

# ***TR 2022/4A1 - Addendum - Income tax: section 100A reimbursement agreements***

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# Addendum

## Taxation Ruling

### Income tax: section 100A reimbursement agreements

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2022/4 to reflect the recent Full Federal Court decisions in *Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust* [2023] FCAFC 3 (*Guardian*) and *B&F Investments Pty Ltd ATF the Iluka Park Trust v Commissioner of Taxation* [2023] FCAFC 89 (*BBlood*). While the decisions don't substantially alter the Commissioner's views on the operation of section 100A, the changes clarify that advisers may be a party to a reimbursement agreement (*BBlood*) and explain when a beneficiary may need to be a party to a reimbursement agreement (*Guardian*). The updates also include some minor editorial corrections.

TR 2022/4 is amended as follows:

#### 1. Table of Contents

(a) Omit:		
	<i>Current and prior case law</i>	47
Substitute:		
	<i>Relevant case law</i>	47
(b) Omit:		
	Scope of section 100A beyond trust stripping	177
	'Counterfactual' required to satisfy tax reduction purpose in subsection 100A(8)	184

#### 2. Paragraph 9

In footnote 3, omit 'entitled'; substitute 'entitled'.

#### 3. Paragraph 11

(a) Omit the wording of the paragraph; substitute:

The relevant agreement is one that provides for a benefit to a person or persons other than the presently entitled beneficiary.<sup>5A</sup> An agreement requires 2 or more parties that assent to the agreement, expressly or impliedly<sup>5B</sup> including (where relevant) through their authorised representatives.<sup>5C</sup> The parties can include advisers who formulate the documentation and implement the agreement with the knowledge and assent of one or more parties to the transactions (or the party's controllers, where relevant).<sup>5D</sup> Whether the beneficiary (or their representative or controller) needs to be a party to the agreement will depend on the particular

circumstances of a case.<sup>5E</sup> An exact understanding of the nature and extent of the agreement (or of the benefits to be provided under it) is not required between all of its parties.

- (b) At the end of the first sentence, insert new footnote 5A:

<sup>5A</sup> *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89 (*BBlood FCAFC*) at [44].

- (c) In the second sentence, after ‘impliedly’, insert new footnote 5B:

<sup>5B</sup> *Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust* [2023] FCAFC 3 (*Guardian FCAFC*) at [111].

- (d) At the end of the second sentence, insert new footnote 5C:

<sup>5C</sup> *Guardian FCAFC* at [124].

- (e) At the end of the third sentence, insert new footnote 5D:

<sup>5D</sup> *BBlood FCAFC* at [44].

- (f) At the end of the fourth sentence, insert new footnote 5E:

<sup>5E</sup> See *Idlecroft Pty Ltd v Commissioner of Taxation* [2005] FCAFC 141 (*Idlecroft*) at [36–41], *East Finchley Pty Ltd v Commissioner of Taxation* [1989] FCA 720 (*East Finchley*); 90 ALR 457 at [475–6], *Guardian FCAFC* at [111] and [117] and *Raftland Pty Ltd as trustee of the Raftland Trust v Commissioner of Taxation* [2008] HCA 21 (*Raftland HCA*) at [61–63].

#### **4. Paragraph 12**

- (a) Omit the wording of the paragraph (excluding footnotes); substitute:

An agreement can cover a range of things, including a series of steps<sup>6</sup>, concerted action towards a purpose<sup>7</sup> or an agreement to act as directed or requested by another.<sup>7A</sup>

- (b) In footnote 6, after the second instance of ‘*BBlood*’, insert ‘*FCA*’.

- (c) At the end of the paragraph, insert new footnote 7A:

<sup>7A</sup> *Commissioner of Taxation v Prestige Motors Pty Ltd as Trustee of the Prestige Toyota Trust* [1998] FCA 221 (*Prestige Motors*) 82 FCR 195 at [216D–217A], per Hill and Sackville JJ; also cited in *BBlood FCA* per Thawley J at [88].

#### **5. Paragraph 16**

- (a) After the first sentence, insert ‘<sup>8A</sup> An expectation that some arrangement will be entered into after the creation of the present entitlement is not sufficient for the purposes of section 100A.’.

