



IT 342 - Determination of a trust estate's net income - ruling of the High Court of Australia on the Union Fidelity Trustee Company

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 342

DETERMINATION OF A TRUST ESTATE'S NET INCOME - RULING
OF THE HIGH COURT OF AUSTRALIA ON THE UNION FIDELITY
TRUSTEE COMPANY

F.O.I. EMBARGO: May be released

REF

H.O. REF: 66/4892 F441

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 03.10.69

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1070600	TRUSTS	25
	NET INCOME OF TRUST	26(b)
	ESTATES	95
	EX - AUSTRALIAN INCOME	97
	SOURCE OF INCOME	98
	UNION FIDELITY COMPANY	99
	CASE	99A

RULING

The Full Court of the High Court has ruled, in the appeal of the Union Fidelity Trustee Company (1969) 119 CLR 177, that section 99 does not operate to make trustees assessable on and liable to tax on income derived from sources out of Australia.

2. In the particular case the trustees of the estate were residents of Australia and there was no person presently entitled to the income of the estate. The Commissioner had argued that the trustees were assessable on income derived from all sources in and out of Australia.

3. In its interpretation of Division 6 the Court held that only income from sources in Australia is to be included in the calculation from which the net income of the estate for the purposes of section 95 is obtained. On this basis, once the net income of the estate is ascertained sections 97, 98 and 99 operate automatically. The residence of the beneficiaries or trustees would therefore be immaterial.

4. The Court further took the view that Division 6 only applies to income which has not been distributed to the beneficiaries. Where a beneficiary has received a share of income during the year, his liability would, on this view, be determined under section 25 or 26(b). The liability of beneficiaries in respect of income derived from sources out of Australia would similarly be governed by section 25 and 26(b).

5. The decision of the Court is to be contrasted with the decision of the Full Court in FC of T v. Belford (1952) 88 CLR 589 which concerned the operation of section 97. In that case, the Court proceeded on the assumption that the net income of an estate for the purposes of section 95 included income from

sources in and out of Australia. Thereafter, the Court said, the residence of the beneficiary in cases to which section 97 and 98 applied would determine the extent of the liability.

6. Despite the apparent differences in approach by the Court in the two cases there is little difference in the results which ensue in practice. In the generality of cases the income of beneficiaries will still be assessable whether under sections 25, 26(b), 97 or 98. It is only in the area of section 99 that the decision will be of any practical effect.

7. It has been decided, therefore, that -

- (a) existing departmental rulings re the application of sections 97 and 98 are to be maintained.
- (b) in the application of sections 99 and 99A only income from Australian sources may be taken into account - otherwise the existing rulings should be followed.

COMMISSIONER OF TAXATION