incapacitation or breakdown in the marriage or relationship of the individual comprising, or an individual included in, the control group, the control test won't be failed for that reason alone.

Broadly, this special treatment applies where:

- another group (the replacement group) begins to control the non-fixed trust within one year of the death, incapacitation or breakdown in the marriage or relationship, or such longer period as the Commissioner of Taxation determines
- if the original group consisted only of the individual who died, became incapacitated or experienced the breakdown in the marriage or relationship – the replacement group consists of one or more individuals who are members of that individual's family (as defined in section 272-95 of Schedule 2F to the ITAA 1936)
- if the original group consisted of more than the individual who died, became incapacitated or experienced the breakdown in the marriage or relationship – the replacement group consists of one or more individuals who are members of that individual's family (as defined in section 272-95), together with all of the members of the original group (other than the individual who died, became incapacitated or experienced the breakdown in the marriage or relationship)
- the replacement group began to control the trust only because of the death, incapacitation or breakdown in the marriage or relationship of the individual
- there are no changes in the beneficiaries of the trust apart from the individual who died, became incapacitated or experienced the breakdown in the marriage or relationship and one or more individuals who are members of that individual's family (as defined in section 272-95).

Other circumstances where control won't be taken to have changed

Under subsection 269-95(4) of Schedule 2F to the ITAA 1936, the Commissioner also has the discretion to treat a group as not beginning to control a trust where, having regard to the identity of the beneficiaries of the trust and all other relevant circumstances of the case, the Commissioner considers it reasonable.

This allows tax losses to be deducted where, because of the particular circumstances of the case, it is not fair and reasonable to treat the control of the trust as having changed. For example, it may be appropriate for the discretion to be exercised in some cases of retirement where those who can benefit under the trust have not changed.

Income injection test

The income injection test applies where there is a scheme to take advantage of a deduction that is allowable to a trust.

For this to apply, an 'outsider to the trust' must provide a benefit to the trustee or a beneficiary of the trust, and a return benefit must be given to the outsider. Such benefits must have been provided (or derived) wholly or partly, but not merely incidentally, because the deduction(s) would be allowable.

The income injection test doesn't apply to income injection schemes that take place wholly within the family group of a trust that has made a family trust election.

It also doesn't apply to complying superannuation funds, complying approved deposit funds, pooled superannuation trusts, deceased estates within a five-year administration period, and unit trusts that are a fixed trust where all the unit holders are exempt from income tax.

Conditions for income injection test to be applied

The following conditions need to be met before the income injection test applies:

- The trust must have an allowable deduction, whether a current year deduction or a carried forward loss, for the relevant income year.
- There must be a scheme under which all the following things happen (in any order)
  - The trust must derive 'scheme assessable income'.

  - A person not relevantly connected with the trust (an outsider to the trust) must directly or indirectly provide a benefit to the trustee or a beneficiary (or an associate of either).
  - The trustee or a beneficiary (or an associate of either) must directly or indirectly provide a benefit to the outsider to the trust (or an associate of the outsider to the trust). However, if the test is being applied to a family trust and this return benefit is being provided only to an associate who is not an outsider to the trust, this element will not be satisfied. This ensures that the income injection test will not apply where benefits only flow from the family trust to the entities listed in subsection 270-25(1).
- It must be reasonable to conclude that any one or more of the following has happened under the scheme
  - The trust derived the scheme assessable income wholly or partly, but not merely incidentally, because the deduction would be allowable. (Whether a benefit has been provided merely incidentally because a deduction is allowable to the trust depends on the particular facts and circumstances of the scheme).
  - The outsider to the trust provided the benefit to the trustee or a beneficiary (or an associate of either) wholly or partly, but not merely incidentally, because the deduction would be allowable.
  - The trustee or a beneficiary (or an associate of either) provided the benefit wholly or partly, but not merely incidentally, because the deduction would be allowable.

Consequences if test is failed

Where the income injection test is failed, no deduction is allowable in the relevant income year against the scheme assessable income, with the result that the 'net income' of the trust for the income year is increased to equal the full amount of the scheme assessable income. In addition, to the extent the deduction may be related to the derivation of the scheme assessable income, the deduction is not allowable.

However, any deduction not related to the derivation of the scheme assessable income is still allowable to the trust. For example, it can be deducted against other assessable income derived in the same income

year or can be deducted in a later year of income in the form of a tax loss.

For examples of how the income injection test applies, see Explanatory Memorandum to Schedule 2F of the ITAA 1936, which was inserted by the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* (Chapter 10).

Meaning of terms

- Scheme
- Benefit
- Outsider to a family trust
- Outsider to a non-family trust

Scheme

For the purposes of this test, 'scheme' takes on the same meaning as in Part IVA of the ITAA 1936:

1. any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and
2. any scheme, plan, proposal, action, course of action or course of conduct.

See also the PS LA 2005/24 *Application of General Anti-Avoidance Rules*.

Benefit

'Benefit' includes anything that is a benefit or advantage within the ordinary meaning of these words. However, it is defined to specifically include money, a dividend or property (whether tangible or intangible), a right or entitlement, services, or the extinguishment, forgiveness, release or waiver of a debt or other liability.

The doing of anything that results in the derivation of assessable income is also specifically defined to be a 'benefit'. For example, if the scheme's assessable income is derived by the trustee of the trust as a result of the transfer to, or conferral on, the trustee of an interest from which assessable income will be derived, the person who transferred

or conferred that interest to or on the trustee will have provided a benefit to the trustee.

A benefit includes all ways that value is given to the relevant parties.

Outsider to a family trust

An outsider to a trust that has validly elected to be a family trust is any person other than those set out in the table below. This means that the income injection test doesn't inhibit income injection schemes that take place wholly within groups with certain members. For more information, see Family trusts – concessions.