- (b) At the end of the first sentence, insert new footnote 8A:

<sup>8A</sup> *East Finchley* at [38]; *Guardian FCAFC* at [108].

- (c) At the end of the second sentence, insert new footnote 8B:

<sup>8B</sup> *Guardian FCAFC* at [111(4)].

- (d) Omit the first dot point; substitute:

- the conduct of the parties before and after the time the present entitlement is created may be relevant to establishing the existence of an agreement by that time (for example, where behaviour is repeated), and

- (e) Omit the wording of footnote 9; substitute '*Idlecroft*'.

**6. Paragraph 17**

Omit the wording of footnote 10; substitute 'Subsections 100A(7), (10) and (12); *BBlood FCAFC* at [44].'

**7. Paragraph 19**

Omit the wording of footnote 11; substitute: '*BBlood FCA* at [120–127]; *BBlood FCAFC* at [39–40].'

**8. Paragraph 21**

- (a) Omit the wording of the paragraph (excluding footnote 13); substitute:

The reference to purpose is to an actual purpose of entering into the agreement at the time of entry into the agreement.<sup>12A</sup> It may be determined by reference to the parties' own evidence as to their purposes for entering into the agreement and to the objective facts and circumstances including the financial, taxation and other consequences of the transaction entered into.<sup>13</sup>

- (b) At the end of the first sentence, insert new footnote 12A:

<sup>12A</sup> *BBlood FCAFC* at [43].

- (c) Omit the wording of footnote 13; substitute '*BBlood FCA* at [130–136]; *BBlood FCAFC* at [49–51].'

**9. Paragraph 22**

- (a) At the end of the paragraph, insert:

A party's understanding of the effect to be achieved is relevant, regardless of whether that understanding is objectively correct.<sup>14A</sup>

- (b) Omit the wording of footnote 14; substitute:

*BBlood FCA* at [161–168]; *BBlood FCAFC* at [45–48].

- (c) At the end of the new sentence, insert new footnote 14A:

<sup>14A</sup> *BBlood FCAFC* at [50].

**10. Paragraph 23**

- (a) Omit the wording of footnote 15; substitute: '*Prestige Motors* 82 FCR 195 at [219–220], per Hill and Sackville JJ; *BBlood FCA* at [163–166].'

- (b) In footnote 16, after '*Raftland*', insert '*HCA*'.

**11. Paragraph 24**

- (a) Omit the wording of the paragraph (excluding footnotes 17 and 18); substitute:

The purpose of an adviser can be relevant to determining whether a tax reduction purpose exists. An agreement can extend to an agreement or understanding to carry out a series of steps.<sup>17</sup> Where the adviser is a party to the agreement, the purpose of the adviser will be directly relevant.<sup>17A</sup> The purpose of the adviser may be imputed to a party to the relevant agreement where the adviser is authorised to act on behalf of that party.<sup>17B</sup> Additionally, communication by an adviser of the intended tax effects of an arrangement to another entity can be relevant in determining that other entity's purpose.<sup>18</sup>

- (b) In footnote 17, after '*BBlood*', insert '*FCA*'.
- (c) At the end of the third sentence, insert new footnote 17A:  
<sup>17A</sup> *BBlood FCAFC* at [44].
- (d) At the end of the fourth sentence, insert new footnote 17B:  
<sup>17B</sup> *Igloo Homes Pty Ltd v Sammut Constructions Pty Ltd* [2005] NSWCA 280 citing *Blackburn Low & Co v Vigers* (1887) 12 App Cas 531 and *Permanent v FAI* [2001] NSWCA 20; 50 NSWLR 679 at [696–7].
- (e) Omit the wording of footnote 18; substitute  
See further, *BBlood FCAFC* at [50].

## 12. Paragraph 25

In footnote 20, after '*Prestige Motors*', insert '82 FCR 195'.

## 13. Paragraphs 26 and 27

In footnotes 21, 22 and 23, after '*BBlood*', insert '*FCA*'.

## 14. Paragraph 35

Omit the wording of footnote 25; substitute '*East Finchley* (1989) 90 ALR 457 at [476–477].'

