


TD 92/112 - Income tax: foreign income: is an amount to be excluded from a trust's attributable income under sub-subparagraph 102AAU(1)(c)(i)(A) if the amount will be included in a beneficiary's assessable income under section 97 at a later point in time?

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: foreign income: is an amount to be excluded from a trust's attributable income under sub-subparagraph 102AAU(1)(c)(i)(A) if the amount will be included in a beneficiary's assessable income under section 97 at a later point in time?

1. Sub-subparagraph 102AAU(1)(c)(i)(A) of the *Income Tax Assessment Act 1936* provides that the attributable income for a year of income of a non-resident trust estate may be reduced by an amount 'that is or has been included in the assessable income of a beneficiary under section 97'. We accept that amounts satisfy this requirement if they will be included in a beneficiary's assessable income under section 97 after the assessment of the attributable taxpayer in respect of the trust estate.

2. For instance, an amount might be included in a beneficiary's assessable income under section 97 after the assessment of an attributable taxpayer in respect of a non-resident trust estate if the beneficiary has a substituted accounting period ending after the attributable taxpayer is assessed in relation to the net income of the non-resident trust estate.

Example:

A non-resident trust estate to which the transferor trust measures apply derives \$1,000 interest income during the 1991-92 income year (1 July 1991 - 30 June 1992) and distributes that income to an Australian beneficiary on 30 June 1992. The beneficiary is a company which has a substituted accounting period ending on 30 December 1992. The interest income will be included in the assessable income of the company beneficiary under section 97 when assessed.

Even though an attributable taxpayer of the trust estate is assessed before the \$1,000 interest income is included in the assessable income of the company beneficiary, sub-subparagraph 102AAU(1)(c)(i)(A) applies to exclude the interest income from the attributable income of the trust estate.

Commissioner of Taxation

09/07/92