People who are not outsiders to a family trust

Person who is not an outsider	Comments
The trustee of the family trust.	The trustee must be acting in their capacity as trustee of the family trust.
A person with a fixed entitlement to a share of the income or capital of the trust.	n/a
The individual specified in the trust's family trust election or a member of his or her family.	n/a
A company, partnership or trust that has made an interposed entity election to be included in the family group of the individual specified in the trust's family trust election.	The interposed entity election must be in force when the scheme commenced. Note that an interposed entity election can be in force before it is actually made.
A fixed trust, company or partnership if some or all of the following have fixed entitlements, directly or indirectly, and for their own benefit, to all the income and capital of the fixed trust, company or partnership:	The family members, etc, must hold the fixed entitlements for their own benefit at all times while the scheme is being carried out. This means the income injection test may operate if the family acquires interests in the trust as part of the scheme.

• the individual specified in the family trust election • the members of that individual's family • the trustees of family trusts with the same specified individual.	
A trust with the same individual specified in its family trust election.	n/a

Outsider to a non-family trust

An outsider to a trust that is not a family trust is a person other than either:

- the trustee of the trust acting in their capacity as such
- a person with a fixed entitlement to a share of the income or capital of the trust.

QC 81685

Trust capital gains and losses

Learn the rules for capital gains or losses of a trust.

Last updated 20 November 2026

> **Trust reform**
>
> The minimum tax on discretionary trusts measures announced in the 2026–27 Federal Budget don't apply to the 2026–27 income year. As the measures progress, we'll review and update the information on this page as necessary.

Capital gain or loss

Disposal of a trust asset (or another capital gains tax event) is likely to result in a capital gain or loss for the trust (unless a beneficiary is absolutely entitled to the asset).

Capital gains and losses are taken into account in working out the trust's net capital gain or net capital loss for an income year as follows:

- A net capital gain is included in the trust's net income.
- A net capital loss is carried forward and offset against the trust's future capital gains.

As part of the net income of a trust, the net capital gain for the year is then allocated proportionately to beneficiaries based on their entitlements to trust income, unless either:

- there is a beneficiary that is specifically entitled to the capital gain
- the trustee (of a resident trust) chooses to be taxed on a capital gain.

This choice can be made provided all or part of an amount relating to the gain has not been paid to, or otherwise allocated for the benefit of, a beneficiary during or within 2 months of the end of the income year. This rule allows the trustee to choose to pay tax on behalf of a beneficiary who doesn't immediately benefit from the gain.

If there is no beneficiary entitled to income (or specifically entitled to the capital gain) the trustee is taxed on the capital gain.

Where the trustee is taxed on trust net income at the top marginal rate, they are not entitled to the CGT discount on the gain.

Absolute entitlement

If a beneficiary is absolutely entitled to a trust asset, the asset is treated for CGT purposes as if it is owned directly by the beneficiary and not the trustee. Any actions taken by the trustee in relation to the asset are taken to have been done by the beneficiary directly. This means that if a capital gains tax (CGT) event happens in relation to the asset, any capital gain or loss will be made directly by the beneficiary and doesn't form part of the trust's net income.

A beneficiary is absolutely entitled to an asset of a trust if they have a 'vested and indefeasible' interest in the entire trust asset – that is, they

can direct the trustee to immediately transfer the asset to themselves or to someone else.

For example, on 30 July a trustee makes a beneficiary absolutely entitled to a property held by the trustee. On 30 September the trustee sells the property for $100,000. For CGT purposes, the asset is treated as being the beneficiary's from 30 July and the beneficiary (not the trustee) is taken to receive the capital proceeds of $100,000 from the sale of the property on 30 September.

Specific entitlement

A capital gain can be streamed to a particular beneficiary by making them specifically entitled to the gain.

If a beneficiary is made specifically entitled to a trust capital gain, the capital gain is taken into account in working out their net capital gain for the income year with the benefit of any discounts or concessions they are entitled.

Note that a beneficiary may be specifically entitled to a capital gain even if they don't have an entitlement to income of the trust (for example, because they had an entitlement to trust capital).

See the Trustee resolutions checklist for more information.

Example: Specific entitlement

A trustee derived the following amounts in the 2023–24 income year:

- interest income of $100
- a capital gain of $200 that is eligible for the CGT 50% discount.

The trust deed defines income to include capital gains. The income of the trust estate is therefore $300 ($100 interest income + $200 capital gain) and the net income of the trust is $200 ($100 interest income + $100 net capital gain because the CGT discount is applied to halve the $200 capital gain).

Provided the trust deed doesn't prevent the trustee streaming capital gains, the trustee can make:

- Beneficiary B specifically entitled to the $200 capital gain
- Beneficiary A presently entitled to the remaining $100.

Beneficiary B has a $100 capital gain to take into account in working out their own net capital gain. Because the gain was a discount capital gain, Beneficiary B must gross it up (double it) and apply the CGT discount (if they qualify in their own right for the CGT discount). Beneficiary A has a $100 share of net income.

On the other hand, if the trustee did not stream the capital gain, Beneficiary A is presently entitled to one third of the income of the trust estate and Beneficiary B is presently entitled to two-thirds. Beneficiary A is assessed on $33 net income and has a capital gain of $34 and Beneficiary B is assessed on $66 net income and has a capital gain of $67.

Trust splitting and capital gains tax

Trust splitting is a common term for an arrangement where separate trustees are appointed over different assets of an existing discretionary trust.

Each trustee is typically controlled by a different party.

The intention of trust splitting is to produce a structure where each trustee is able to deal with the assets it holds independently of the other trustees. In particular, the trustee is able to deal with the assets largely for the benefit of the controlling party.

We have released a Taxation Determination that expresses the ATO view that a trust split of the type described in the Determination will have CGT consequences – Taxation Determination TD 2019/14 *Income tax: will a trust split arrangement of the type described in this Determination cause a new trust to be settled over some but not all assets of the original trust with the result that CGT event E1 in subsection 104-55(1) of the Income Tax Assessment Act 1997 happens?*

QC 23088

Trust taxation – reimbursement agreement

Find out when section 100A might apply to your circumstances, and where you can get more information.