## 15. Paragraph 36

Omit the wording of the paragraph (excluding footnotes 26 and 27); substitute:

Any assessment of the net income of the trust estate to a beneficiary that would otherwise arise under section 97 will be proportionately reduced by the share of the income of the trust estate that section 100A deems the beneficiary not to be presently entitled to or to have received or had applied for their benefit. Any proportionate assessment of the net income of the trust estate to the trustee that would otherwise have arisen under section 98<sup>26</sup> in respect of such a share would be likewise reduced, with section 98A<sup>27</sup> then only having application in respect of any share of net income that remains as assessed under section 98.

## 16. Paragraphs 47 to 53

- (a) In the heading, omit '*Current and prior*'; substitute '*Relevant*'.
- (b) Omit the paragraphs (including footnotes 34 to 46).

**17. Paragraph 54**

(a) In subparagraph (b), omit 'carry forward'; substitute 'carry-forward'.

(b) At the end of subparagraph (b), omit ', and'.

(c) At the end of subparagraph (c), omit '.'; substitute ', and'

(d) After subparagraph (c), insert, new subparagraph (d):

(d) a trustee received significant proceeds from the buy-back of shares in a related entity, and took steps to cause that receipt to be excluded from trust income. It resolved to make a new corporate beneficiary presently entitled to the income of the trust estate, which ensured that no further tax was payable on the share buy-back proceeds, which were retained as trust corpus.<sup>49A</sup>

(e) At the end of new subparagraph (d), insert new footnote 49A:

<sup>49A</sup> *BBlood FCA* and *BBlood FCAFC*.

(f) After paragraph 54, insert new paragraph 54A

54A. Section 100A was considered by the Full Court of the Federal Court of Australia in the *Guardian* case, in circumstances where income distributed to a corporate beneficiary was returned to the trust as a fully franked dividend in the following year and then distributed by the trustee (without further tax being payable) to a non-resident beneficiary. As it was found on the evidence in *Guardian* that at the time of the present entitlement, there was no agreement to pay a dividend back to the trust, there was no agreement to which section 100A could apply.<sup>49B</sup>

(g) At the end of new paragraph 54A, insert new footnote 49B:

<sup>49B</sup> *Guardian FCAFC* at [125]. While the Court held that there was no 'reimbursement agreement' for the purposes of section 100A in the 2013 income year, it did hold that there was a scheme entered into for the dominant purpose of obtaining a tax benefit to which Part IVA would apply in the 2013 income year.

**18. Paragraphs 61 and 62**

In footnotes 52 and 53, omit 'entitled'; substitute 'entitled'.

**19. Paragraph 64**

In footnote 55, after '*Raftland*', insert '*HCA*'.

**20. Paragraph 67**

In footnotes 58 and 59, after '*Prestige Motors*', insert '82 FCR 195'.

**21. Paragraph 68**

(a) Omit the wording of the paragraph (excluding footnotes 60 and 62); substitute:

For the purposes of section 100A, the relevant agreement is one that provides for a benefit to be provided to a person or persons other than the presently entitled beneficiary, or to the beneficiary and another person or persons. The relevant

agreement must be between 2 or more parties<sup>60</sup> that assent to it, expressly or impliedly.<sup>60A</sup> An exact understanding of the parties to the nature and extent of the agreement and benefits to be provided is not required. Section 100A does not require the presently entitled beneficiary or the relevant trust to even be in existence when the agreement is made.<sup>62</sup>

- (b) At the end of the second sentence, insert new footnote 60A:

<sup>60A</sup> *Guardian FCAFC* at [111].

- (c) In footnote 62, after '*Prestige Motors*', insert '82 FCR 195'.

- (d) Omit footnote 61.

- (e) Omit footnote 63.

## **22. Paragraph 69**

Omit the paragraph (including footnotes 64, 65 and 66).

## **23. Paragraph 70**

- (a) Omit footnote 68.

- (b) In the second dot point, after 'period of time', insert new footnote 68A:

<sup>68A</sup> See *Raftland at first instance* at [96], per Kiefel J and *Lutovi Investments* at [445–447]; *BBlood FCA* at [89].

