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# Streaming franked dividends, capital gains, Cash flow boost and JobKeeper through trusts

Nexia Tax Alliance & NEXTension

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# Introduction

- Many clients uses trusts
  - Business
  - Holding entity
  - Investments
  - Other
- Rely on us to manage taxation outcomes, advise
- Confidence

# Today's session

- Background on taxing trust income
- Definition of trust income in deed, absence
- "Trust income", "net income", "distributable income", "taxable income"
- Streaming franked dividends and capital gains
- Practical approach
- Tax return disclosures
- Dealing with JobKeeper and Cash flow boost amounts

# Brief history

- Pre-CGT
- Pt III, Division 6 ITAA36 (taxing trust income)
- EM to original CGT Bill
- *Zeta Force v FC of T* (1998)
  - Proportionate approach
- *Bamford v FCT* (2010)
  - Trust income
- 2011 "interim" amendments
  - Division 6E ITAA36 (modifies taxing trust income)
  - Subdiv 115-C ITAA97 (capital gains)
  - Subdiv 207-B ITAA97 (franked dividends)

# What governs trusts

- Trust Deed
- State Trustees Acts
- Case Law
- Taxation:
  - Income Tax Assessment Act 1997
  - Income Tax Assessment Act 1936
  - State Duties Acts
  - Commissioner’s views in Rulings and Determinations

# Trust deeds

- Sets out trustee's powers, purpose of the trust, how the trustee exercises powers
- Many aspects of state Trustees Acts incorporated into trust deeds
- Often need to refer to the trust deed to resolve issues of governance
- May include a definition of trust income
  - Standard in modern deeds
  - Trustee include/exclude power
  - Review, amend

# Taxation of Beneficiaries

## s 97

- Division 6, Part III, 1936 Act
- General assessing provision is s97 1936 Act
- Extract from s97 (for as a resident beneficiary):
  - "*where a beneficiary is presently entitled to a share of the income of the trust, the assessable income of a beneficiary shall include:*
  - *that share of the net income of the trust*"
- S98 – trustee assessed for beneficiaries under a legal disability; marginal rates

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# Concepts

## s 97

- “Presently entitled”
- “Share” and “that share”
- “Income of a trust”
- “Net income”
- Leading into “distributable income”

# Present Entitlement

## s 97

- *FC of T v Whiting (1943)*
- Indefeasible, absolutely vested, beneficial interest
- Must not be contingent
- Must be such that beneficiary can demand payment *(Harmer v FCT (1991) )*
- Most standard trustee resolutions for discretionary trusts generally have the above effect

# "Share" and "that share"

## s 97

- "Share" means a proportionate share *(Zeta Force v FCT (1998) ),* as in a percentage:
  - Does not mean a share as in the same dollar amount (Quantum approach)
  - Beneficiary presently entitled to 60% of trust income, assessed on 60% of the net income (taxable income)

# Income of the trust

## No definition of income in the deed

- Income according to the common law of trusts
- Generally means “income” according to ordinary concepts
- Does not include receipts of a capital nature or capital gains
- Trust capital is anything that is not trust income