Last updated 20 November 2026

> **Trust reform**
>
> The minimum tax on discretionary trusts measures announced in the 2026–27 Federal Budget don't apply to the 2026–27 income year. As the measures progress, we'll review and update the information on this page as necessary.

Reimbursement agreement and section 100A

Section 100A is an anti-avoidance rule that can apply where a beneficiary's trust entitlement arose from a reimbursement agreement. Broadly, a reimbursement agreement involves an arrangement under which a beneficiary is made presently entitled to trust income and:

- someone other than that beneficiary receives a benefit in connection with the arrangement
- at least one of the parties enters into the agreement for a purpose of reducing tax.

Exclusions from reimbursement agreements

There is no reimbursement agreement in any of the following circumstances:

- an arrangement simply involves a beneficiary receiving and using their trust entitlement
- the agreement has been entered into in the course of ordinary family or commercial dealing

- the presently entitled beneficiary is under 18 years of age or otherwise under a legal disability.

Example 1: ordinary family or commercial dealing

Harry and Nina are a couple that live with their 2 children and Harry's aunt, Petunia. Petunia contributes to some housekeeping but is reliant on Harry and Nina for financial support.

Harry and Nina manage a grocery business through a discretionary trust, H&N Foods Trust. Harry is the trustee of the trust. In the 2022–23 income year, the trust distributes $25,000 to each of Harry and Nina. The funds representing the entitlements are deposited by the trustee in Harry and Nina's joint account. Harry takes funds from that account throughout the next year to pay for the mortgage and school fees. Harry and Nina have also provided Petunia with a linked credit card that allows her to pay for her medication and groceries for the family.

Harry and Nina have shared financial responsibilities and ultimately enjoy the shared benefits of the distribution and use the funds to meet the expenses of their family and dependents. Based on these facts, this arrangement would generally be an ordinary family dealing.

What is a benefit

'Benefit' is widely defined to include the payment or loan of money (including by way of loan), the transfer of property, providing services or any other benefits.

A 'payment of money' includes an agreement that provides for a person to release, abandon, fail to demand payment of, or postpone payment, of a debt.

What is an agreement

‘Agreement’ is defined widely to include arrangements and understandings whether formal, informal, express or implied. An agreement can include a single step or a series of steps or transactions. An agreement doesn't need to be binding for it to be a reimbursement agreement.

An individual might represent multiple entities. The acts of an individual can result in an agreement where they act as a representative for one or more entities. For example, if an individual is both a beneficiary and a director of a corporate trustee.

Beneficiary doesn't have to be party to agreement

The beneficiary entitled to the trust income does not have to be a party to or know of the reimbursement agreement. This means a reimbursement agreement could be an agreement between any parties involved. For example, it could be between:

- the trustee and beneficiary
- the beneficiary and another person
- another person and the trustee.

Example 2: beneficiary receives the benefit of their entitlement

Margaret Gertrude is the sole trustee of the Gertrude Trust. The beneficiaries of the trust include Margaret and her son Gareth, aged 21.

For the 2022–23 income year, the income of the Gertrude Trust is $40,000 (the trust's net income is also $40,000).

On 30 June 2023, Margaret as the trustee of the Gertrude Trust resolves to make Gareth presently entitled to $40,000 of the trust income.

Gareth's entitlement to trust income is paid to Margaret in repaying a loan she made to him during the year which he used to purchase a new car for his personal use.

Although Gareth's entitlement to trust income is not directly paid to him, he benefits from his trust entitlement since it is applied to reduce his debt.

Based on these facts there is a low risk of section 100A applying. Margaret lent money to Gareth that was used to purchase a car for his personal use. Gareth's trust entitlement was used to benefit Gareth in reducing his indebtedness to Margaret.

The result in this example would still be the same if the specific expense was for something different (the purchase of a new car in this example). The arrangement, while in fact involving a payment of an amount to Margaret, is one in which Gareth actually enjoys the benefit of his entitlement as it is used to benefit him by reducing his indebtedness).

Example 3: trust income distributed to a loss entity outside the family group

The Banksia Trust carries on a property development business. Alexi is the trustee of the Banksia Trust and the beneficiaries include Alexi, his family and any entity he controls. The trust income of the Banksia Trust for the 2022–23 income year is $250,000 (the net income is also $250,000).

During the 2022–23 income year, Alexi is introduced to Mr Herschel by his accountant. Mr Herschel controls Herschel Pty Ltd, a company with $1,000,000 in available tax losses. Alexi and Mr Herschel agree that the Banksia Trust will distribute $200,000 to Herschel Pty Ltd to utilise tax losses and that Herschel Pty Ltd will be paid $20,000 and not call for the payment of the balance of its entitlement to trust income.

The trust deed of the Banksia Trust is amended on 31 March 2023 to include Herschel Pty Ltd as a beneficiary of the trust. On 30 June 2023, the Banksia Trust makes Herschel Pty Ltd presently entitled to $200,000 of the trust income and the balance of $50,000 to Alexi.

Herschel Pty Ltd receives $20,000 and the balance of its entitlement remains unpaid. The balance of the trust entitlement is used by the trustee to make loans to Alexi.

This is a high risk arrangement because the distribution was made:

- to a beneficiary outside of the family group
- for the purpose of reducing tax

- to someone other than the presently entitled beneficiary received a benefit.

Ordinary family or commercial dealing

An agreement will not be a reimbursement agreement if it is entered into in the course of ordinary family or commercial dealing. Broadly, an arrangement is entered into in the course of ordinary family or commercial dealing, if the purpose of the arrangement is to achieve family or commercial objectives.

Whether a particular agreement is entered into in the course of 'ordinary family or commercial dealing' depends on all of the relevant facts. The exclusion must be considered having regard to all of the steps comprising the reimbursement agreement – not merely components of it.

