

Resolutions checklist

- <https://www.ato.gov.au/General/Trusts/In-detail/Trust-tax-time-toolkit/Resolutions-checklist/> (<https://www.ato.gov.au/General/Trusts/In-detail/Trust-tax-time-toolkit/Resolutions-checklist/>)
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Trustee resolutions

This information is for trustees who wish to make beneficiaries of a trust presently entitled to trust income for an income year by way of making resolutions (including where in doing so they also want to make beneficiaries specifically entitled to franked dividends and capital gains included in that income). It is also for trustees who wish to make beneficiaries specifically entitled to capital gains forming part of the trust capital.

You need to ensure resolutions meet the requirements explained below. If a resolution is not effective, other beneficiaries or you (as trustee) may instead be assessed on the relevant share of the trust's net (taxable) income. Where a trustee is assessed, that may be at the top rate of tax.

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Do you have a complete copy of the trust deed?

Make sure you have a complete copy of the trust deed, including any amendments. You need to be sure that any resolution you make to distribute the trust's income or capital is consistent with the terms of the deed.

Who can you appoint income or capital to?

Check the trust deed to ensure that the intended beneficiaries are within the class of persons who can benefit from an appointment of trust income (or of trust capital, if you intend to stream a capital gain that is not income of your trust) and not listed as excluded beneficiaries. For example, some trust deeds specifically exclude the trustee of the trust from being a beneficiary.

If you make an appointment in error to someone who is not a beneficiary, the default beneficiaries (if any) or you as trustee may be assessed on a corresponding part of the trust's net (taxable) income.

Has the trust vested?

Check the trust deed to ensure that the trust has not yet vested. If it has, then entitlements to income will already have vested in those beneficiaries entitled to the trust fund on the vesting date and attempted appointments of income or capital that are inconsistent with those entitlements will be ineffective.

Is there a family trust election in force for the trust?

Eligible trusts can make a family trust election to access certain tax concessions. If the election has been made, check whether the beneficiaries to whom you intend to distribute trust income or capital are within the family group of the individual specified in the election.

Appointing trust income or capital to a person outside the family group will result in a family trust distribution tax liability to you (as trustee). [The beneficiaries who would otherwise be assessable because of the resolution will not be assessable.]

See also:

- [Family trusts: concessions \(/General/Trusts/In-detail/Family-trusts---concessions/\)](/General/Trusts/In-detail/Family-trusts---concessions/)

When do you have to make resolutions?

If you make beneficiaries entitled to trust income for an income year by way of a resolution, it will only be effective for determining who is assessed on the trust's net (taxable) income if it is made by the end of the income year (30 June).

Sometimes a trust deed will require a resolution to be made before the end of the income year. In this case you should comply with the deed. For example, if the trust deed requires your resolution to be made by 28 June, then you should make the resolution by that date.

If your trust deed requires an earlier resolution, all references below to 30 June should be read as the earlier date required by your deed.

If you are make beneficiaries specifically entitled to trust capital gains by way of appointing trust capital to them, that must be done within 2 months of the end of the income year (31 August).

Is there a standard format for a resolution?

No. As there are a wide variety of trust deeds with different requirements for trustee resolutions, we cannot provide a standard format.

The important thing is that your resolution makes one or more beneficiaries presently entitled to the trust income by 30 June.

Does a resolution have to be in writing?

Whether the resolution must be recorded in writing will depend on the terms of your trust deed. However, a written record will provide better evidence of the resolution and avoid a later dispute, for example with us or with relevant beneficiaries, as to whether any resolution was made.

A written record will be essential if you want to effectively stream capital gains or franked distributions for tax purposes. This is because a beneficiary can only be specifically entitled to franked dividends or capital gains if this entitlement is recorded in writing in the records of the trust either:

- by 30 June for franked dividends
- by 31 August for capital gains.

A beneficiary cannot be made specifically entitled to a capital gain included in the income of the trust estate after 30 June if, as a result of the operation of the trust deed, another beneficiary (including a default beneficiary) was presently entitled to it before that date.

Is the wording of your resolution clear and unambiguous?

Check that your resolution is unambiguous and robust enough to deal with all eventualities.

Example: allocation of income

A trustee resolves to distribute the trust income as follows:

A – the first \$100

B – the next \$100

C – the balance of the income

D – the balance of the income.

The trustee may have been intending to appoint to C and D 50% of the income remaining after the specific appointments to A and B. But on one reading, all of that income was appointed to C, so that there is nothing that can be distributed to D.

Example: description of income

A trustee simply resolves to distribute all of the trading income to a beneficiary. But the trustee, in carrying on a business, has derived some interest income – this interest income would not be dealt with by the resolution. Depending on the wording of the particular trust deed, the result would be that some of the net (taxable) income of the trust would be assessed to the trustee or default beneficiaries.

Is the entitlement vested?

A beneficiary's entitlement must be vested by 30 June. An entitlement that will only arise on the happening of an event in the future is not vested

For example, a resolution would not be effective if it stated that an entitlement of a beneficiary would arise in the event of a future adjustment to the trust's net (taxable) income by the ATO.

Can the entitlement be taken away?