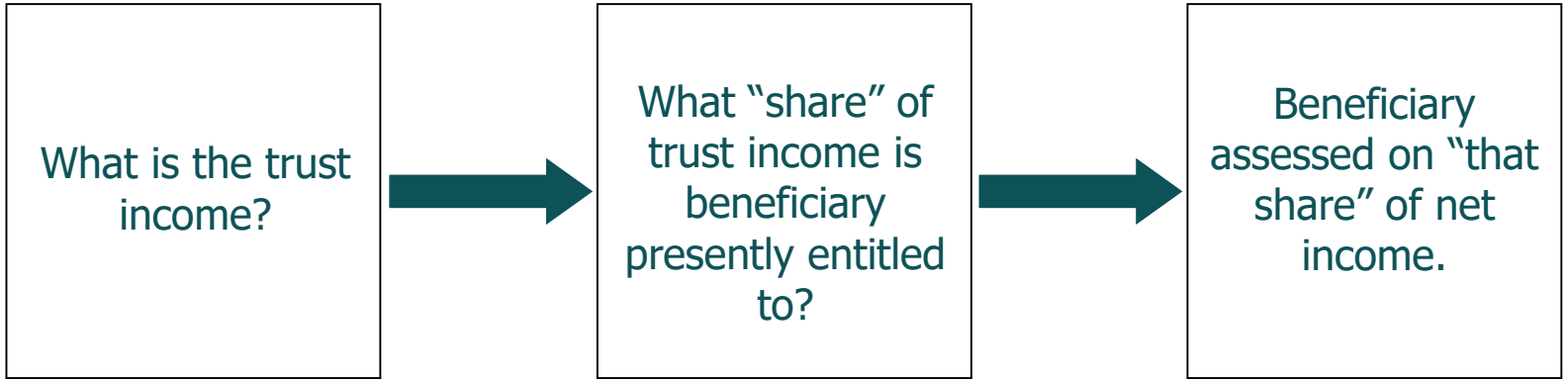
# Net Income

## s 97

- "Essentially taxable income (s 95)
- Modifications may arise in relation to:
  - Farm management deposit deductions
  - Non-corpus beneficiaries
  - Life tenants
  - Losses or deductions denied under the trust loss rules

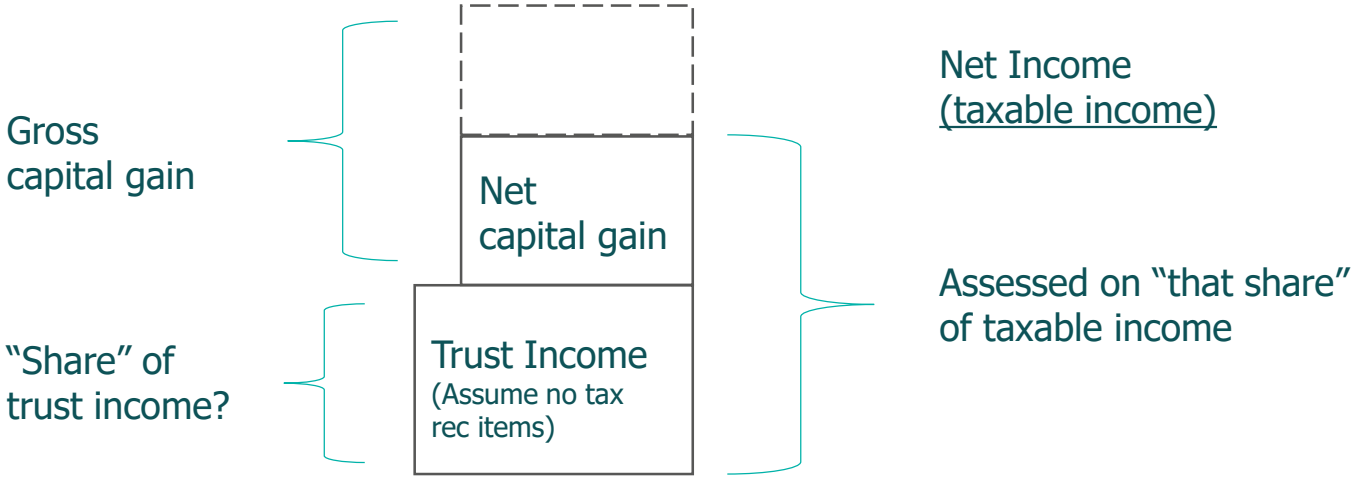
# Income & Net Income

- s97 borrows "trust income" to assess "net income" (taxable income) to a beneficiary



# No definition of income in the deed

- How this may apply to a trust with a net capital gain



# Proportionate Approach

## Example 1

- The Baker Family Trust derived the following during 2019/20:

| | $ | |
|---|---|---|
| Interest income: | 20,000 | |
| Capital gain: | 80,000 | (assume no discount/indexation) |
| Total | 100,000 | |

- No definition of income in the deed

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# Proportionate Approach

## Example 1

- Trustee confers the following present entitlements:
  - Beneficiary A: 100% of the interest income; and
  - Beneficiary B: 100% of the capital gain
- For 2019/20:
  - "Trust income" is $20,000 (i.e. does not include capital);
  - "Net income" (e.g. taxable income) is $100,000

# Proportionate Approach

## Example 1

- Beneficiary A is presently entitled to 100% of the "trust income".
- Therefore, s97 assesses Beneficiary A on that same share of net income (taxable income).

