


IT 2242 - Income tax : distribution of employment income to minor beneficiaries of family trusts - application of recent court decision

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TAXATION RULING NO. IT 2242

INCOME TAX : DISTRIBUTION OF EMPLOYMENT INCOME TO MINOR
BENEFICIARIES OF FAMILY TRUSTS - APPLICATION OF RECENT
COURT DECISION

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/13340 DATE OF EFFECT: Immediate
83/13341
83/13343

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1206118	TRUSTS	102AF(1) (b)
	EMPLOYMENT INCOME	102AG(2)
	DISTRIBUTION TO MINOR	102AG(4)
	BENEFICIARIES	102AG(5A)

PREAMBLE In a decision of the Supreme Court of Queensland, FC of T v Bill Wissler (Agencies) Pty Ltd, reported at 85 ATC 4626, 16 ATR 952, G.N. Williams J. dismissed the Commissioner's appeal against the decision of Taxation Board of Review No 3 (Case S50 85 ATC 375, Case 55 28 CTBR (NS) 389). The Board had allowed the taxpayer's objection against the application by the Commissioner of Division 6AA of the Income Tax Assessment Act (the Act) to the distribution of certain income of a family trust to a minor beneficiary.

FACTS 2. The corporate trustee of the Peter Wissler Family Trust, Bill Wissler (Agencies) Pty Ltd, engaged in three types of business activity, one of which was the rendering of management services to Bill Wissler (Can-Rub) Pty Ltd (Can-Rub). For these services the trustee was paid an identifiable sum negotiated between the parties on an annual basis. For the year ended 30 June 1981, an amount of \$46,348.58 was paid to the Trust by Can-Rub for such services. Of this amount, \$10,000 was distributed to a beneficiary, Amanda Wissler, who at all times during the income year was less than 18 years of age. It was successfully argued before the Board on behalf of the trustee that the whole of the beneficiary's share (\$10,000) was "employment income" (as defined in paragraph 102AF(1) (b) of the Act), that it was "excepted trust income" (as defined in sub-section 102AG(2) by virtue of paragraph 102AG(2) (b) of the Act) and thus fell outside the scope of Division 6AA and was not subject to the higher rate of tax applicable under that Division and the Income Tax (Rates) Act.

3. The major issues before G.N. Williams J. on appeal were as follows:

(a) the construction of the relevant provisions of

Division 6AA in relation to the definitions of "employment income" and "excepted trust income";

- (b) whether sub-section 102AG(5A) was inserted into the Act in order to clarify, or alternatively to amend, the definition of "employment income"; and
- (c) whether sub-section 102AG(4) of the Act applied to the facts of this case.

4. In dismissing the Commissioner's appeal, his Honour held that :

- (a) Amanda Wissler was at the material time a "prescribed person" for the purposes of Division 6AA, and that the Division applied to her share of the net income of the Trust unless the income was "excepted trust income" for the purposes of sub-section 102AG(2).
- (b) There was a clear distinction in the definition section, section 102AF, between "employment income" and "business income", and that because the Trust's income was received in payment for the rendering of services it was within the definition of "employment income" in paragraph 102AF(1)(b).
- (c) Consequently, the income in question was "excepted trust income" for the purposes of sub-section 102AG(2) and Division 6AA had no application to the amount distributed to Amanda Wissler.
- (d) There was no ambiguity in the provisions in question. While there was some uncertainty whether sections 15AA and 15AB of the Acts Interpretation Act applied in such a situation, his Honour was unable to discern any intention in the Explanatory Memorandum and Second Reading Speech to the original legislation that would support the view that sub-section 102AG(2) should be limited to income received for services rendered by the beneficiary. In fact, his Honour was of the view that this material and the Explanatory Memorandum and Second Reading Speech of the later amending legislation tended to suggest that the original legislation did not, in law, reflect the intention of the legislature.
- (e) The wording of section 17 of the amending Act, by which sub-section 102AG(5A) was inserted into the Act, clearly suggested that prior to the amendment, the type of income in question was within the definition of "employment income". In particular, the formula contained in sub-section 17(3) of the amending Act could only be arrived at if, prior to the amending Act, the definition of "excepted trust income" included payments for

services rendered otherwise than by the beneficiary.

- (f) Sub-section 102AG(4) did not apply merely where, at the time of entering into a legitimate commercial agreement, the parties recognised that the resultant income would be "excepted trust income" for the purposes of Division 6AA. The sub-section cannot strike down, according to his Honour, an agreement to make a payment for services rendered.

RULING 5. No appeal has been lodged against the decision of the Supreme Court.

6. It has been decided to accept the Court's decision that the provisions of Division 6AA did not apply on the particular facts of this case. Because the Act has been amended (by the insertion of sub-section 102AG(5A)) to overcome this situation, the decision may only be applied in comparable fact situations which arose during the income years ended 30 June 1980 and 1981, and that part of the 1982 financial year, up to and including 27 August 1981, as provided for in the formula contained in sub-section 17(3) of the amending legislation.

7. As to income derived after that date, for it to be regarded, in relation to a beneficiary of a trust estate, as "employment income" and thus excluded as "excepted trust income" from the scope of Division 6AA - in the case of payments made for services rendered or to be rendered - the services must have been or are to be rendered by the beneficiary.

COMMISSIONER OF TAXATION
21 January 1986

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