For a beneficiary to be presently entitled to trust income, their right to the income must be indefeasible. That is, the entitlement must not be capable of being taken away. If an entitlement to trust income can be taken away from a beneficiary then the trustee may be assessed on the corresponding part of the trust's net (taxable) income.

How should you calculate and report the income of the trust?

Make sure you understand how the income of your trust is calculated and that your resolution reflects this – for example, if the deed defines the income of the trust to be an amount equal to the trust's net (taxable) income, your resolution should not then seek to appoint accounting income.

If your trust deed equates the trust's income with its net (taxable) income, you should note the ATO's view (set out in [Draft Taxation Ruling TR 2012/D1 \(http://law.ato.gov.au/view.htm?DocID=DTR/TR2012D1/NAT/ATO/00001&PiT=99991231235958\)](http://law.ato.gov.au/view.htm?DocID=DTR/TR2012D1/NAT/ATO/00001&PiT=99991231235958)) that income cannot generally include notional amounts such as franking credits.

The income of the trust needs to be reported on the trust tax return, along with each beneficiary's share of that income. This requirement is in addition to reporting the net (taxable) income of the trust and each beneficiary's share of that net (taxable) income. We use this additional information to check each beneficiary's share of the trust's net (taxable) income and to consider whether anti-avoidance provisions may apply.

Are you 'streaming' capital gains or franked distributions?

If you are 'streaming' capital gains or franked distributions (seeking for their character to be retained as capital gains or franked distributions in the hands of beneficiaries), check that:

- you are not prevented from doing so under the terms of the deed
- you have complied with the relevant legislative requirements relating to the creation and recording of these entitlements.

For example, if a trustee wants to stream a capital gain to a particular beneficiary so that the gain is assessed only to that beneficiary, the beneficiary must be entitled to all of the financial benefits referable to the capital gain. In a trust where income is equated with the trust's net (taxable) income, a resolution distributing that part of the income attributable to a discount

gain will only create an entitlement to 50% of the financial benefits that arise from the capital gain – that is, the discount component of the capital gain being non-assessable will not form part of the income of the trust.

To create an entitlement to all of the financial benefits referable to the capital gain, the trustee would also need to distribute that part of the trust capital attributable to the discount component of the gain.

While tax law allows until 31 August to record the specific entitlements relating to capital gains, such entitlements cannot be created over any amount that has already been dealt with – for example, any capital gains forming part of trust income that was already dealt with by 30 June.

Are you seeking to ‘stream’ other types of income?

The tax attributes of other types of income cannot be separately streamed to different beneficiaries in the way that capital gains and franked distributions may be streamed. Under the general trust-assessing provisions in tax law, each beneficiary is taxed on a proportionate share of each component of the trust's net (taxable) income and cannot be treated as having a share of net income that consists of one category of income (for example, foreign income).

Will records created after 30 June be accepted as evidence of the making of the resolution by that date?

Yes. If a resolution is validly made by 30 June, we will accept records created after 30 June as evidence of the making of a resolution by that date. The following examples show the types of records and circumstances in which we will accept them.

Example: Individual trustee

On 29 June, an individual trustee writes a note, dated 29 June, stating that they have resolved to distribute the trust income in a certain way. On 15 July, the trustee types the note reflecting the resolution of 29 June and provides a copy to the beneficiaries. We will accept the handwritten or typed notes as evidence of the making of the resolution on 29 June.

Example: Corporate trustee

The corporate trustees of a larger trust group map out where distributions are to be made, with appropriate percentages. This 'map' is signed by the relevant trustees on 26 June to evidence the resolutions that have been made. On 25 July, the

resolutions are recorded in the minutes book maintained by the trustees. We will accept the signed 'map' or minutes book as evidence of the making of the resolutions on 26 June.

Do you have to prepare the trust accounts by 30 June to make beneficiaries presently entitled to trust income?

No. Your resolution does not need to specify an actual dollar amount for the resolution to be effective in making a beneficiary presently entitled, unless the trust deed specifically requires it.

A resolution is effective if it prescribes a clear methodology for calculating the entitlement – for example, the entitlement can be expressed as a specified percentage of the income, whatever that turns out to be.

Alternatively, if you know that the income of the trust will be at least a certain amount, you may choose to make one or more beneficiaries presently entitled to the certain amount, and other beneficiaries entitled to the balance, whatever that turns out to be.

What happens if you make a resolution after 30 June?

If no beneficiary (including a default beneficiary) was presently entitled to trust income as at 30 June, and no beneficiary was made specifically entitled to trust capital gains (if any), then you (the trustee) will be assessed on the trust's net (taxable) income.

Have all entitled beneficiaries quoted their tax file number (TFN) to you?

If not, TFN withholding rules apply to closely held trusts, including family trusts. Further information is available [here \(/General/Trusts/In-detail/Closely-held-trusts/TFN-withholding-for-closely-held-trusts/\)](/General/Trusts/In-detail/Closely-held-trusts/TFN-withholding-for-closely-held-trusts/).

What if a beneficiary disclaims their entitlement to trust income or capital?

A beneficiary may disclaim an entitlement to trust income or capital arising from a resolution within a reasonable time of becoming aware of their entitlement.

If a beneficiary has made a valid disclaimer, you (the trustee) may be assessed on a share of the trust's net (taxable) income.

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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