Factors relevant to whether a dealing is 'ordinary family or commercial dealing' can include family living arrangements, financial dependence on one another, cultural traditions, and financing arrangements.

An agreement will not necessarily be considered to have been entered into in the course of ordinary family dealing simply because all of the entities involved are members of the same family group. Conversely, an arrangement can still achieve commercial objectives in the absence of dealing at arm's length or market value.

Features indicating that a dealing may not be ordinary family or commercial dealing include:

- the arrangement is artificial, contrived, is overly complex or contains steps that might be explained by objectives different to those said to be behind the ordinary family or commercial dealing
- circumstances or conduct that is inconsistent with the legal or economic consequences of the beneficiary's entitlement, such as
  - appearing unlikely that the beneficiaries will receive their entitlements when the assets or funds representing the entitlement are purportedly paid or lent to others without any intention of being returned or repaid
  - funds representing the entitlement are dealt with in a way that is inconsistent with the beneficiary’s right to demand the entitlement

- beneficiaries are not informed of their entitlements

- where income entitlements have actually been paid to the beneficiary and there is an agreement for the beneficiary to pay some or all of their income entitlement to another person.

Example 4: beneficiary gifts their entitlement to another party

Thomas is the controller and trustee of Thomas Trust. During the year Thomas uses trust funds to pay for his personal living expenses.

Tracey is Thomas' adult daughter who is a student with no income other than her trust entitlement. Thomas has other sources of income and pays tax at the highest marginal rate.

Thomas wants to avoid paying more tax so that he can maximise his ability to borrow funds and purchase more investments. Under an agreement between Tracey and Thomas, she agrees to gift her trust entitlement to Thomas (less an amount used to pay her income tax for the year).

The trustee of Thomas Trust then makes Tracey, presently entitled to all of the trust income for that income year.

The trustee reduces the loan owed to it by Thomas by the amount gifted from Tracey to Thomas. Thomas benefits from the trust income but is not assessed on any part of it.

Even though Thomas and Tracey share a close family relationship, with Tracey being financially dependant upon Thomas, it is high risk because the arrangement appears to be explained by the objective of reducing the tax that would otherwise have been payable had the trustee simply accumulated the income.

We would dedicate compliance resources to conduct further analysis on the facts and circumstances of the arrangement to consider if section 100A may apply.

Example 5: complex arrangement that is not ordinary family or commercial dealing

Andy and Gabriella are cousins who operate a hardware business through a discretionary trust. Andy, Gabriella and their families are beneficiaries of the trust. Andy and Gabriella's families, other than co-owning the business, are not financially dependent on each other. There is an informal understanding between Andy and Gabriella that the profits of the business are to be shared equally between their respective families.

In the 2022–23 income year, Andy and Gabriella each draw a salary of $25,000 from the business. Andy's only other source of income is from negatively geared rental properties he owns which have generated rental losses of $50,000 for the year. Gabriella's only other source of income is from trading in cryptocurrency which has generated assessable income of $180,000.

The trust has $200,000 net income (after the payment of salaries). The trust deed defines income of the trust estate to equal the trust net income. Gabriella wants to avoid paying more tax so rather than distribute the income equally, Gabriella and Andy agree to distribute $200,000 to Andy and nil to Gabriella. They agree that Andy will pay $100,000 (less $25,000 used to pay tax on that $100,000) to Gabriella.

In earlier income years, Andy and Gabriella entered into similar agreements where Andy was made presently entitled to trust income to take advantage of his lower marginal tax rate.

Even though Andy and Gabriella are cousins and business partners, they have their own family units and are not financially dependent on each other. This arrangement was entered into to take advantage of Andy's lower marginal tax rate. This is a high risk arrangement and we will devote compliance resources.

Consequences of a reimbursement agreement

Generally, (in relation to amounts other than trust capital gains and franked distributions) when a beneficiary is presently entitled to a share of trust income and is not under a legal disability, a

corresponding share of the trust's net income is assessed (taxed) to either the:

- beneficiary, if they are an Australian resident
- trustee, if the beneficiary is a foreign resident (but only to the extent to which that proportion of the trust's net income is from Australian sources).

However, to the extent a beneficiary's entitlement arises out of a reimbursement agreement, section 100A disregards it. This means that the net income that would otherwise have been assessed to the beneficiary (or trustee on their behalf) is instead assessed to the trustee at the top marginal tax rate.

There is comparable treatment for a reimbursement agreement that involves franked distributions or capital gains.

How we assess section 100A risk

Practical Compliance Guideline PCG 2022/2 *Section 100A reimbursement agreements – ATO compliance approach* (Guideline) sets out how we differentiate risk and how we manage that risk through our compliance approach for a range of trust distributions to which section 100A may apply.

Where an arrangement does not meet one of the exclusions, and your circumstances align with what is described in the low risk zones of the Guideline (the white zone and the green zone), you can be confident that we will not allocate compliance resources to that arrangement, except to confirm you meet the requirements of that zone.

The Guideline uses 3 coloured zones to describe our compliance approach to arrangements that fall within those zones.

Risk zones and the relevant compliance approach

Risk level	Risk zone	Description and compliance approach
Low risk	White zone	Applies to arrangements entered into in income years that ended prior to 1 July 2014 and describes the circumstances in which we will not dedicate new compliance resources to

		consider the application of section 100A to these arrangements.
Low risk	Green zone	Describes arrangements that exhibit features that are consistent with ordinary family or commercial dealing, or an absence of a purpose of reducing tax, and are considered low risk.
High risk	Red zone	Describes arrangements which will attract our attention and for which you might expect further engagement from us as a matter of priority. These arrangements commonly have elements of contrivance, undue complexity, or other features that do not show a commercial or family-based reason, but instead a motivation to shelter income from higher rates of tax. If further analysis confirms the facts and circumstances of your arrangement are high risk, we may proceed to audit where appropriate.