- (c) After paragraph 70, insert new paragraphs 70A to 70D:

70A. The parties to the agreement may include advisers who formulate the documentation and implement the agreement with the knowledge and assent of one or more parties to the transactions (or the party's controllers, where relevant).<sup>68B</sup>

70B. A person can be made a party to an agreement without knowing its terms where another person is authorised to act on their behalf<sup>68C</sup> or where they have agreed to follow the decisions of another person in relation to the management of certain affairs.<sup>68D</sup> Whether these conclusions can be reached in a specific case is a question of fact, which may turn on the documentary and other evidence relevant to determining whether an agreement, arrangement or understanding exists. The Courts have not prescribed what being authorised to act means, but have observed that authorisation would not be established simply by showing a general practice of following advice.<sup>68E</sup>

70C. Section 100A applies according to its terms, which do not require a presently entitled beneficiary to be a party to the agreement.<sup>68F</sup> However the Courts have recognised in some cases that it cannot be concluded that there is an agreement that meets the conditions of being a reimbursement agreement unless the presently entitled beneficiary, or at least their controller or representative, is a party to that agreement.<sup>68G</sup> For example, where an alleged reimbursement agreement requires a presently entitled corporate beneficiary to declare and pay a franked dividend in favour of the trustee to achieve the intended taxation outcome of that dividend being appointed to another beneficiary, the beneficiary or their controller would ordinarily have to be a party to that agreement.<sup>68H</sup> For other cases, whether a beneficiary will be required to be a party to the agreement for it to be a

reimbursement agreement will depend on the particular circumstances and documentation.<sup>68I</sup>

70D. Consistent with the approaches of the Courts where the meaning of the words ‘agreement’, ‘arrangement’ or ‘understanding’ have been otherwise considered:

- Where, as provided by subsection 100A(13), an agreement can be implied, it is open to infer that an agreement exists from the surrounding circumstances or the conduct of the parties.<sup>68J</sup> In the particular context of section 100A, examples of where it is possible that this inference may be drawn include
  - where the conduct of the trustee and others is inconsistent with the rights and duties imposed by the trust deed and the general law
  - where parties act in accordance with the advice of a professional adviser (or rely on the professional adviser) in undertaking a series of steps or taking concerted action, and it is open to infer that the parties had knowledge of, and had assented to a relevant plan formulated by the adviser.
- While an ‘arrangement or understanding’ must have been entered into consensually, the parties’ acceptance or adoption may be tacit and it is not essential that they be committed or bound to support it. The arrangement may be both informal and unenforceable, and the parties may be free to withdraw from it or to act inconsistently with it, notwithstanding their adoption of it.<sup>68K</sup> An arrangement or understanding may lack formality and precision.<sup>68L</sup>

(d) At the end of new paragraph 70A, insert new footnote 68B:

<sup>68B</sup> *BBlood FCAFC* at [44].

(e) In new paragraph 70B, in the first sentence after ‘on their behalf’, insert new footnote 68C:

<sup>68C</sup> *Guardian FCAFC* at [124].

(f) In new paragraph 70B, at the end of the first sentence, insert new footnote 68D:

<sup>68D</sup> *Prestige Motors*.

(g) At the end of new paragraph 70B, insert new footnote 68E:

<sup>68E</sup> *Guardian FCAFC* at [124].

(h) In new paragraph 70C, at the end of the first sentence, insert new footnote 68F:

<sup>68F</sup> *Idlecroft* at [40–41], *Prestige Motors* 82 FCR 195 at [216], [219], *Raftland HCA* at [61–63].

(i) In new paragraph 70C, at the end of the second sentence, insert new footnote 68G:

<sup>68G</sup> *East Finchley, Guardian FCAFC*. The Courts have not prescribed what is a representative or controller for these purposes and the terms take their ordinary meaning. A representative or controller would have the ability to influence the actions of the presently entitled beneficiary, whether or not they are in a position to legally bind them.

(j) In new paragraph 70C at the end of the third sentence, insert new footnote 68H:

<sup>68H</sup> *Guardian FCAFC*.

(k) At the end of new paragraph 70C, insert new footnote 68I:

<sup>68I</sup> *Idlecroft* at [38].

- (l) In new paragraph 70D, at the end of the first sentence of the first dot point, insert new footnote 68J:

<sup>68J</sup> See *Lutovi Investments* at [443–444], per Gibbs and Mason JJ and *Commissioner of Taxation v BHP Billiton Limited* [2011] HCA 17 at [53], per French CJ, Heydon, Crennan and Bell JJ.