| | **Beneficiary A** | **Beneficiary B** |
|---|---|---|
| Present entitlements conferred | $20,000 | $80,000 |
| Percentage of "trust income" | 100% | 0% |
| S97 assesses above percentage of net income | $100,000 | nil |

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# Proportionate Approach

## Example 2

- Newman Family Trust's 2019/20 tax reconciliation is as follows:

| | $ |
|---|---|
| Net profit per P&L (all business profit) | 100,000 |
| Add – non-deductible entertainment | 10,000 |
| Taxable income | 110,000 |

- The trust deed does not contain a definition of income

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# Proportionate Approach

## Example 2

- The trustee resolves to appoint the 2019/20 income as follows:

| Beneficiary | Income appointment |
|---|---|
| David Newman | The first $40,000 |
| Sally Newman | The next $40,000 |
| Newman Pty Ltd | The balance |

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# Proportionate Approach

## Example 2

- Tax outcome as follows:

| Beneficiary | Trust income $ | Proportion of Trust income % | Assessable amount per s97 $ |
|---|---|---|---|
| David Newman | 40,000 | 40% | 44,000 |
| Sally Newman | 40,000 | 40% | 44,000 |
| Newman Pty Ltd | 20,000 | 20% | 22,000 |
| Total | 100,000 | 100% | 110,000 |

- Reverse-worded style of resolution

# No Beneficiary Presently Entitled

- Where any part of trust's net income not assessed to a beneficiary under s97, trustee assessed under s99/99A
- 47% (s99A). Individual rates in certain cases e.g. deceased estate (s99)
- A later distribution of the taxed income to a beneficiary is exempt

# Resolution appointing trust income

- Must be made by 30 June (*case R105*, *Estate Mortgage*, *Colonial*)
  - Or earlier, if deed requires
- Minutes of meeting/resolution typically prepared and signed later
- Default beneficiary clause
  - If not appropriately drafted, ineffective (*BRK (Bris) V FCT* (2001))
  - If ineffective, trustee assessed

# Disputed meaning

- Commissioner's view: income under common law i.e.
  - Excludes capital receipts or a capital gain
  - Deed cannot modify
- Other view: trust deed can modify above

# Distributable Income

## *Cajkusic v FC of T* (2006)

- "Distributable income" generally means trust income as defined under the trust deed
- Forms the basis of beneficiaries' entitlements to trust income
- Trust deed may modify the meaning of trust income for s97 e.g.:
  - Treating capital receipts as income
  - Defining income as being equal to s95 1936 Act (taxable income). Includes a net capital gain
  - Trustee discretion

## *Bamford v FCT* (2008) – AAT

- ATO denied a deduction, increasing trust's taxable income
- Taxable income now exceeded trust income
- Taxpayer argued excess should be assessed to trustee under Quantum approach
- Court affirmed *Zeta Force*. Proportionate approach applied
  - All beneficiaries had their share of taxable income increased
- "Income of the trust" in s97 means distributable income
  - Comments in *Cajkusic* not obiter; ratio (i.e. binding)

# Trust Income – Case Law

## *Bamford v FCT (2009)*

- Appeal to Full Federal Court
- Taxpayer appealed against use of proportionate approach and other matters
- Commissioner invited the Full Court to consider the correctness of *Cajkusic*

