Trusts

A trust is an obligation for a person or other entity to hold property or assets for beneficiaries.

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QC 23082

Trusts, trustees and beneficiaries

An overview of the role of trusts, trustees and beneficiaries.

Last updated 31 January 2024

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Trusts

Trusts are widely used for investment and business purposes.

A trust is an obligation imposed on a person or other entity to hold property for the benefit of beneficiaries. While in legal terms a trust is a relationship not a legal entity, trusts are treated as taxpayer entities for the purposes of tax administration.

Trustees

The trustee(s) (there may be more than one) of a trust may be a person or a company (the latter is known as a corporate trustee). In either case, the trustee must be legally capable of holding trust property in their own right. The trustee holds the trust property for the benefit of the beneficiaries.

Where the trust is established by deed (which in the case of a deceased estate is the will), the trustee must deal with the trust property in line with the intentions of the settlor as set out in the trust deed. They must also act in accordance with the relevant state or territory law regulating trusts, and with any other applicable law, including tax law.

Under trust law, trustees are:

- personally liable for the debts of the trusts they administer, and
- entitled to be indemnified out of the trust property for liabilities incurred in the proper exercise of the trustee's powers (except where a breach of trust has occurred).

Under tax law, the trustee is responsible for managing the trust's tax affairs, including registering the trust in the tax system, lodging trust tax returns and paying some tax liabilities.

Beneficiaries

A trust beneficiary can be a person, a company or the trustee of another trust.

The trustee may also be a beneficiary, but not the sole beneficiary unless there is more than one trustee.

Beneficiaries may have an entitlement to trust income or capital that is set out in the trust deed or they may acquire an entitlement because the trustee exercises a discretion to pay them income or capital.

Generally, the beneficiaries are taxed on the net income of a trust based on their share of the trust's income – regardless of when or whether the income is actually paid to them.

Next:

- Trust income

QC 23084

Trust income

Understand how the income of a trust is taxed.

Last updated 24 January 2019

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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

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.

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

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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.

Last updated 25 February 2025

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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.

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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.

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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	Contr 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.

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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	The family members, etc, must hold the fixed entitlements for their own benefit at all times while the

indirectly, and for their own benefit, to all the income and capital of the fixed trust, company or partnership: • 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.	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.
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.

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On this page

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:

- 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:

- there is a beneficiary that is specifically entitled to the capital gain, or
- 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 two 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 also

- Streaming trust capital gains and franked distributions
- Capital gains made by trusts
- Resolutions checklist

Example: Specific entitlement

A trustee derived the following amounts in the 2014–15 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, and
- 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.

QC 23088

Trusts registration and reporting obligations

How trustees must manage a trust's tax affairs, including registering and reporting.

Last updated 30 January 2020

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Trustees and beneficiaries

The **trustee** is responsible for managing the trust's tax affairs, including registering the trust in the tax system, lodging trust tax returns and paying some tax liabilities.

The **beneficiaries** include their share of the trust's net income in their tax returns and may need to pay instalments on their expected tax liability through the pay as you go (PAYG) instalment system.

Special rules apply to closely held trusts or where a beneficiary is a non-resident.

If a trust is carrying on a business, the trustee may have employer obligations.

Registration

A trust should have its own tax file number (TFN), which the trustee uses in lodging income tax returns for the trust. A trust is also entitled to an Australian business number (ABN) if the trust is carrying on an enterprise.

The trustee registers for the trust's TFN and ABN in their capacity as trustee. This registration is separate from any registration the trustee may require for other capacities they may act in, including acting on their own behalf.

All trusts will automatically have 'The Trustee for...' added to the name of the trust when the ABN is registered, as the trustee is responsible for the tax obligations of the trust.

PAYG instalments

Trusts are not liable to pay PAYG instalments. Instead, the beneficiaries (or the trustee when assessed on their behalf) may have to pay instalments based on their share of the trust's instalment income.

Non-resident withholding tax

If a non-resident beneficiary is presently entitled to dividends, interest or royalties included in the trust income, the trustee must withhold tax and remit it to the ATO. The trustee may need to lodge a PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report.

Tax returns

A trustee is required to lodge a trust income tax return, regardless of the amount of net income involved, unless we advise that a return is not required.

If the trustee is liable for tax they will receive an income tax assessment as trustee that is separate to their own assessment as an individual or corporate tax entity.