- (m) In new paragraph 70D, at the end of the second sentence of the second dot point, insert new footnote 68K:

<sup>68K</sup> *Lutovi Investments* at [444], per Gibbs and Mason JJ.

- (n) In new paragraph 70D, at the end of the second dot point, insert new footnote 68L:

<sup>68L</sup> *Commissioner for Taxation of the Commonwealth of Australia v. Lutovi Investments Pty Ltd* [1978] FCA 53; 78 ATC 4289 at [4291–4292], per Bowen CJ.

#### **24. Paragraph 74**

- (a) Omit the wording of the paragraph (excluding footnotes 72 and 73); substitute:

Where a present entitlement arises from an agreement or a payment or application of trust income results from an agreement, naturally, the relevant agreement must be in existence at the time when the present entitlement arises or the payment is made or funds applied.<sup>72</sup> An expectation that some arrangement will be entered into after the creation of the present entitlement is not sufficient for the purposes of section 100A.<sup>72A</sup> The existence of an agreement might be established by evidence of the conduct of the parties before and after the time the present entitlement is created.<sup>73</sup>

- (b) Omit the wording of footnote 72; substitute

*East Finchley*, per Hill J; *Guardian AIT Pty Ltd ATF Australian Investment Trust v Commissioner of Taxation* [2021] FCA 1619 (*Guardian FCA*) at [128–129], per Logan J.

- (c) At the end of the second sentence, insert new footnote 72A:

<sup>72A</sup> *Guardian FCAFC* at [111(4)].

- (d) In footnote 73, omit ‘*Raftland HC*’; substitute ‘*Raftland HCA*’.

#### **25. Paragraph 75**

In footnote 74, after ‘*BBlood*’, insert ‘*FCA*’.

#### **26. Paragraph 76**

Omit the wording of footnote 76; substitute:

*BBlood FCAFC* at [37–38], citing *Commissioner of Taxation (Cth) v Peabody* [1994] HCA 43.

#### **27. Paragraph 77**

Omit the wording of footnote 77; substitute:

*Prestige Motors* 82 FCR 195 at [220], per Hill and Sackville JJ; *BBlood FCA* at [120–121]; *BBlood FCAFC* at [39].

**28. Paragraph 84**

- (a) Omit the wording of the paragraph (excluding footnote 79); substitute:

An agreement is entered into for a tax reduction purpose if any of the parties to the agreement entered into the agreement for that purpose.<sup>79</sup> For there to be a tax reduction purpose, '[i]t is not part of the statutory task to *establish* what the parties would have done if the agreement had not been entered into.'

- (b) Omit footnote 80.

- (c) Omit footnote 81.

- (d) At the end of the paragraph, insert new footnote 81A:

<sup>81A</sup> *BBlood FCAFC* at [46].

- (e) After paragraph 84, insert new paragraph 84A:

84A. In *BBlood FCAFC*, the Court observed that<sup>81B</sup>:

An inquiry as to the purpose of a party (as required by s 100A(8)) is, on the other hand, an historical inquiry of why [a] party entered into the agreement in fact entered into. The inquiry is not a prediction. Nor is it an examination of a comparative position or comparative outcomes for a particular taxpayer requiring you to remove from the proposed future what was done and positing what might have been done: *Ludekens* at 192.

- (f) After 'the Court observed that', insert new footnote 81B:

<sup>81B</sup> *BBlood FCAFC* at [47], affirming the decision at first instance in *BBlood* at [130] per Thawley J.

**29. Paragraph 85**

- (a) In footnote 82, after '*Prestige Motors*', insert '82 FCR 195'.

- (b) At the end of the third dot point, insert new footnote 84A:

<sup>84A</sup> *BBlood FCAFC* at [43].

- (c) At the end of the last dot point, insert new footnote 85A:

<sup>85A</sup> *BBlood FCAFC* at [43].

**30. Paragraph 87**

- (a) At the end of the paragraph, insert new sentence:

It is also relevant to consider a party's understanding of the intended taxation effect to be achieved, regardless of whether that understanding is objectively correct.<sup>86A</sup>

- (b) At the end of the new sentence, insert new footnote 86A:

<sup>86A</sup> *BBlood FCAFC* at [50].