# Trust Income – Case Law

## *Bamford*

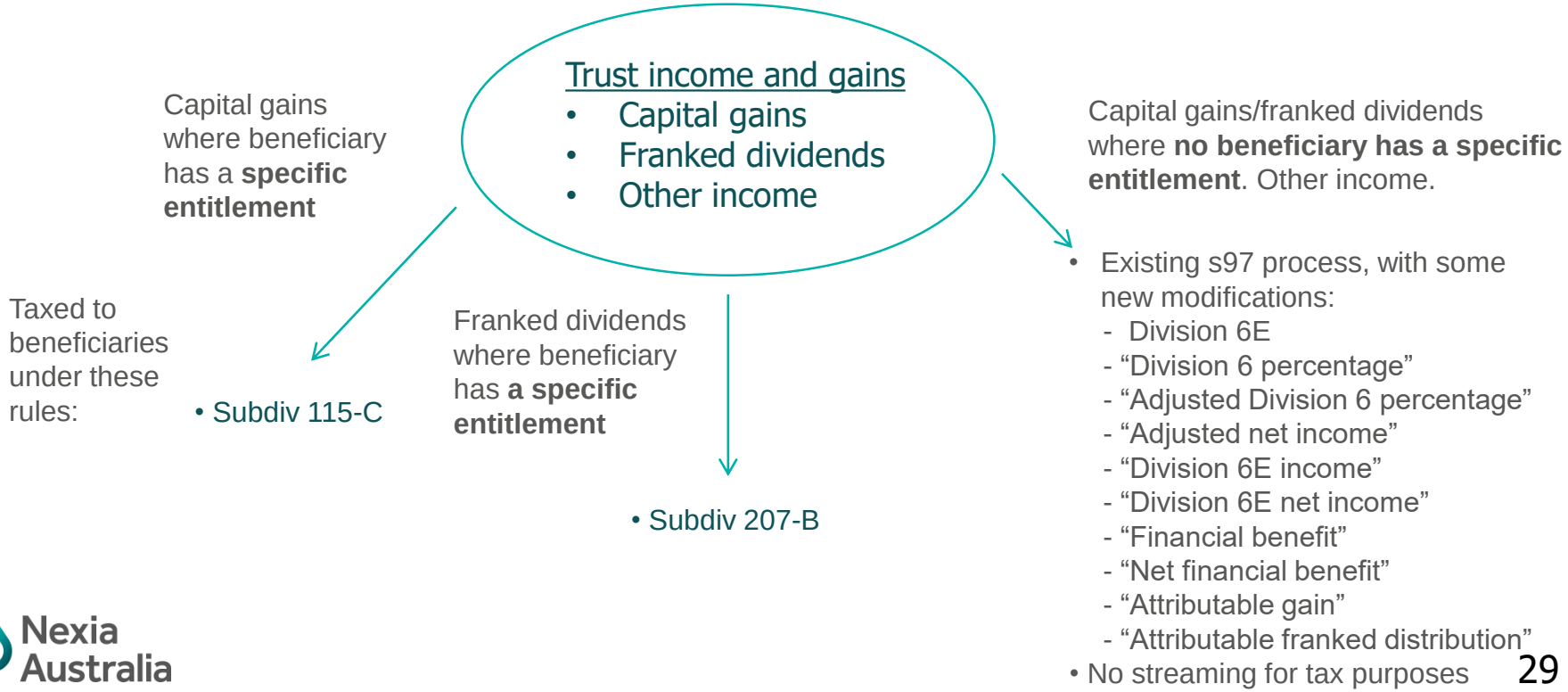
- Confirmed proportionate approach applies, even where specific dollar amounts are appointed
- "Income of the trust" for s97 purposes is ordinary income, as modified by the relevant trust deed i.e. distributable income
- High court confirmed *(CoT v Bamford [2010] HCA10)*
- *FCT v Thomas* – cannot stream franking credits separately from dividend

# Streaming trust income

- "Interim" reforms in 2011
- Stream franked dividends and capital gains:
  - Specific entitlement
- In Commissioner's opinion, other income cannot be streamed

# Taxation of beneficiaries

- Illustrated as follows:

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# Taxation of beneficiaries

- Modifications to operation of s 97:
  - Trust income and taxable income are worked out, ignoring CG/FD subject to specific entitlement
  - Proportionate approach applies to remainder
- Where specific entitlements for all CGs and FDs, clean carve-out arises. i.e.:
  - CGs taxed under Subdiv 115-C
  - FDs taxed under Subdiv 207-B
  - Remainder taxed via existing s97 process
    - The modifications have little practical impact

# Specifically entitled

- Tax law concept
- More strict than trust law "present entitlement" concept
- Key requirement for "carve-out" treatment of CGs and FDs
- **Trustee must have streaming power under trust deed**. i.e. the deed:
  - Recognises income and other receipts of a different character or nature; and
  - Empowers trustee to separately deal with different types of income/receipts
- Tax law relies on the trust deed

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# Specific entitlement

## CGs & FDs

- To stream FD and net CG to different beneficiaries, trustee resolution must stipulate a "specific entitlement"
- If not, will be only a general entitlement to trust income
  - Beneficiaries assessed on a share of both FD and net CG

# Specifically entitled

## CGs & FDs

- Tax law changes do not (and cannot) give trustees streaming power
  - Only the trust deed can do that
- Therefore, where trustee:
  - Has power to stream under the deed; and
  - Confers, not just a present entitlement, but a (stricter) specific entitlement to a CG/FD, the CG/FD is taxed to beneficiary, retaining their character.

