

IT 330 - Children's bank accounts : treatment of interest income



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TAXATION RULING NO. IT 330

CHILDREN'S BANK ACCOUNTS : TREATMENT OF INTEREST INCOME

F.O.I. EMBARGO: May be released

NOTE: This ruling has been superseded by IT 2486

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CHILDREN'S BANK ACCOUNTS

97

INTEREST - CHILDREN'S

98

ACCOUNTS

99A

TRUSTS - CHILDREN'S BANK

102 (1) (b)

ACCOUNTS

102AA

TRUSTEE - CHILDREN'S BANK

ACCOUNTS

PREAMBLE

The following ruling issued as a result of a reveiw of the income tax implications attaching to interest earned on bank and building society accounts opened on behalf of children by their parents and/or relatives. Attention has been drawn to the question as a result of dividend and interest checks in recent years.

RULING

2. The answer to be given in any case, i.e., whether the interest belongs to the child, whether the arrangements constitute a trust, whether the child is presently entitled, etc. will inevitably depend upon the facts of the particular case. As a practical approach, however, the following proposals may be followed.

Account in child's name with child as signatory

3. Generally a savings institution will accept an account in the name of a child with the child as signatory and operator of the account as soon as the child can legibly write his or her own name.

4. In this situation there would be a prima facie presumption that the moneys in the particular account were the property of the child. Unless the circumstances lead to a contrary conclusion it may be accepted that the income generated by the account would be assessable to the child in his or her own right and will, subject to the exceptions specified therein, fall for assessment under the provisions of Division 6AA.

Account opened by third party

5. Where it is established that the account was opened as a result of a settlement by a third party it should normally be

presumed, unless there is evidence to the contrary, that the arrangements constitute a trust for the benefit of the child or children.

6. Assessment of the interest in this situation will depend upon the extent to which it can be said that the child is presently entitled to the interest. Where it appears that the child is presently entitled either on the face of an existing trust instrument or because the child has a vested and indefeasible interest in the trust or because the trustee has exercised a discretion and paid or applied money to or on behalf of or for the benefit of the child, the income should be assessed in accordance with sections 97 or 98, subject to the provisions of Division 6AA. Where it appears that the child is not presently entitled to the interest from the bank account then the interest should be assessed to the trustee in terms of section 99A.

Account held in child's name with parent/s as signatory

7. The difficulty that is inherent in this situation is to determine what the intentions were in opening the account. In very many cases enquiries would reveal no fixed intention on behalf of the parent or parents other than a general purpose of putting some money aside for the future benefit of the child or children. In the event that some family financial emergency might arise resort would be had to the moneys in the account. There would be very little likelihood that moneys in the account would pass to the child's legal personal representative in the manner that occurred in *Taylor v FC of T* (1970) 119 CLR 444.

8. In the circumstances it is most unlikely that a child could be said to have a vested and indefeasible interest in the moneys accumulated in an account of this nature. The child's interest in the moneys would be more in the nature of a contingent interest and as explained in CITCM 760, paragraph 102(1)(b) would not apply.

9. It would seem that the best approach with this sort of account is to assess the interest income to the parent signatory in his or her own right. In the event that the assessment is disputed the parent should be advised that if the assessment is not correct the income may be assessable under section 99A or paragraph 102(1)(b) or Division 6AA, all of which would produce much the same result.

10. However, there may be cases in this category where the correct conclusion would be that the income is that of the child. For example, where income derived by a child, e.g. from delivering newspapers, delivering brochures, child minding etc. is deposited into an account in the name of the child with the parent as signatory, it should be accepted that the interest is that of the child.

11. Another situation has its origin in the practice of banks some years ago not to open an account in the child's name with the child as signatory - children's accounts were generally

opened with the parent as signatory. Cases will arise in this situation where it is also the proper conclusion to draw that the interest belongs to the child.

12. The examples outlined at paragraphs 10 and 11 emphasise the statement in paragraph 2 that the proper conclusion to be drawn in any case will depend upon the facts of each particular case.

COMMISSIONER OF TAXATION

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