We will not dedicate compliance resources to arrangements described in the white or green zone, other than to confirm that the zone conditions are met.

The Guideline explains how we will manage risk and apply our compliance resources. Not all arrangements will be described by one of the coloured zones. Where an arrangement is not described by one of the coloured zones, we may engage with you to:

- further understand the facts and circumstances
- determine if there's a risk that section 100A may apply so that further compliance resources should be applied.

For trust entitlements arising before 1 July 2022:

- the administrative position outlined in Trust taxation – reimbursement agreement (July 2014) will continue to apply where it is more favourable to the taxpayer's circumstances than the Guideline.
- we will not dedicate compliance resources to consider the application of section 100A where you demonstrate to us either:

– your arrangement satisfies the white zone

– you have taken reasonable care in applying the administrative position in Trust taxation – reimbursement agreement to determine that section 100A does not apply to that arrangement.

Example 6: company beneficiary's present entitlement retained by the trustee running a business

LL Trust runs a small takeaway business. Len and Laura are the trustees for LL Trust. Len, Laura and a private company MM Pty Ltd are beneficiaries of LL Trust. Len and Laura are the directors and shareholders of the private company beneficiary MM Pty Ltd.

On 30 June 2023, LL Trust appoints 100% of the trust income, $30,000 to MM Pty Ltd. MM Pty Ltd incudes the trust income in its tax return for the 2022–23 income year. The trustee pays part of the entitlement to enable MM Pty Ltd to pay tax on that income. LL Trust enters a loan with MM Pty Ltd on commercial terms to retain the balance of MM Pty Ltd's entitlement to trust income. The loan is Division 7A compliant.

This is a low risk arrangement because:

- the funds representing MM Pty Ltd's remaining present entitlement are retained by the trustee of LL Trust and used as working capital to operate the takeaway business
- LL Trust and MM Pty Ltd put in place a loan agreement on commercial terms, for the amount of the unpaid present entitlement.

As this is low risk, we would not dedicate compliance resources, other than to confirm the facts of the arrangement.

Example 7: trust income is returned to the trust by the beneficiary in the form of assessable income

A private group includes the Jones Trust and a private company Smith Pty Ltd. The company is wholly owned by the trustee of the Jones Trust.

The Jones Trust received an assessable insurance payment of $2 million in December 2015 which was included in its assessable income in the year ended 30 June 2016.

The trustee of the Jones Trust used $1.4 million of the $2 million insurance payment to purchase a holiday house in February 2016 for the personal use of Ms Jones-Smith who controls the trust.

On 30 June 2016, the trustee of the Jones Trust made Smith Pty Ltd presently entitled to the $2 million income of the Jones Trust.

The company's taxable income for the year ended 30 June 2016 was $2 million which was wholly comprised of the net income of the Jones Trust.

During the year ended 30 June 2017, Smith Pty Ltd received $600,000 of its trust entitlement which was used to pay its income tax liability.

The trustee of the Jones Trust does not have liquid funds available to pay the $1.4 million unpaid entitlement of Smith Pty Ltd.

During the year ended 30 June 2017, Smith Pty Ltd paid a $1.4 million dividend that was fully franked to the Jones Trust. The distributable income of the trust for that year was $1.4 million and the net income of the Jones Trust was $2 million. The trustee made Smith Pty Ltd presently entitled to the $1.4 million franked dividend income of Jones Trust. The taxable income of Smith Pty Ltd was $2 million which is comprised of the $1.4 million dividend and $600,000 franking credits included in the $2 million net income of the Jones Trust.

The distribution between Jones Trust and Smith Pty Ltd is repeated in each subsequent income year. In effect, there is a circular distribution of the $1.4 million.

The arrangement concerning Smith Pty Ltd's entitlement to income of the Jones Trust is high risk because the arrangement cannot be explained by any commercial objective and appears to be explained by the objective of reducing the tax that would otherwise have been payable had the trustee simply

accumulated the income. We would dedicate compliance resources to conduct further analysis on the facts and circumstances of the arrangement to consider if section 100A may apply.

Example 8: arrangement that attracts our attention

Donald Angel is the trustee of the Angel Family Trust. The primary beneficiaries under the deed include himself, his daughter Samantha and his son Alex. The trust carries on a business of importing and wholesaling furniture products to small retailers.

Samantha works part-time in the business of the trust as a marketing assistant while Alex is self-employed as a musician. During the 2022–23 income year, Samantha earns $30,000 from her employment (which is comparable with her experience and qualifications) and Alex earns $15,000 from performances. The trust has net income of $500,000 and the deed defines income of the trust estate to equal the trust net income. Donald as the trustee resolves to distribute $150,000 to each of Samantha and Alex and the remaining $200,000 to Donald.

Prior to making the resolution, Donald informs Samantha about her expected trust entitlement and they agree that she will be paid $55,000 to pay her tax bill and the balance ($95,000) will be placed in a one-year term deposit in her name. Upon maturity Samantha will receive the interest earned on the term deposit and she will pay the $95,000 to Donald.

Donald does not inform Alex about his present entitlement and instead manages his son’s tax affairs by organising for Alex’s tax return to be lodged without his knowledge. Donald worries that if Alex knew about his trust distribution, Alex would ask for it to be paid to him, so has the Angel Family Trust record Alex’s trust entitlement as being fully satisfied and pay entitlement to Donald. Donald uses $49,500 of Alex's entitlement to pay Alex's tax liability and retains the balance of the entitlement to meet his personal expenses.

The arrangements with Samantha and Alex is a high risk arrangement because:

- an agreement was entered into between Samantha and her father, Donald, before her entitlement arose and that agreement provided for Samantha's after-tax entitlement to be paid to Donald
- Donald has not notified Alex of his entitlement to trust income and someone other than the presently entitled beneficiary (Alex) received a benefit (Donald).

