IT 331 - Trustees and beneficiaries: adjustments to estate income as returned to arrive at net income of estate for the purposes of section 95

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TAXATION RULING NO. IT 331

TRUSTEES AND BENEFICIARIES : ADJUSTMENTS TO ESTATE INCOME AS RETURNED TO ARRIVE AT NET INCOME OF ESTATE FOR THE PURPOSES OF SECTION 95.

F.O.I. EMBARGO: May be released

REF H.O. REF: J78/95 P5 F265 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED: 18.10.67

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1103219	TRUSTEES AND BENEFICIARIES	59
	DEPRECIATION - SURPLUS ON SALE	95
	DISPOSAL OF ASSETS	99
	BENEFICIARIES - NET INCOME	

PREAMBLE In CITCM No.829 the problems associated with assessment of beneficiaries who are presently entitled to the income of estates but who, for one reason or another, do not or cannot receive part of their shares of the net income of the estate as calculated under section 95 and the practices to be followed in the application of the various provisions of Division 6 in the light of those problems were set out.

2. In a case considered in this office, the testator died on 16 February 1949. By his will, he gave power to his trustees to carry on the grazing business formerly conducted by him, and in fact, the trustees did carry on the business until the property was sold on 18 September 1961. On the sale of the business considerable sums had to be included in the total assessable income under section 59 in respect of excess depreciation allowed on plant and structural improvements used in the grazing business.

3. Three beneficiaries had been presently entitled to all the income of the estate since 1955, one a life tenant, the other two, residuary beneficiaries. In the return of the estate for the year of sale, the excess depreciation was taken into account by the trustees in the calculation of the net income of the estate and the whole of the net income was apportioned to the beneficiaries according to their respective shares. However, following upon the instructions contained in CITCM No.829 the amount of the excess depreciation was assessed to the trustees under section 99 as income to which no beneficiary was presently entitled and against this assessment the trustees subsequently lodged an appeal to the Supreme Court of Queensland.

RULING 4. On consideration of the matter in this office it was decided that the assessment under section 99 could not be defended. In the first place, section 99 as it was then expressed could only apply where there was some part of the income of the estate to which no beneficiary was presently entitled. In the particular case there were beneficiaries

presently entitled to all the income of the estate. It may be true that the life tenant had no interest in the amount of excess depreciation but, in the terminology of sections 97, 98 and 99, this amount was part of the net income, (i.e. taxable income) of the estate but it was not part of the income of the estate (i.e. the income ascertained according to the law of trusts) it did not exist at all except as a conception of income tax law. Accordingly, there was nothing in the facts of the case to bring section 99 into operation and it was necessary to allow the appeal.

5. It is not intended in this ruling to withdraw or modify in principle any of the rulings given in CITCM No.829. In the main those rulings have provided a satisfactory solution to the particular problems both to the Commissioner and taxpayers and they should continue to be applied. As a practical assessing expedient, however, where the net income of an estate in which beneficiaries are presently entitled to all the income includes an amount (such as a depreciation balancing charge) which is assessable income for income tax purposes but not income according to general concepts, the allocation of this part of the net income as made by the trustees in the return should be accepted, irrespective of whether it is treated as income of the beneficiaries or as income assessable under section 99.

COMMISSIONER OF TAXATION