## Specifically entitled

# CGs & FDs

- Tax treatment follows streaming for trust purposes
- Other types of income may be streamed for trust purposes, but streaming not recognised for tax purposes
- Trade off:
  - Specifically entitled CG and FD retain character; and
  - No streaming for tax purposes for all other amounts. Based on obiter in *Colonial* case

# Example 3

- A trust has two types of income
  - Rent
  - Interest
- Trustee appoints rent to Beneficiary A, interest to Beneficiary B
  - Income category relevant only for trust entitlements
  - A and B taxed on proportionate share of each category
- Does it matter?
  - What if one beneficiary was a non-resident?

# 3-pots approach

- Need to determine the components of trust income and taxable income
- Broad practical approach:
  - Divide the trust's accounting profit into the following:

**Franked** dividends (Benchmark % > 0)
(i.e. The 70c or 72.5c – don't add ICs)
***Less***
Directly related expenses

Positive

Specific Entitlement

Gross Capital Gains
(i.e. Not reduced by discount, concessions)

Positive

Specific Entitlement

**Everything else:**
- All other income (including unfranked dividends)
- All other expenses

Positive

Confer present entitlement in usual manner

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# Franked Dividends

**Franked** dividends
(i.e. The 70c or 72.5c – don't add ICs)
***Less***
Directly related expenses

Gross Capital Gains
(i.e. Not reduced by discount, concessions)

**Everything else:**
- All other income
- All other expenses

**Negative**

- Provided there is:
  1. Positive trust income overall; and
  2. Taxable income.

  the imputation credits can flow to beneficiaries.

- Is there a capital gain? Other?
- Trust income definition.

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# Trusts and franking credits

- FDs and expenses.

**Franked** dividends
(i.e. The 70c or 72.5c – don't add ICs)
***Less***
Directly related expenses

**Positive**

Gross Capital Gains
(i.e. Not reduced by discount, concessions)

**None**

**Everything else:**
- All other income
- All other expenses

**Negative**

1. Positive exceeds negative?
Specific entitlement to FD

2. Negative exceeds positive?
No trust income.
Trustee assessed on any taxable income, less ICs.

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# Rateable reduction for other expenses

- Attributable franked dividends and net capital gains are further reduced if there are other net deductible expenses.
  - i.e. All other deductions exceed all other income.
- If a trust has either franked dividends or a net capital gain, it is reduced.
- If a trust has both, reduced rateably.

**Franked** dividends
(i.e. The 70c or 72.5c – don't add ICs)
***Less***
Directly related expenses

Gross Capital Gains
(i.e. Not reduced by discount, concessions)

**Everything else:**
- All other income
- All other expenses

**Positive**

Specific Entitlement

Ratebly reduce this amount

**Positive**

Specific Entitlement

**Negative**

Ratebly reduce net capital gain

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# Example 4 – P&L

- Hill Family Trust

| 2020 P&L | $ |
|---|---|
| **Income** | |
| Franked dividends | 70,000 |
| Capital gain | 100,000 |
| Rent | 45,000 |
| Total | 215,000 |
| **Expenses** | |
| Interest - dividends | 8,000 |
| Fines | 1,000 |
| Rental expenses | 55,000 |
| Total | 64,000 |
| Net profit | **151,000** |

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# Example 4 – tax rec

- Hill Family Trust

| 2020 Tax Reconciliation | $ | |
|---|---|---|
| Accounting profit | 151,000 | |
| **ADD** | | |
| Imputation credits | 30,000 | ($70,000 x $^{30}/_{70}$) |
| Net capital gain | 50,000 | (i.e. 50%) |
| Fines | 1,000 | |
| **DEDUCT** | | |
| Gross capital gain | (100,000) | |
| Taxable income | 132,000 | |