We would dedicate compliance resources to conduct further analysis on the facts and circumstances of the arrangement to consider if section 100A may apply.

Records you should keep

You should keep sufficient records that explain the transactions that have happened, as this will either:

- help demonstrate how a trustee's circumstances meet the requirements of the green zone (where applicable)
- will assist in the timely resolution of any compliance activity we undertake.

The records relevant to an arrangement will differ depending on the circumstances. However, as a general guide, the following documents and records should be kept where possible:

- trust deed (including amendments), trustee resolutions, your contact details and details of the former trustee(s) if any
- notes, records of discussions or meetings explaining the transactions that have happened or calculations made
- details of how
  - the beneficiary was notified of their present entitlement to trust income
  - the trust income was received or used by the beneficiary
  - you utilised the beneficiary's present entitlement if they were not paid

- loan agreements and records showing how loan repayments were satisfied
- file notes of a meeting between you and your registered tax agent.

Intra-family arrangements are typically conducted with a greater level of informality than dealings between unrelated parties. Where possible, trustees (or their registered tax agent) should keep sufficient records that:

- are ordinarily created for other purposes
- demonstrate the objectives an arrangement was intended to achieve and how it would achieve them.

For example, this could be in the form of a file note of a meeting between the trustee and their registered tax agent.

Related information

Taxation Ruling TR 2022/4 *Income tax: section 100A reimbursement agreements* sets out our view on when the entitlement of a beneficiary to trust income arises out of a reimbursement agreement.

Practical Compliance Guideline PCG 2022/2 *Section 100A reimbursement agreements – ATO compliance approach*.

Managing section 100A for the 2021-22 income year – guidance for registered tax agents and trustees dealing with trust distributions for 2021–22 when section 100A may apply.

Trust entitlements – how a beneficiary's entitlement arising out of a reimbursement agreement may be assessed to the trustee instead of to the beneficiary.

Unit trust arrangements and unpaid present entitlements – we have concerns about several arrangements involving UPEs and unit trusts that may have implications under Division 7A of the ITAA 1936.

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.

Last updated 20 November 2026

> **Trust reform**
>
> The minimum tax on discretionary trusts measures announced in the 2026–27 Federal Budget don't apply to the 2026–27 income year. As the measures progress, we'll review and update the information on this page as necessary.

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)*

QC 67389

Non-widely held trusts and the franking tax offset

Generally shares must be held 'at risk' by both trustees and beneficiaries to be eligible for the franking tax offset.

Last updated 18 November 2025

Qualified person and the franking tax offset

Special rules apply to shares acquired on or after 31 December 1997 that are held by a non-widely held trust. Both the trustee and beneficiaries need to be qualified persons in relation to the shares for the beneficiaries to be entitled to a franking tax offset. Generally, this requires that **both** the trustee and the beneficiaries satisfy the holding period rule and, if applicable, the related payments rule.

A beneficiary of a non-widely held trust can also be a qualified person if:

- the trustee satisfies the holding period rule and, if applicable, the related payments rule, and
- the beneficiary is eligible for the individual small shareholder exemption.

Holding period rule for non-widely held trusts

The holding period rule requires that **both** the trustee and beneficiaries of a non-widely held trust hold the shares, or an interest in shares, 'at risk' for 45 days (90 days for preference shares) during the qualification period. At the completion of this period, the trustee and beneficiaries become qualified persons in relation to those specific share holdings.

The holding period rule only has to be satisfied once for each purchase of shares by both the trustee and beneficiaries.

Trustees of non-widely held trusts

For a trustee of a non-widely held trust to be a qualified person in relation to shares or an interest in shares, the holding period rule applies. This rule requires that shares or an interest in shares are held 'at risk' by the trustee for a continuous period of at least 45 days (90 days for preference shares) during the qualification period.

If the trustee of a non-widely held trust is not a qualified person in relation to one or more shares or interests in shares forming part of the trust estate, then the beneficiaries can't be qualified persons in relation to those shares or interests.

Trustee holds shares or interest in shares at risk

A trustee holds shares or an interest in shares as part of the trust estate of a non-widely held trust 'at risk' when the trustee does not have materially diminished risks of loss or opportunities for gain in respect of the shares or interest. A trustee has materially diminished risks of loss or opportunities for gain if the trustee's net position in relation to the shares or interest in shares has less than 30% of those risks and opportunities.

Arrangements such as hedges, options and futures may reduce the financial risks of holding shares or an interest in shares.

Trustee qualification period

The qualification period for trustees is generally the period beginning on the day after the trustee acquired the shares, or the interest in the shares, and ending on the 45th day (or 90th day for preference shares) after the day on which the interest became 'ex dividend'. The shares become 'ex-dividend on the day after the last day on which the acquisition of a share will entitle the person to receive a dividend.

The 45-day and 90-day periods don't include the day of acquisition or, if the shares or interest have been disposed of, the day of disposal.

The 45-day and 90-day periods also exclude days in which the trustee has materially diminished risks of loss or opportunities for gain, although the exclusion of those days is not taken to break the continuity of the period for which the trustee held the shares or interest in shares.

Beneficiaries of non-widely held trusts

For beneficiaries of non-widely held trusts, the holding period rule requires the beneficiary to hold the interest in the shares forming part of the trust estate 'at risk' for a continuous period of at least 45 days (90 days for preference shares) during the qualification period.

When a beneficiary has an interest in shares

A beneficiary (including a potential beneficiary of a discretionary trust) is taken to acquire, hold, or dispose of an interest in shares when the trustee of the non-widely held trust acquires, holds, or disposes of the shares or the interest in shares. This only applies to beneficiaries that are currently in existence at the time the trustee acquires, holds or disposes of the shares or the interest in shares.