See also

- Trust tax return instructions
- PS LA 2000/2 *An exemption for the trustees of some trust estates from the requirement to furnish a tax return on behalf of the trust estate*
- Streamlined trust tax return for custodians with non-resident beneficiaries

Beneficiaries generally include their share of the trust's net income in the partnership/trust distributions section of their tax return.

See also

- Tax rates
- Lodging your tax return

Closely held trusts – withholding and reporting

The following additional requirements apply to trustees of closely held trusts.

Tax file number (TFN) withholding

The trustee of a closely held trust, including a family trust, must withhold tax from payments to beneficiaries who have not provided their TFN to the trust.

See also

- TFN withholding for closely held trusts

Trustee beneficiaries

The trustee of a closely held trust (other than a family trust) with one or more trustee beneficiaries who are presently entitled to a share of the income or a tax-preferred amount (or both) of the trust must provide us with certain details of the trustee beneficiaries.

See also

- Trustee beneficiary reporting rules

Trustee beneficiary non-disclosure tax

This tax is payable if:

- the trustee of a closely held trust (other than a family trust) fails to lodge a correct trustee beneficiary (TB) statement within the specified period in respect of each trustee beneficiary's share of net income, or
- a share of the net income of a closely held trust (including a family trust) is included in the assessable income of a trustee beneficiary under section 97 of the *Income Tax Assessment Act 1936* and the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the untaxed part of the share (referred to as a 'round robin' or 'circular trust distribution').

If the trustee of a closely held trust is liable for trustee beneficiary non-disclosure tax, the trustee beneficiary's share of net income is not included in their assessable income under section 97 (except where the share of net income is assessable under sections 99, 99A and 99B).

See also

- Rules for closely held trusts

Employer obligations

If a trust employs people, the trustee will have employer obligations, including pay as you go (PAYG) withholding, paying super contributions for any eligible employees and reporting and paying tax on fringe benefits.

See also

- Your workers

QC 23089

Specific rules for some trusts

Understand the rules for certain types of trusts.

Last updated 12 May 2016

On this page

Unit trusts

Unit trusts are used in many commercial arrangements, including managed investment schemes. Units can often be bought and sold in a way similar to shares in a company. Some unit trusts are taxed like companies and their unit holders like shareholders.

See also

- Unit trusts treated as corporate tax entities

Managed investment trusts

A managed investment trust (MIT) is a type of managed investment scheme.

A new tax system for MITs came into effect in May 2016. The new tax system is designed to reduce complexity and increase certainty for MITs and their investors.

See also

- Managed investment trusts – overview

Family trusts

A trust becomes a family trust when the trustee of the trust makes a 'family trust election'. To make the election, the trust must be controlled by a 'family group'.

Trusts that qualify as a family trust for the purposes of the trust loss provisions may benefit from concessional tax treatment.

However, family trust distribution tax (FTDT) applies to distributions made from these trusts if the trustee confers a present entitlement, or distributes income or capital, makes concessional loans or otherwise provides or allows the use of income or capital of the trust for less than its market value to a person or entity that is outside the trust's family group.

FTDT is payable by the trustee of the family trust at the highest marginal rate plus the Medicare levy. Beneficiaries that receive distributions on which FTDT was paid receive the distribution as non-assessable non-exempt income (against which they can't deduct expenses).

See also

- Family trust concessions

Deceased estates

A deceased estate is technically not a trust while it is being administered, but is treated as a trust for tax purposes, with the executor or administrator of the estate taken to be the trustee.

See also:

- Deceased estates

Super funds

Super funds are generally trusts, and have trustees and beneficiaries (members). However, super funds are taxed differently to other types of trusts.

- Self-managed super funds

Charitable trusts

Some types of charitable funds must be established as trusts in order to qualify for charity tax concessions.

See also:

- Choosing your business structure

Special disability trusts

Immediate family members and carers can set up a special disability trust to provide for the future care and accommodation needs of a person with a severe disability. The trustee is taxed at individual marginal rates.

See also:

- Reporting the income of a special disability trust

Reporting the income of a special disability trust

How to complete the special disability trust tax return and individual return for the principal beneficiary.

QC 23083

Reporting the income of a special disability trust

How to complete the special disability trust tax return and individual return for the principal beneficiary.

Last updated 1 March 2022

On this page

This information is for the trustees of special disability trusts and the principal beneficiaries of such trusts (or their tax advisers).

It explains how to complete the trust tax return of the trust and the individual tax return of the principal beneficiary.

How special disability trusts are taxed

Special disability trusts are trusts established in accordance with Part 3.18A of the Social Security Act 1991 to help families and carers provide financially for the care and accommodation of a person with a severe disability – referred to as the principal beneficiary.