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# Example 4 – rateable reduction

| Steps | | Franked dividends | | Capital gain | | Other | | Total |
|---|---|---|---|---|---|---|---|---|
| | | | $ | | | Rent | 45,000 | |
| 1 | Financial statements | FD | 70,000 | | | Rent Expenses | (55,000) | |
| | | Directly related expenses | (8,000) | | | Fines | (1,000) | |
| | | Total | 62,000 | | 100,000 | | (11,000) | 151,000 |
| 2 | Tax rec adjustments | Imputation credits | 30,000 | 50% discount | (50,000) | Non-deductible fines | 1,000 | |
| | | | | | | Total | (10,000) | |
| 3 | Rateable reduction | | (5,536) | | (4,464) | | | |
| 4 | Taxable income | | $86,464 (Inc. $30k imputation credits) | | $45,536 (net CG) | | | $132,000 |

$$\frac{\$62{,}000}{\$62{,}000 + \$50{,}000 \text{ (net CG)}} \times \$10{,}000 = \$5{,}536$$

$$\frac{\$50{,}000 \text{ (net CG)}}{\$62{,}000 + \$50{,}000 \text{ (net CG)}} \times \$10{,}000 = \$4{,}464$$

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# Example 4 – what if…?

- What if the CG were not a discount CG?
- What if the CG was exempt, or reduced to nil by concessions?

# Example 4 – UPEs in financials

- How much trust income appoint in the accounts?
- No particular rule

| Financial statements | FD $ | CG $ | Other $ | Total $ |
|---|---|---|---|---|
| Accounts | 70,000 | | | |
| Directly related expenses | (8,000) | | | |
| Total | 62,000 | 100,000 | (11,000) | 151,000 |
| Rateable reduction | (5,536) | (4,464) | | |
| Fines (same proportion) | (554) | (446) | | |
| Appoint to beneficiaries in financial statements | 55,910 | 95,090 | | 151,000 |
| To restate: Assessable for Tax | 86,464 | 45,536 | | 132,000 |
| | (Incl imp cr) | (net CG) | | |

- Need to work with trust deed's definition of income.

# Beneficiary appointed net CG

## Example 4

- Net CG of $45,536 doubled to $91,072
- Apply any capital losses of beneficiary's
- Reduce by 50% discount
- Disclose net CG

TRUST TAX RETURN [redacted]

[redacted]

## Trust information

| | |
|---|---|
| TYPE OF TRUST | I - Discretionary trust – investment activities |
| Is this also a Charitable Trust? | No |
| MANAGED INVESTMENT TRUSTS | |
| If the trust is a managed investment trust, has the trustee made an election into capital account treatment? | No |
| Is any tax payable by the trustee? | No |
| Final tax return? | No |

## Income excluding foreign income

5 BUSINESS INCOME AND EXPENSES

| Income | Primary production | Non-primary production | Totals |
|---|---|---|---|
| **Total business income** | | | |
| **Is the trust a small business entity?** | | | |
| **Net small business income** | | V | |
| 9 RENT | | | |
| Gross rent | F | $45,000.00 | |
| Interest deductions | G | $0.00 | Net "other" loss |
| Capital works deductions | X | $0.00 | |
| Other rental deductions | H | $55,000.00 | |
| Net rent | | (F - G - X - H) | ($10,000.00) |
| 12 DIVIDENDS | | | |
| Franked amount | | L | $70,000.00 |
| Franking credit | | M | $30,000.00 |
| **15 Total of items 5 to 14** | | | **$90,000** |

## Deductions

| | | |
|---|---|---|
| 16 DEDUCTIONS RELATING TO: | Deductions directly related to FDs | |
| Australian investment income | P | $8,000.00 |
| **19 TOTAL OF ITEMS 16 TO 18** | | **$8,000.00** |
| **20 NET AUSTRALIAN INCOME – OTHER THAN CAPITAL GAINS** | | **$82,000.00** |

TRUST TAX RETURN [redacted]

[redacted]

## Capital gains and foreign income

| | | |
|---|---|---|
| 21 CAPITAL GAINS | | |
| **Prior year losses brought forward** | | |
| Did you have a CGT event during the year? | G | Yes |
| Have you applied an exemption or rollover? | M | No |
| Net capital gain | A | $50,000.00 |