When a person becomes a beneficiary of a non-widely held trust (including a potential beneficiary of a discretionary trust), that person is taken to have acquired an interest in any shares or interests forming part of the trust estate at that time. This applies to persons that became a beneficiary upon their birth or incorporation, or because of changes to the class of beneficiaries under the trust deed or by the trustee.

These persons will only be taken to have acquired an interest in one or more shares or interests forming part of the trust estate on the day they became a beneficiary (including a potential beneficiary) of the trust, including because of their birth or incorporation. A beneficiary is a potential beneficiary where they are capable of benefiting under the trust (for instance, where the trustee can exercise a discretion to distribute income or capital to them).

Similarly, when a person ceases to be a beneficiary of a non-widely held trust (including by ceasing to be a potential beneficiary of a discretionary trust), then that person is taken to have disposed of the interest in any shares forming part of the trust estate at that time.

Beneficiary's interest in shares is held at risk

A beneficiary holds an interest in shares forming part of the trust estate of a non-widely held trust 'at risk' where the beneficiary does not have materially diminished risks of loss or opportunities for gain in respect of the interest in the shares.

Where the non-widely held trust is a discretionary trust and the trustee has not made a family trust election (**FTE**), the beneficiaries of the trust are deemed to have a short position equal to their long position (in addition to any other positions the beneficiaries have in respect of their interests in the shares). The effect of this deeming is that beneficiaries of discretionary trusts that haven't made an FTE have materially diminished risks of loss or opportunities for gain. So, beneficiaries of discretionary trusts that haven't made an FTE don't hold an interest in the shares forming part of the trust estate 'at risk'.

If however the trustee of a discretionary trust has made an FTE, the beneficiaries are not deemed to have a short position equal to their long position. This means that any other positions the beneficiaries have with respect to their interest in shares are relevant. Provided the beneficiary doesn't have materially diminished risks of loss and opportunities for gain, the beneficiary will be taken to hold the interest in shares 'at risk'.

Beneficiary qualification period

Where the beneficiary holds an interest in the shares forming part of the trust estate of a non-widely held trust 'at risk', they will satisfy the holding period rule if they hold the interest for a continuous period of at least 45 days (90 days for preference shares) during the qualification period.

The qualification period for beneficiaries is generally the period beginning on the day after the beneficiary acquired the interest in the shares and ending on the 45th day (or 90th day for preference shares) after the day on which the interest became 'ex dividend'. The shares become 'ex-dividend' on the day after the last day on which the acquisition of a share will entitle the person to receive a dividend.

The 45-day and 90-day periods exclude days in which the beneficiary has materially diminished risks of loss or opportunities for gain, although the exclusion of those days is not taken to break the continuity of the period for which the beneficiary held the interest in shares.

It's noted that a beneficiary of a non-widely held trust (including a potential beneficiary of a discretionary trust) who was not born, or was not incorporated, during the qualification period won't hold the interest in shares for a continuous period of at least 45 days (90 days for preference shares) during the qualification period. This is even if the trustee has satisfied the holding period rule in their own right.

Similarly, a person that was not a beneficiary of the non-widely held trust (which also excludes a potential beneficiary of a discretionary trust) while the shares were part of the trust estate will not hold the interest in shares for a continuous period of at least 45 days (90 days for preference shares) during the qualification period.

Related payments rule

In certain circumstances, the related payments rule prevents a taxpayer from claiming the franking tax offset if a related payment is made. This rule applies if a taxpayer makes a 'related payment'. For instance, the taxpayer or an associate are under an obligation to pass on the benefit of the franked dividend to someone else.

The distribution by a trustee of a franked dividend to a presently entitled beneficiary doesn't constitute the making of a related payment.

Where there has been a related payment, to be a ‘qualified person’ for a dividend or distribution, the taxpayer must hold the relevant shares ‘at risk’ for the period beginning on the 45th day before and ending on the 45th day after the day on which the shares became ex-dividend (90 days before and after for preference shares).

Being a ‘qualified person’ for the payment of current dividends or distributions doesn't mean that the taxpayer is automatically a ‘qualified person’ for future dividends or distributions if the taxpayer or an associate are under an obligation to pass on those dividends or distributions to someone else. The related payments rule must be satisfied for all subsequent dividends and distributions.

Individual small shareholder exemption

If the trustee of a non-widely held trust satisfies the holding period rule and the related payments rule in relation to shares or an interest in shares forming part of the trust estate, then the beneficiary will also

be taken to be a qualified person in relation to the shares or the interest in shares if the beneficiary is an individual and their total franking credit entitlement is below $5,000.

This is the case even if the beneficiary did not hold the interest in the shares 'at risk' for at least 45 days (or 90 days for preference shares) during the qualification period (because, for example, the shares were part of the trust estate of a discretionary trust that had not made an FTE).

A total franking credit entitlement of $5,000 is roughly equivalent to receiving a fully franked dividend of:

- $11,666 (for companies that are not base rate entities, with a corporate tax rate of 30%)
- $13,181 (for companies that are base rate entities, with a corporate tax rate of 27.5%)
- $14,230 (for companies that are base rate entities, with a corporate tax rate of 26%).

This exemption only applies to individuals, and does not apply to trustees, partnerships or companies.

Examples

The following examples set out how the holding period rule applies to trustees and beneficiaries of non-widely held trusts. It is assumed the related payments rule is not applicable to these examples.

Example 1: individual beneficiary franking credit entitlement less than $5,000

Andrew is the trustee of the A Trust. The A Trust is a discretionary trust. Andrew hasn't made a family trust election in respect of A Trust.

In his capacity as trustee, Andrew resolves to distribute the income of the A Trust to Joy, an eligible beneficiary of the trust. The income of the trust included a fully franked dividend of $7,000 (with franking credits of $3,000 attached).The fully franked dividend was received in respect of ordinary shares held

by the A Trust. Andrew, in his capacity as trustee of the A Trust, is a qualified person in relation to the shares.

