

Edited version of private ruling

Authorisation Number 84707

This ruling is a private ruling for the purposes of Division 359 of Schedule 1 of the Taxation Administration Act 1953.

What this ruling is about:

Will the Commissioner exercise the discretion under section 99A of the *Income Tax Assessment Act 1936* (ITAA 1936) to tax the income of the trust estate under section 99 ITAA 1936?

Ruling:

Will the Commissioner exercise the discretion under section 99A of the ITAA 1936 to tax the income of the trust estate under section 99 ITAA 1936?

Yes.

Year(s) of income or period(s) to which this ruling applies:

Year ended 30 June 2008

Commencement date of scheme:

1 July 2007

The scheme that is the subject of the ruling:

The trust is a deceased estate established under the will of deceased person.

It has taken the trustee longer than three years to proceed with the final distribution to the beneficiaries due to an on-going court case which has now been resolved.

The funds have been dispersed to the beneficiaries and the Estate's bank account was closed during the 2008 income year.

Relevant provisions:

Income Tax Assessment Act 1936 Section 99.

Income Tax Assessment Act 1936 Section 99A.

Income Tax Assessment Act 1936 Subsection 99A(2).

Income Tax Assessment Act 1936 Paragraph 102AG(2)(c).

Income Tax Rates Act 1986 Subsection 12(6).

Income Tax Rates Act 1986 Sch10-Ptl.

Income Tax Rates Act 1986 Section 14.

Explanation: (This does not form part of the notice of private ruling)

The categories of trusts in respect of which the Commissioner has discretion to assess the trustee under section 99 of the ITAA 1936 rather than under section 99A of the ITAA 1936 are limited to:

deceased estates;

bankrupt estates; and

trusts that consists of the following types of property as specified in ITAA 1936 section 102AG(2)(c) - (subsection 99A(2) of the ITAA 1936).

As the trust is a deceased estate of the 'ordinary and traditional' kind, has been in existence for more than three years, whose assets have been distributed to the beneficiaries and there is no tax avoidance involved, the Commissioner's discretion to assess the trustee under section 99 of the ITAA 1936 will be exercised.

Accordingly, the Commissioner will assess the net trust income retained by the deceased estate under section 99 of the ITAA 1936 for the year ended 30 June 2008.

The rates of tax for trustees assessed under section 99 are found in subsection 12(6) of the *Income Tax Rates Act 1986* (ITRA 1986), which directs attention to Schedule 10 of the Rates Act. Part 1 of Schedule 10 of the ITRA 1986 identifies two classes of trustees for the purpose of determining the rates of tax that are to apply.



In the first class are trustees who are liable to be assessed under section 99 of the ITAA 1936 in respect of resident trust estates of a deceased person where the income is derived in the year of death of the deceased or in any one of the following two years. These trustees are liable to pay tax at the rates applicable to resident individuals.



The second class of trustees identified in Part 1 of Schedule 10 of the ITRA 1986 comprises trustees liable to be assessed under section 99 of the ITAA 1936 in respect of income of a resident trust estate, other than the estate of a person who died fewer than three years before the end of the income year. The trustees in this class are liable to tax at the rates specified for resident individuals except that they do not benefit from the tax free threshold of \$6,000. When this is the case, section 14 of the ITRA 1986 states a reduced tax free threshold of \$416 applies. On income between \$416 and \$594 the rate of tax applied is 50%, and for amounts between \$594 and \$30,000, the rate of 15% is applied (subclause 2(b) of Schedule 10 of the ITRA 1986).

There is no discretion available to the Commissioner as to whether Clause 1 or Clause 2 will apply and no extension can be granted to the three year period.

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