IT 331W - 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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Notice of Withdrawal

Taxation Ruling

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

Taxation Ruling IT 331 is withdrawn with effect from today.

1. Taxation Ruling IT 331 outlines the Commissioner's practice in relation to the taxation of amounts, such as depreciation balancing charges, that are included in the net income of a trust estate but are not income of the trust estate for the purposes of sections 97, 98, 99 and 99A of the *Income Tax Assessment Act 1936*. The practice has been to accept the allocation made by the trustee of this part of the net income.

2. It is now settled law that a beneficiary is assessed on that proportion of the section 95 net income of a trust estate as its entitlement to the income of the trust estate bears to the income that is available for distribution: *FC of T v. Bamford Ors; Bamford Anor v. FC of T* [2010] HCA 10; 2010 ATC 20-170; (2010) 84 ALJR 266 following *Zeta Force Pty Ltd v. Commissioner of Taxation* (1998) 84 FCR 70 at 74-75; (1998) 98 ATC 4681; (1998) 39 ATR 277.

3. As the law in respect of this matter is now clear, IT 331 is withdrawn. However, the Commissioner will continue to be administratively bound by IT 331 in respect of beneficiary and trustee assessments for the 2009-10 and earlier income years. For further information on the status of old series and other rulings that are not legally binding, refer to Taxation Ruling TR 2006/10 and Law Administration Practice Statement PS LA 2008/3.

Commissioner of Taxation
30 June 2010

ATO references

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