## Foreign income

| | | |
|---|---|---|
| 22 ATTRIBUTED FOREIGN INCOME | | |
| Did you have overseas branch operations or a direct or indirect interest in a foreign trust, foreign company, controlled foreign entity or transferor trust? | S | No |
| **24 TOTAL OF ITEMS 20 TO 23** | | $132,000.00 |
| **26 TOTAL NET INCOME** | | $132,000.00 |
| **29 OVERSEAS TRANSACTIONS** | Taxable income | |
| Was the aggregate amount of your transactions or dealings with international related parties greater than $2 million? | W | No |
| **Thin capitalisation** | | |
| Did the thin capitalisation provisions affect you? | O | No |
| Was any beneficiary who was not a resident of Australia at any time during the income year 'presently entitled' to a share of the income of the trust? | A | No |
| Transactions with specified countries | C | No |
| 30 PERSONAL SERVICES INCOME | | |
| Does your income include an individual's personal services income? (PSI) | N | No |

## Business and professional items

| | | |
|---|---|---|
| 54 INCOME OF THE TRUST ESTATE | A | $151,000.00 |

## Beneficiary not entitled

| | |
|---|---|
| 57 BENEFICIARY UNDER LEGAL DISABILITY WHO IS PRESENTLY ENTITLED TO INCOME FROM ANOTHER TRUST | No |
| 58 NON-RESIDENT TRUST | |
| Is the trust a non-resident trust? | No |

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TRUST TAX RETURN [redacted]

## Beneficiary – [redacted]

| Tax File Number | TFN Recorded | Entity code | U | I - Individual |
|---|---|---|---|---|

INDIVIDUAL NAME

| Title | Given name | Other given names | Family name | Suffix | Date of birth |
|---|---|---|---|---|---|
| [redacted] | [redacted] | [redacted] | [redacted] | | [redacted] |

RESIDENTIAL / BUSINESS ADDRESS

| Address | Town/City | State | Postcode |
|---|---|---|---|
| [redacted] | [redacted] | [redacted] | [redacted] |

| | | | |
|---|---|---|---|
| Distribution type | Manual | | |
| Assessment calculation code | | V | 30 |
| | Inter | y - Not under legal disability | |
| Share of income of the trust estate | | W | $151,000.00 |
| Credit for tax withheld – foreign resident withholding (excluding capital g | | L | $0.00 |
| Australian franking credits from a New Zealand franking company | | N | $0.00 |
| SHARE OF INCOME | | | |
| Non-primary production | | B | ($13,536.00) |
| Credit for tax withheld where ABN not quoted | | C | $0.00 |
| Franked distributions | | U | $100,000.00 |
| Franking credit | | D | $30,000.00 |
| TFN amounts withheld | | E | $0.00 |
| Share of credit for TFN amounts withheld from payments from closely he | | O | $0.00 |
| Capital gains | | F | $45,536.00 |
| Share of credit for foreign resident capital gains withholding amounts | | Z | $0.00 |
| Attributed foreign income | | | $0.00 |
| Other assessable foreign source income | | | $0.00 |
| Foreign income tax offset | | | $0.00 |
| Share of national rental affordability scheme tax offset | | | $0.00 |
| Exploration credits distributed | | | $0.00 |
| SMALL BUSINESS INCOME TAX OFFSET INFORMATION | | | |
| Share of net small business income | | | $0.00 |

This is the $8,000 of directly related expenses, plus $5,536 rateable reduction= $13,536

$100,000 - $13,536= $86,464 as per our calculation
The $86,464 is the FD ($70k), less direct expenses ($8k), plus ICs ($30k), rateably reduced by $5,536 per s207-37
This will go into the beneficiary's return

This is the $50,000 net CG, rateably reduced by $4,464 in accordance with s115-225
Even though the net CG in the return is $50,000, $45,536 is the attributed net CG to the beneficiary. There is no error message.
Grossed-up CG of $91,072 goes in the beneficiary's return, then apply cap losses, discount.

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INDIVIDUAL TAX RETURN [redacted] [redacted]

