


***TD 93/D152 - Income tax: where a trustee is assessed under subsection 98(1) of the Income Tax Assessment Act 1936, in respect of a resident individual beneficiary under a legal disability, is the imputation credit on dividends allowed in both the trustee's assessment and the individual's assessment ?***

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This document has been finalised by TD 93/186.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

## Draft Taxation Determination

**Income tax: where a trustee is assessed under subsection 98(1) of the *Income Tax Assessment Act 1936*, in respect of a resident individual beneficiary under a legal disability, is the imputation credit on dividends allowed in both the trustee's assessment and the individual's assessment ?**

1. Yes. Both the trustee (section 160AQY) and the beneficiary (section 160AQX) receive the imputation credit. However, the benefit is not actually allowed twice.

2. Under subsection 100(2), a beneficiary who is under a legal disability receives a credit for the tax paid or payable by the trustee on that beneficiary's share of the income entitlement. To calculate this credit, the gross tax payable by the trustee under subsection 98(1) is reduced by the beneficiary's share of the trust's imputation credits. This reduced amount is the credit allowed under subsection 100(2) in the beneficiary's assessment.

*Example :- During the year ended 30 June 1992, the ABC Trust derived a net income of \$5,000, consisting of a fully franked dividend of \$3,050 and the attached imputation credit of \$1,950. The sole beneficiary "X" is presently entitled to the trust income, but as a minor, is under a legal disability. In addition to the entitlement to the trust distribution, X derived \$2,000 of interest during the year. All income is assessable under the provisions of Division 6AA.*

### TRUSTEE

*The ABC Trust would be assessed under subsection 98(1) on a taxable income of \$5,000. The tax assessed would be:-*

Franked dividend, s44(1)	\$3,050
Imputation credit, s160AQT(1)	<u>\$1,950</u>
Taxable Income	<u>\$5,000</u>

### BENEFICIARY

*The beneficiary "X" would be assessed as follows:-*

Interest, s25(1)	\$2,000
Trust distribution, s100(1)	
Franked dividend	\$3,050
Imputation credit	<u>\$1,950</u> <u>\$5,000</u>
Taxable Income	<u>\$7,000</u>

## TRUSTEE

Tax Payable on \$5,000 @ 47%	\$2,350
<u>Less</u>	
Imputation credit, s160AQY	<u>\$1,950</u>
Tax payable by trustee, s98(1)	<u>\$400</u>

## BENEFICIARY

Tax payable on \$7,000 @ 47%	\$3,290
<u>Less</u>	
Imputation credit, s160AQX	<u>\$1,950</u>
Section 100(2) credit	<u>\$400</u>
Net Tax payable by Beneficiary	<u>\$940</u>

Note :- The combined tax paid by the trustee and the individual is \$1,340, being 47% of the total income of \$7,000 less the imputation credit of \$1,950.

**Commissioner of Taxation**

10/6/93

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