The tax rules for special disability trusts are designed so that the net income of the trust is taxed at the principal beneficiary's marginal tax rate, rather than some or all of it being assessed to the trustee at the rates applicable under section 99A.

Unlike other trusts, where taxation of net income depends on a beneficiary being actually presently entitled to trust income, a principal beneficiary is deemed to be presently entitled to all of the income of a special disability trust (even if there is none). The principal beneficiary of the trust is also treated for tax purposes as though they are under a legal disability, even if they are not. This means the entire net income of the trust is assessed to the trustee on behalf of the beneficiary.

If the principal beneficiary is a beneficiary in more than one trust or derives income from other sources, the net income of the special disability trust should also be included in the beneficiary's assessable income. Any tax payable by the trustee of the special disability trust should be claimed as a credit on the beneficiary's individual tax return (to prevent double taxation).

If a trust estate is not a special disability trust at the end of an income year, these rules do not apply and net income is taxed under the ordinary trust taxation rules.

Example

Mark is the principal beneficiary of the Lang SDT, which is a special disability trust. Mark is an Australian resident, is not under a legal disability and has a part-time job during the income year from which he earns $15,000.

During the income year, the Lang SDT earns income of $25,000. The net income of the trust is also $25,000.

The trustee of the Lang SDT applies $20,000 for Mark's reasonable care and accommodation costs during the income year and retains the remaining $5,000 in the trust.

Mark is treated as if he is presently entitled to all of the income of the Lang SDT and under a legal disability. The trustee of the Lang SDT is therefore assessed on the entire $25,000 in accordance with subsection 98(1). However, as Mark has also derived income from his part-time employment, he is required to include the entire income of the SDT in his assessable income under subsection 100(1).

Mark is assessed on $40,000 at his marginal rates of tax. He is able to offset against his individual assessment, any tax payable by the trustee of the Lang SDT on the $25,000 of trust net income.

Completing a trust tax return for a special disability trust

Generally you complete a **trust tax return** for a special disability trust in the same way as for other trusts. There are a few specific requirements:

- The code for the type of trust is 'C'.
- Complete the distribution details at item **57** as follows:
  - At the reference to 'Beneficiary 1', provide details of the principal beneficiary of the special disability trust. Include the principal beneficiary's tax file number (if they have one) and date of birth.
  - At label **V** 'Assessment calculation code', insert '45' if the principal beneficiary is a resident of Australia, or '145' if the principal beneficiary is a non-resident.
  - Complete the remaining labels under label **V** 'Assessment calculation code' as necessary for **beneficiary 1** (as per the return instructions).
  - Leave the other beneficiary statements of distribution blank.
  - You don't need to provide any details of income to which no beneficiary is presently entitled. This is because the principal beneficiary of the trust is treated as being presently entitled to all of the income of the trust.
- Any refundable tax offset amount that is refundable in the trust tax return should not also be claimed in the beneficiary's individual tax return. This means the following items should be claimed only in the trust tax return
  - all 'share of credits from income' amounts at item **8**
  - all 'TFN amounts withheld from gross interest' at item **11**
  - all 'TFN amounts withheld from dividends' at item **12**.

Completing an individual tax return for a principal beneficiary

If the principal beneficiary is required to lodge an **Individual tax return**, the guidance below will help in completing it.

If the special disability trust has a total net income amount at item **26** of the trust tax return, the principal beneficiary should include that amount in their individual tax return at item **13** (of the supplementary section).

If the trustee paid tax on that net income, the principal beneficiary should:

- claim the tax paid by the trustee as a credit at **P** item **T9** 'Other refundable tax offsets' in their individual tax return
- print **S** in the code box at the right of **P**.

In addition to any income from the special disability trust, the principal beneficiary should include in their return any other personally derived assessable income or deductible expenditure incurred.

If the special disability trust has net income but is not required to lodge a trust tax return, the principal beneficiary should:

- still include the amount of net income at item **13**
- not include any amount as a credit at item **T9** 'Other refundable tax offsets', as the trustee will not have paid any tax.

QC 23538

Trust vesting

What trust vesting means, what happens when it occurs, and whether the vesting rules can be changed.

Last updated 11 February 2019

On this page

What vesting means

A trust deed usually specifies a date, or an event (such as the youngest beneficiary attaining a certain age), on which the interests in the trust property must vest. The deed may describe this as the 'vesting date' or 'termination date'.

