


# ***IT 316 - Minor beneficiaries : court or damages trusts***

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TAXATION RULING NO. IT 316

MINOR BENEFICIARIES : COURT OR DAMAGES TRUSTS

F.O.I. EMBARGO: May be released

REF

H.O. REF: J78/95 P7 F98

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 17.10.79

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1219958	MINOR BENEFICIARIES	98
	COURT OR DAMAGES TRUSTS	99
	TRUSTS	
	PRESENT ENTITLEMENT	

PREAMBLE

Consideration has been given to the income tax treatment of income derived by court or damages trusts.

RULING

2. It is considered that minor beneficiaries in court trusts which require the income to be accumulated until the beneficiary attains the age of majority are presently entitled to the income so accumulated. Accordingly assessments in these cases should be raised on the trustee under section 98.

3. In the course of his judgment in *Taylor v FCT* (1970) 119 CLR 444, Kitto J. went to some lengths to analyse the earlier decision of the Full Court in *Whiting v. FCT* (1943) 68 CLR 199. As a result of the analysis he was able to conclude that the tenor of the judgments of the majority in that case was that "presently entitled" refers to an interest in possession in an amount of income that is legally ready for distribution so that the beneficiary would have the right to obtain payment of it if he were not under a disability.

4. The terms of the trust deed in the *Taylor* case led Kitto J. to conclude that the beneficiary became absolutely entitled to the income arising during his minority although his personal enjoyment of it was postponed, i.e. his minority prevented him from obtaining payment of the income.

5. By the very nature of court trusts a minor beneficiary has an absolute indefeasible interest vested in possession both as to the capital and the income. He is under a disability in as much as the Supreme Court Acts prevent him from getting the money until he reaches his majority. It is the same disability that existed in *Taylor's* case. It would follow, therefore, that the decision in the *Taylor* case would apply with equal force to court and damages trusts.

6. It has been suggested that provisions in certain State Trustee Acts might operate to deny present entitlement in these trusts. Typical of the provisions is section 37(1) of the Trustee Act of Victoria which provides that, where a minor

beneficiary has either a vested or contingent interest in the income of a trust estate, to the extent that it is not applied for the beneficiary's benefit a trustee is required to accumulate the income as an accretion to the capital of the trust to pass with the capital. If section 37 applies then, notwithstanding that the beneficiary may in the literal sense of the trust instrument be entitled to the income, he would not, in fact, have a legal right to get it except insofar as it is applied in his favour. Whether he would get any of the accumulated income would depend on the directions in the trust deed relating to the disposition of the capital.

7. It is extremely doubtful whether provisions such as section 37 of the Trustee Act of Victoria have any application to court and damages trusts. Court and damages trusts are generally controlled by the Supreme Court Acts of the various States - it is not clear that the Trustee Acts would have any application to them. Even if the the Trustee Acts were to apply the position remains that the beneficiary is absolutely entitled to both the income and the capital on his attaining his majority. There is no question of the capital passing other than to the beneficiary.

8. As from 1 July 1979 it is the expressed intention of the Government to legislate to ensure that minor beneficiaries in these trusts are treated as presently entitled and the trustees assessable under section 98. It is likely, therefore, that this ruling will have practical application only to outstanding assessments for 1978 and 1979 and objections in respect of those years.

COMMISSIONER OF TAXATION