## Supplementary section

| 13 PARTNERSHIPS AND TRUSTS | | | |
|---|---|---|---|
| **Primary production** | | | |
| Distribution from partnerships | N | | |
| Share of net income from trusts | L | | |
| Landcare operations and deduction for decline in value of water facility, fencing asset and fodder storage asset | I | | |
| Other deductions relating to amounts shown at **N** and **L** | X | | |
| **Net primary production amount** | | | |
| **Non-primary production** | | | |
| Distribution from partnerships relating to financial investments, less foreign income | | | |
| Share of net rental property income or loss from partnerships | | | |
| Other distributions from partnerships | | | |
| Distribution from partnerships less foreign income | O | $0.00 | |
| Share of net income from trusts less capital gains, foreign income and franked distributions | U | ($13,536.00) | |
| Franked distributions from trusts | C | $100,000.00 | |
| Land-care operations expenses | J | | |
| Other deductions relating to amounts shown at **O**, **U** and **C** | Y | | |
| **Net non-primary production amount** | | | **$86,464.00** |
| Partnership share of net small business income less deductions attributable to that share | D | | |
| Trust share of net small business income less deductions attributable to that share | E | | |
| **Share of credits from income and tax offsets** | | | |
| Share of credit for tax withheld where Australian business number not quoted | P | | |
| Share of franking credit from franked dividends | Q | $30,000.00 | |
| Share of credit for TFN amounts withheld from interest, dividends and unit trust distributions | R | | |
| Credit for TFN amounts withheld from payments from closely held trusts | M | | |
| Share of credit for tax paid by trustee | S | | |
| Share of credit for amounts withheld from foreign resident withholding (excluding capital gains) | A | | |
| Share of National rental affordability scheme tax offset | B | | |

Correct! And from using the auto-transfer function.

WORKSHEET

| Name | Credit / Offset | PP Amount | NPP amount |
|---|---|---|---|
| Distributed from [redacted] | $30,000 | | $86,464.00 |

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INDIVIDUAL TAX RETURN [redacted]

[redacted]

## 18 CAPITAL GAINS

| | | |
|---|---|---|
| Did you have a capital gains tax event during the year? | G | Yes |
| Have you applied an exemption or roll over? | M | No |
| Net capital gain | A | $45,536.00 |
| Total current year capital gains | H | $91,072.00 |

Manually entered in usual manner. CGT schedule may be required.

## 19 FOREIGN ENTITIES

| | | |
|---|---|---|
| Did you have either a direct or indirect interest in a controlled foreign company CFC? | I | No |
| Have you ever, either directly or indirectly, caused the transfer of property—including money—or services to a non-resident trust estate? | W | No |

## 20 FOREIGN SOURCE INCOME AND FOREIGN ASSETS OR PROPERTY

| | | |
|---|---|---|
| During the year did you own, or have an interest in, assets located outside Australia which had a total value of AUD$50,000 or more? | P | No |

| | | |
|---|---|---|
| **TOTAL SUPPLEMENT INCOME** | Items 13 to 24 | **$132,000.00** |

Totals to $132,000 - correct! (Beneficiary may have other income; have only shown the trust distribution to illustrate)

# Deductions

| | |
|---|---|
| **TOTAL SUPPLEMENT DEDUCTIONS** | Items D11 to D15 |

# Tax offsets

| | |
|---|---|
| **TOTAL SUPPLEMENT TAX OFFSETS** | Items T3, T4, T6, T7, T8, T9, T10 and T11 |

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# JobKeeper

- Assessable income of the business
- Trust income?  Probably, yes
- Which pot?
- Deal with like any other income

# Cash flow boost

- Not assessable income
  - But might be on extraction from entity. Eg:
    - Unfranked dividend – company
    - CGT event E4 capital gain – unit trust
- Trust income?
  - Lumpy, received as little as two times
  - Maybe not
  - Capital?
- Which pot?

# Cash flow boost

- Ideally, appoint to individual
- Undesirable to end up in corporate beneficiary UPE
- On basis trustee has requisite powers, suggested action:
  - Resolve CFB excluded from trust income (just to be certain)
  - Appoint trust capital represented by CFB to individual beneficiary(ies)
  - Deal with trust income in ordinary course

# Appoint CG to non-resident

## *Greensill v FCT* [2020]

- Resident trust derived CG - $58 million
  - Non-TAP asset
  - CG appointed to **non-resident beneficiary**
- s855-10 did not apply
  - CG assessed under Subdiv 115-C
- Probably will be appealed to FFC

- *Note – if non-res beneficiary had personally owned the non-TAP asset, s855-10 would apply. CG would be disregarded*

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# Conclusion

- Check the trust deed
- Specific entitlement for FDs and CGs
- Document in resolution any use of trustee's power to modify trust income
  - Incl that CFB excluded from trust income
- Document calculation for rateable reduction
- Confidence in outcomes
  - Beneficiary entitlements
  - Tax outcomes

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# Thank you

If you would like to discuss anything further, please do not hesitate to contact us.