**31. Paragraph 88**

- (a) Omit the last sentence; substitute:

For example, the purpose of an adviser can be directly relevant if the adviser is party to the agreement or understanding to carry out the relevant steps in the transaction in accordance with their advice, as was found in the *BBlood* decisions.<sup>87</sup>

- (b) Omit the wording of footnote 87; substitute:  
*BBlood FCA* at [241] and *BBlood FCAFC* at [44].

### **32. Paragraph 89**

- (a) Omit the wording of the paragraph (including footnote 88); substitute:  
Even where an adviser is not a party to the agreement or understanding, their purpose may, in certain cases, be imputed to another party to the agreement or understanding. This would occur where they are authorised to act for that party (for example, within the express, implied or ostensible authority of an agent).<sup>87A</sup> Additionally, communication by an adviser of the intended tax effects of an arrangement to another entity can be relevant for determining that other entity's purpose.<sup>87B</sup>
- (b) At the end of the second sentence, insert new footnote 87A:  
<sup>87A</sup> *Guardian FCAFC* at [124]; *Igloo Homes Pty Ltd v Sammut Constructions Pty Ltd* [2005] NSWCA 280 citing *Blackburn Low & Co v Vigors* (1887) 12 App Cas 531 and *Permanent v FAI* [2001] NSWCA 20; 50 NSWLR 679 at [696–7].
- (c) At the end of the paragraph, insert new footnote 87B:  
<sup>87B</sup> See further, *BBlood FCAFC* at [50].

### **33. Paragraph 91**

Omit the wording of footnote 89; substitute '*Prestige Motors* 82 FCR 195 at [221 E–F], *BBlood FCA* at [91–93].'

### **34. Paragraph 94**

In footnote 89, after '*Prestige Motors*', insert '82 FCR 195'.

### **35. Paragraph 98**

- (a) In the second dot point, after '*Guardian*', insert '*FCA*'.
- (b) In the last dot point, after '*BBlood*', insert '*FCA*'.
- (c) In footnote 92, after '*BBlood*', insert '*FCA*'.
- (d) In footnote 93, after '*Prestige Motors*', insert '82 FCR 195'.
- (e) In footnote 94, after '*Guardian*', insert '*FCA*'.
- (f) In footnote 95, after '*Guardian*', insert '*FCA*'.
- (g) In footnote 96, after '*BBlood*', insert '*FCA*'.
- (h) In footnote 97, after '*BBlood*', insert '*FCA*'.

### **36. Paragraph 100**

- (a) In footnote 100, omit 'both'; substitute 'each of the'.
- (b) In footnote 100, after '*Prestige Motors*', insert '82 FCR 195'.

- (c) In footnote 100, after '*Guardian*', insert '*FCA*'.
- (d) In footnote 101, after '*Prestige Motors*', insert '82 FCR 195'.
- (e) In footnote 101, after '*Guardian*', insert '*FCA*'.
- (f) In footnote 102, omit '*Abbatoir*'; substitute '*Abattoir*'.

**37. Paragraph 103**

In footnote 103, omit 'Privy Counsel'; substitute 'Privy Council'.

**38. Paragraph 105**

- (a) In the Note, after '*Guardian*', insert '*FCA*'.
- (b) In the Note, omit the first instance of 'dealings'; substitute 'dealing'.
- (c) In footnote 104, after '*Guardian*' and '*BBlood*', insert '*FCA*'.
- (d) In footnote 105, after '*BBlood*', insert '*FCA*'.
- (e) In footnote 106, after '*Guardian*', insert '*FCA*'.
- (f) In footnote 107, after '*Guardian*', insert '*FCA*'.

**39. Paragraph 106**

Omit the last three dot points; substitute:

- the complexity of the arrangement and the presence of additional steps that achieve no commercial purpose
- the conduct of the arrangement is inconsistent with the legal and economic consequences of the beneficiary's entitlement (such as an asset or funds representing the entitlement are purportedly lent to others without any intention of being repaid), and
- income entitlements have actually been remitted to the beneficiary, amounts were subsequently returned or other benefits or services were provided, by way of gift or otherwise to another person (such as the trustee, another beneficiary or an associate, whether by the beneficiary or by the trustee either independently or under a power of attorney).

