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Taxation of trust net income – non-resident beneficiaries

Amendments were made to the *Income Tax Assessment Act 1936* (ITAA 1936) from 1 July 2006 to ensure that a trustee is assessed on a non-resident trustee beneficiary's share of the net income of a trust.

This treatment is similar to the way in which trustees are assessed in relation to a non-resident company or individual beneficiary.

If a trustee is assessed in respect of a non-resident trustee beneficiary's share of the net income of the trust, there are special rules that apply to the assessment of the trustee beneficiary and any subsequent trustee beneficiary in the chain of trusts.

There are also rules about how the ultimate individual or company beneficiaries are assessed.

Note: All references in this information are to the *Income Tax Assessment Act 1936* unless otherwise stated.

Find out about:

- [General overview of changes](#)
- [Rules on particular amounts in net income \(?anchor=Rulesonparticularamountsinnetincome#Rulesonparticularamountsinnetincome\)](#)
- [Example – chain of trusts \(?anchor=Example#Example\)](#)

General overview of changes

Generally, the net income of a trust is taxed to beneficiaries of the trust under section 97 of the *Income Tax Assessment Act 1936*. However, section 98 applies in certain cases to tax a trustee in relation to a beneficiary, including where a beneficiary is a non-resident at the end of an income year. Trustees are taxed in relation to non-resident beneficiaries to assist in the collection of Australian tax on relevant income.

In the 2006–07 Federal Budget, the Treasurer announced that the law would be amended so that trustees would be assessed in respect of non-resident trustee beneficiaries. The Treasurer's press release no. 039/2006 stated:

The intent of this measure is to ensure that trust distributions to **non-resident trustees** are taxed in the same way as distributions to other non-resident beneficiaries. This measure will improve integrity relating to trust distributions by introducing a taxing point in Australia on distributions to non-resident trustee beneficiaries and will ensure that these distributions are taxed in a manner consistent with distributions to other non-residents.

The legislation introducing these changes received Royal Assent on 21 June 2007. It applies to income years starting on or after 1 July 2006.

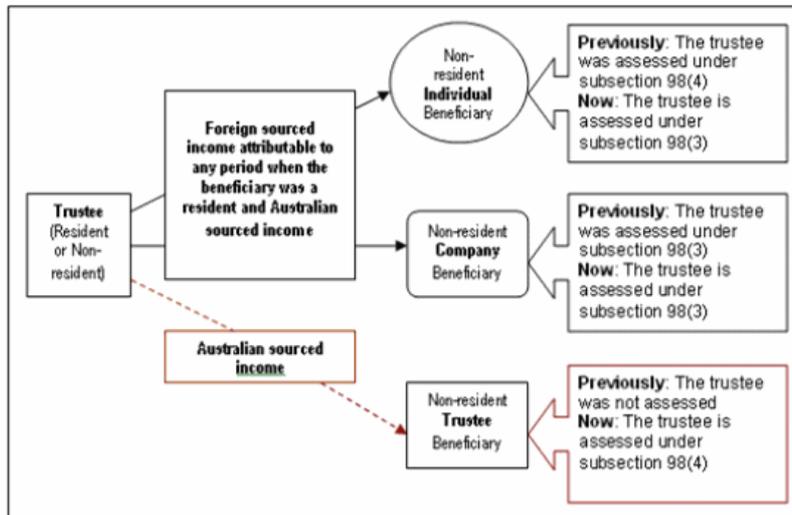
Before the amendment, subsection 98(3) provided that a trustee was liable to pay tax on a non-resident company beneficiary's share of the net income of the trust. Subsection 98(4) provided that a trustee was liable to pay tax on a non-resident individual beneficiary's share of the net income of the trust. However, a trustee was not liable to pay tax if the beneficiary was acting in the capacity of trustee of another trust.

Operation of subsections 98(3) and (4)

The amendments to section 98 do two things:

- They restate the effect of the previous subsections 98(3) and (4) (new subsections 98(2A) and (3)). The rewritten provisions do not change the way a trustee is taxed in relation to non-resident company and individual non-trustee beneficiaries.
- The amendments extend the circumstances in which a trustee is taxed in respect of a non-resident beneficiary to include non-resident trustee beneficiaries (new subsection 98(4)).

A trustee is liable to pay tax in respect of a trustee beneficiary's share of the trust's net income attributable to Australian sources if the trustee beneficiary is a non-resident at the end of that income year. If the beneficiary trust has more than one trustee, subsection 98(4) will apply if at least one trustee is a non-resident at that time.



Trustees of Australian managed investment trusts and Australian trustee intermediaries (to the extent their income is managed investment trust income) are not subject to taxation under section 98 where they are subject to taxation under new Subdivision 12-H of the *Tax Administration Act 1953*.

Rate of tax

The rate of tax that a trustee pays in relation to a non-resident trustee beneficiary is the top tax rate for a non-resident individual (currently 45 %). There is no change to the tax rates a trustee pays in relation to non-resident individual and company beneficiaries that are not trustees.

Trustee tax – not a final tax

Tax assessed to a trustee in relation to a non-resident beneficiary is generally not a final tax. If the trustee is assessed under subsection 98(3) in respect of an individual or company beneficiary, those beneficiaries are assessed under subsection 98A(1) and allowed a credit under subsection 98A(2) for tax paid by the trustee.

If the trustee is assessed under subsection 98(4) in respect of a trustee beneficiary, the trustee beneficiary and any later trustee in the chain of trusts is not assessed again on that amount under section 98, 99 or 99A. However, an amount may be taxed to an ultimate individual or company beneficiary under subsection 97, 98A(3) or 100 and allowed a credit under section 98B.

Find out about:

- [Rules on particular amounts in net income \(?anchor=Rulesonparticularamountsinnetincome#Rulesonparticularamountsinnetincome\)](#)
- [Example – chain of trusts \(?anchor=Example#Example\)](#)

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