



PS LA 1998/5 - Trust reimbursement agreements - Section 100A ITAA 1936 - FCT v Prestige Motors Pty Ltd

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ATO Practice Statement

Law Administration

PS LA 1998/5

FOI Status: may be released

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SUBJECT: Trust reimbursement agreements - Section 100A ITAA 1936 – FCT v Prestige Motors Pty Ltd

PURPOSE: To ensure trust reimbursement agreements are defined clearly and precisely when applying section 100A

STATEMENT

1. Officers who seek to apply section 100A of the *Income Tax Assessment Act 1936* (ITAA 1936) must ensure that all the steps, negotiations and transactions said to comprise a reimbursement agreement are defined with clarity and precision. The reimbursement agreement must plainly account for all the trust income sought to be brought under section 100A.

EXPLANATION

2. Section 100A is an anti-tax avoidance provision. It seeks to catch the diversion of trust income to beneficiaries who are liable to pay little or no tax, and who themselves divert the income in some tax-free form to a third party who was intended to take the benefit of the trust income. An arrangement of this kind is defined in the section as a 'reimbursement agreement'.

3. The Commissioner applied section 100A to certain transactions involving Prestige Motors Pty Ltd and the Prestige Unit Trust. The taxpayer appealed to the Federal Court. Before the Federal Court the Commissioner defined the reimbursement agreement as a six-step series of transactions. On appeal, however, the Commissioner sought to modify this by adding a further three steps.

4. In allowing the Commissioner's appeal and dismissing the taxpayer's cross appeal (*FC of T v Prestige Motors Pty Ltd* 98 ATC 4,241; 153 ALR 19), the Full Federal Court allowed the addition of the three steps, but in doing so, Hill and Sackville JJ, at p4,250 or p30 made the following observation:

"We wish to make it clear that in cases such as this, the Commissioner should specify with particularity the nature and scope of the reimbursement agreement alleged. Neither the Court nor the taxpayer should be left in a state of uncertainty on such a critical question. In the ordinary course, it will be open to the Commissioner to amend the particulars, but only if the taxpayer is not thereby prejudiced." (emphasis added).

Amendment history

Date of amendment	Part	Comment
10 May 2011	Contact details	Updated.

subject references: Trust reimbursement agreements

legislative references: s100A ITAA 1936

case references: *FCT v Prestige Motors P/L* 98 ATC 4,241; 153 ALR 19

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