Ordinarily Joy wouldn't satisfy the holding period rule because her interest in the shares is not held 'at risk'. However, as Andrew in his capacity as trustee of the A Trust is a qualified person in respect of the shares and Joy is an individual with franking credits of less than $5,000, she qualifies for the small shareholder exemption. Joy can therefore obtain a franking tax offset.

Example 2: individual shareholder franking credit entitlement more than $5,000

Andrew is the trustee of the A Trust. The A Trust is a discretionary trust. Andrew hasn't made a family trust election in respect of A Trust.

In his capacity as trustee, Andrew decides to distribute the income of the A Trust to Gavin, an eligible beneficiary of the trust. The income of the trust included a fully franked dividend of $14,000 (with franking credits of $6,000 attached).

The fully franked dividend was received in respect of ordinary shares held by the A Trust. Andrew, in his capacity as trustee of the A Trust, is a qualified person in relation to the shares.

Although Andrew is a qualified person in relation to the shares, Gavin doesn't satisfy the holding period rule because his interest in the shares is not held 'at risk'. This is because the financial risk is materially diminished through holding the shares in a discretionary trust. Additionally, Gavin doesn't qualify for the small shareholder exemption because the franking credit entitlement is more than $5,000. Therefore Gavin can't obtain a franking tax offset.

Example 3: family trust

Michael is the trustee of the B Trust. The B Trust is a discretionary trust. Michael has made a family trust election in respect of B Trust to join the family group of Belinda.

In his capacity as trustee, Michael decides to distribute the income of the B Trust for the year ended 30 June 2023 to Belinda. The income of the trust included a fully franked dividend of $700,000 (with franking credits of $300,000 attached).

The fully franked dividend was received in respect of ordinary shares held by the B Trust since 1 July 2015. Belinda has been in the class of eligible beneficiaries since the establishment of the B Trust on 1 April 2014.

Michael, in his capacity as trustee of the B Trust, is a qualified person in relation to the shares. Michael has held the shares 'at risk' for a period of at least 45 days during the qualification period.

Belinda is also a qualified person in relation to the interest in the shares. Belinda has held an interest in the shares 'at risk' for a period of at least 45 days during the qualification period. Belinda is accordingly entitled to a franking tax offset in respect of the shares.

Example 4: new beneficiary

Michael is the trustee of the B Trust. B Trust is a discretionary trust. Michael has made a family trust election in respect of B Trust to join the family group of Belinda.

In his capacity as trustee, Michael decides to distribute the income of the B Trust for the year ended 30 June 2024 to Jesse. The income of the trust included a fully franked dividend of $35,000 (with franking credits of $15,000 attached).

The shares became ex-dividend on 31 May 2024 and a fully franked dividend was received on the same day in respect of ordinary shares held by the B Trust since 1 July 2015. Jesse became a member of the eligible class of beneficiaries on

28 June 2024, when Michael exercised his powers as trustee to validly extend the beneficiary class.

Michael, in his capacity as trustee of the B Trust, is a qualified person in relation to the shares. Michael has held the shares 'at risk' for a period of at least 45 days during the qualification period.

Jesse is not a qualified person in relation to the interest in the shares. Jesse acquired his interest in the shares on 28 June 2024, which is after the day the shares became ex-dividend on 31 May 2024. Jesse accordingly didn't hold the shares 'at risk' for a period of at least 45 days during the qualification period. Therefore Jesse is not entitled to a franking tax offset in respect of the shares.

Example 5: new corporate beneficiary

Michael is the trustee of the B Trust. The B Trust is a discretionary trust. Michael has made a family trust election in respect of B Trust to join the family group of Belinda.

In his capacity as trustee Michael decided to distribute the income of the B Trust for the year ended 30 June 2025 to NewCo Pty Ltd. The income of the trust included a fully franked dividend of $7 million (with franking credits of $3 million attached).

The shares became ex-dividend on 1 June 2025 and a fully franked dividend was paid on the same day in respect of ordinary shares held by the B Trust since 1 July 2015. NewCo Pty Ltd was incorporated on 15 June 2025 and became a member of the class of beneficiaries of the B Trust on that date.

Michael, in his capacity as trustee of the B Trust, is a qualified person in relation to the shares. Michael held the shares 'at risk' for a period of at least 45 days during the qualification period.

NewCo Pty Ltd is not a qualified person in relation to the shares. NewCo Pty Ltd acquired its interest in the shares on 15 June

2025, which is after the day the shares became ex-dividend on 1 June 2025.

NewCo Pty Ltd accordingly didn't hold the shares 'at risk' for a period of at least 45 days during the qualification period. Therefore NewCo Pty Ltd is not entitled to a franking tax offset in respect of the shares.

Example 6: share buy-back

Christine is the trustee of the C Trust. The C Trust is a discretionary trust. Christine has made a family trust election in respect of C Trust to join the family group of David.

In her capacity as trustee Christine decided to distribute the income of the C Trust for the year ended 30 June 2025 to BC Pty Ltd. The income of the trust included a fully franked dividend of $14 million (with franking credits of $6 million attached).

The fully franked dividend was paid as part of a share buyback of ordinary shares on 1 January 2025. The trustee had held the shares since 1 October 2017. BC Pty Ltd was incorporated on 21 June 2025 and became a member of the class of beneficiaries of the C Trust on that date.

Christine, in her capacity as trustee of C Trust, is a qualified person in relation to the shares. Christine held the shares 'at risk' for a period of at least 45 days during the qualification period.

BC Pty Ltd is not a qualified person in relation to the shares. BC Pty Ltd was not an eligible beneficiary of the C Trust during the time the shares formed part of the trust estate, and so BC Pty Ltd did not have an interest in the shares.

Therefore BC Pty Ltd did not hold the shares 'at risk' for a period of at least 45 days during the qualification period and is not entitled to a franking tax offset in respect of the shares.

More information

For more information about eligibility for the franking tax offset, see You and your shares 2025 (NAT 2632).

QC 105857

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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