On vesting, the beneficial interests in the property of the trust become fixed. This is to avoid breaching the 'rule against perpetuities'. You should check your trust deed so that you are aware of when your trust will vest.

When a trust vests

What happens when a trust vests will depend on the terms of the trust. For example, the trust deed may direct that, on the vesting day, the trustee is to end the trust by distributing the trust property to particular beneficiaries or it may provide that the trustee continues to hold the trust property on trust from this date for certain beneficiaries.

The vesting of the trust does not always end the trust or create a new trust. If the trustee is permitted by the trust deed to hold trust property for specified beneficiaries after the vesting date, the same underlying trust relationship continues although the duties of the trustee will have changed. For example, the trustee will no longer have any discretionary powers to appoint income or capital after vesting.

There may be income tax implications of the trust vesting depending on the trust deed, including capital gains tax (CGT) consequences. Our views on the income tax consequences of a trust vesting are set out in **Taxation Ruling TR 2018/6 Income Tax: Trust Vesting – amending the vesting date and consequences of a trust vesting**

If the vesting of the trust has not resulted in a CGT event happening or led to the creation of a new trust, the trust continues to use its current trust registrations (ABN/TFN/GST).

Provisions of the trust deed dealing with vesting

You might have the power under your deed to amend the provisions that deal with vesting, including the vesting date. Determining this requires consideration of the terms of the trust deed, including any specific and general powers of the trustee and any relevant exceptions to those powers.

If the trust deed does not provide you with powers to extend or bring forward the vesting date, you will need to approach the supreme court in your state or territory to make any changes to the vesting date.

Continuing to administer the trust in the same manner as it was administered before the vesting date will not extend the vesting date.

It's too late to change the vesting date or vesting clause of a trust **after** it has vested.

Validly extended vesting dates

Amending the vesting date with a valid exercise of power in a trust deed or the approval of a relevant court prior to the trust vesting, will not cause CGT event E1 to happen or create a new trust.

Administrative approach on trusts vesting

We want to support trustees and beneficiaries who engage with us and want to get their tax affairs in order.

You are encouraged to contact us before you lodge your return if you have any concerns whether your trust may have vested or is about to vest. We will work with you to get it right.

We won't devote compliance resources solely to apply TR 2018/6 *Income Tax: Trust vesting – consequences of a trust vesting* in relation to trusts that vested before the issue of the final ruling. However, we will act consistently with the views set out in TR 2018/6 where the Commissioner is required to:

- issue or amend assessments (if we identify other tax risks in relation to the trust during compliance activities that affect its net income and to whom it is assessed)

- state a view (for example in a private ruling or in submissions in a litigation matter).

We won't apply penalties that trustees or beneficiaries may be liable to pay where the parties engage with us and have a compliance history that shows they have been generally compliant with their tax obligations. We also won't assess interest where it can be established, or the Commissioner can reasonably be satisfied, that income tax has been paid on the net income of the trust that is consistent with what we consider to be correctly payable.

What you need to do

- You need to carefully check the trust deed to determine the vesting date and what action the trustee must take on vesting. We recommend that you regularly review your trust deed, but this is particularly important if there has been, or is proposed to be, a change in trustee or any other amendments to your trust deed.
- Understand your obligations on vesting as the trustee. Ignoring or being unaware of the trust vesting date can have significant tax and trust law implications for both trustees and beneficiaries. The best way to prevent any issues arising is to check the vesting date and vesting clause in your trust deed. This will allow you time to seek professional advice if the requirements are not clear, and make preparations or amendments to the trust deed as required.
- If the vesting date for your trust has already passed, you may want to seek professional advice about the legal implications of your trust vesting.
- You need to consider taking further action if you become of aware of any issues. This may include
  - amending any relevant assessments that are within period of review (your amendment request should include the name of the trust that has vested)
  - contacting us for advice if you have questions or concerns about the tax consequences of your trust vesting.

You can apply for a private ruling, request an early engagement discussion or write to us at the address below.

Australian Taxation Office
GPO Box 9990
[insert the name and postcode of your capital city]

For example:

Australian Taxation Office
GPO Box 9990
SYDNEY NSW 2001

Next steps:

- Early engagement
- Making a voluntary disclosure
- Applying for a private binding ruling
- Request an amendment to a business or super tax return

QC 49690

Tax consequences of trust splitting

Understand how appointing separate trustees over different trust assets may have tax impacts.

Last updated 18 December 2019

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.

See also:

- 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?*
- Trusts

QC 53129

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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