**40. Paragraph 107**

Omit the paragraph.

**41. Paragraph 108**

- (a) Omit the two dot points (excluding footnotes); substitute:
  - it has been recognised by the courts that complexity is a feature of many transactions that achieve commercial or family objectives<sup>108</sup>; as explained by the court in *BBlood FCA*, where

... the agreement ... is *overly* complex, involving more than is needed to achieve the relevant objective, or includes additional steps which are not [seen as] necessary to achieving that objective, ... [that] ... the dealing might more readily be seen as not being “ordinary”,

and

- ordinary family and commercial objectives are commonly achieved in transactions which are chosen for the reason that they are tax effective when compared to similar alternatives to achieve those objectives.

(b) In footnote 108, after ‘*BBlood*’, insert ‘*FCA*’.

#### **42. Paragraph 115**

Omit the wording of footnote 110; substitute:

*BBlood FCAFC* at [36].

#### **43. Paragraph 116**

(a) In footnote 112, after ‘[2018] FCAFC 44’, insert ‘(*Sandini*)’.

(b) In footnote 113, omit ‘*Ellison v Sandini Pty Ltd* [2018] FCAFC 44’; substitute ‘*Sandini*’.

#### **44. Paragraph 121**

Omit the wording of the paragraph; substitute:

Any assessment of the net income of the trust estate to a beneficiary that would otherwise arise under section 97 will be proportionately reduced by the share of the income of the trust estate that section 100A deems the beneficiary not to be presently entitled to or to have received or had applied for their benefit. Any proportionate assessment of the net income of the trust estate to the trustee that would otherwise have arisen under section 98 in respect of such a share would be likewise reduced, with section 98A then only having application in respect of any share of net income that remains as assessed under section 98.

#### **45. Paragraph 127**

In footnote 119, after ‘Bill 2011’ insert ‘ (Streaming EM)’.

#### **46. Paragraph 129**

In footnote 121, omit ‘Explanatory Memorandum to the Tax Laws Amendment (2011 Measures No. 5) Bill 2011’; substitute ‘Streaming EM’.

#### **47. Paragraph 154**

In footnote 125, omit ‘decision’; substitute ‘and Full Federal Court decisions’.

**48. Paragraph 155**

Omit '\$70,700'; substitute '\$70,707'.

**49. Paragraph 161**

Omit '*equal to*'; substitute '*component of*'.

**50. Paragraph 162**

In footnote 129, omit the first instance of ' of the ITAA 1997'.

**51. Paragraph 164**

Omit 'entitlements'; substitute 'entitlement'.

**52. Paragraph 170**

Omit 'income'.

**53. Paragraph 171**

After '*pays tax at the*', insert '*applicable*'.

**54. Paragraph 173**

In footnote 132, omit '*Guardian*'; substitute 'the *Guardian* matters'.

**55. Paragraph 177 to 190**

Omit the paragraphs (including headings and footnotes 133 to 140).

**56. Paragraph 192**

In footnote 141, after '*Prestige Motors*', insert '82 FCR 195'.

**57. Paragraph 194**

- (a) After '*BBlood*', insert '*FCA*'.
- (b) In footnote 142, after '*BBlood*', insert '*FCA*'.

**58. Paragraph 197**

- (a) After '*BBlood*', insert '*FCA*'.
- (b) In footnote 143, after '*BBlood*', insert '*FCA*'.

**59. Paragraph 199**

- (a) In the third sentence, omit ‘*Comber*’; substitute ‘*Commissioner of Taxation v Comber, A.H.*<sup>144</sup>’.
- (b) After ‘*Commissioner of Taxation v Comber, A.H.*’, insert new footnote 144:  
<sup>144</sup> [1986] FCA 92 at [96].

**60. Paragraph 203**

Omit the first sentence; substitute ‘The Commissioner does not agree with this view.’.

**61. Paragraph 205**

Omit ‘consider’.

This Addendum applies before and after date of issue.

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**Commissioner of Taxation**  
27 September 2023

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ATO references

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