# Managing section 100A for the 2021–22 income year

**Find guidance for registered tax agents and trustees dealing with trust distributions for 2021–22 when section 100A may apply.**

## About this guidance

This guidance will assist registered tax agents and trustees understand when section 100A of the *Income Tax Assessment Act 1936* (section 100A) may be relevant, including:

- trust distributions for the 2021–22 income year
- what happens when section 100A applies
- where you can access our new draft guidance
- what records will assist in the event of a review.

## When section 100A may apply

Section 100A of the *Income Tax Assessment Act 1936* is an anti-avoidance rule. It applies to an agreement (called a 'reimbursement agreement') where one person receives a benefit from the trust but another person is made presently entitled to income and assessed.

Each of the following must be satisfied for section 100A to apply:

- The present entitlement is connected to an agreement, arrangement or understanding.
- There is a benefit provided to someone else. A benefit can take the form of a transfer of trust property, a payment or loan of money or provision of services.
- At least one party had a purpose of reducing or deferring income tax.

There cannot be a reimbursement agreement where either:

- the arrangement is 'entered into in the course of ordinary family or commercial dealing' (further details below)
- the beneficiary is a child under 18 years old or under a legal disability
- at the time the beneficiary became presently entitled, there was no agreement, arrangement or understanding to provide a benefit to someone else. However, a repeated pattern may lead to an inference there was an understanding.

## Key points about section 100A

- It is usual for a trustee to allocate the income of a trust to beneficiaries and for beneficiaries to pay tax at their own rates on those amounts.
- The result is different if there is a 'reimbursement agreement' – in that case the trustee pays tax at the highest marginal rate.
- A 'reimbursement agreement' does not include an arrangement 'entered into in the course of ordinary family or commercial dealing'.
- A 'reimbursement agreement' can involve a distribution to a family member.
- Section 100A does not apply where the beneficiary simply receives or enjoys the benefit of their distribution.
- The majority of small business trust arrangements involve nothing more than presently entitled beneficiaries receiving their entitlement, or controllers re-investing the profits of the trust into the working capital of the business. These arrangements present a very low risk of section 100A applying.

## Managing your section 100A risk for 30 June 2022

For trust entitlements for the year ending 30 June 2022, trustees can, in addition to using this guide material:

- consider our draft guidance to help you understand our view of what is an 'ordinary family or commercial dealing' and the instances where there is a potential risk that section 100A may apply
- refer to our 2014 website guidance which sets out examples for when section 100A may or may not apply
- maintain good records to evidence arrangements.

Trustees who believe section 100A may apply to their affairs should speak to their registered tax agent. They can also apply for a private ruling or contact us by emailing ReimbursementAgreement@ato.gov.au.

## Consequences of section 100A applying

Where section 100A applies, the beneficiary's entitlement is taken to be disregarded. The trustee is then assessed on the beneficiary's share of the trust's taxable income at the top marginal rate.

Where this occurs, it only changes the taxation consequences of the beneficiary's entitlement. It does not change the trust law outcomes.

> **Example – loan with no reimbursement agreement**
>
> Thomas is attending university while living at home. His parents have loaned him money to purchase a car and pay for his university fees.
>
> At the end of the income year, he is made presently entitled to trust income. The trust applies Thomas' income to repay the loan advanced by his parents.

## How we assess section 100A risk

In essence, we will focus our compliance resources to high-risk arrangements. Together, the 2014 website guidance and Draft Practical Compliance Guideline PCG 2022/D1 (the PCG) set out our compliance approach to applying section 100A. The PCG sets out arrangements we consider to be lower risk (Green zone) and higher risk (Red zone) arrangements.

### Common arrangements in the Green zone

An arrangement is considered low risk (Green zone) where either:

- a beneficiary simply uses their entitlements to benefit themselves, their spouse and dependents, or
- in most cases, the beneficiary's entitlement is retained by the trustee for use in commercial or income earning operations of the trust, provided that either
  - the beneficiary is employed in managing the business conducted by the trustee
  - the beneficiary (or their spouse) controls the trustee
  - the beneficiary is a private company that enters into a loan agreement with the trustee that complies with Division 7A.

### Arrangements in the Red zone

High risk arrangements commonly have elements of contrivance, undue complexity, or other features that do not show a commercial or family-based reason, but instead a motivation to shelter income from higher rates of tax. Examples include:

- a university student who has no other sources of income, is made presently entitled to $180,000 and agrees to pay the $180,000 less tax to reimburse their parents for the costs their parents incurred when the student was a minor
- a circular distribution where a company is made presently entitled to income each year and, all or part of that income includes a dividend sourced from that company.

## Records you should keep

Keep good records that explain the transactions that have happened. Having a clear understanding as to why entitlements have been dealt with in the way they have will help support your position. It will also assist in timely resolution in the event that we review your arrangement.

While each arrangement depends on its facts, the following will be important:

- the trust deed (including amendments), trustee resolutions, and contact details of the trustee
- for an inter-party loan, copies of the loan agreements and records of the purpose for making the loan
- evidence to demonstrate that a beneficiary has received or enjoyed the benefit of their entitlement.

It is acknowledged that intra-family arrangements are typically conducted with a greater level of informality than commercial dealings that are conducted by unrelated parties. Nonetheless, to the extent possible, the trustee or their registered tax agent should maintain contemporaneous records that demonstrate the objectives an arrangement was intended to achieve and how it helped to achieve them.

For further information about ordinary family or commercial dealings, see paragraphs 20 through 30 of Draft Taxation Ruling TR 2022/D1 *Income tax: section 100A reimbursement agreements*.

## Further guidance

The Commissioner of Taxation's views on section 100A and our compliance approach are set out in the following guidance:

- Draft Taxation Ruling TR 2022/D1 *Income tax: section 100A reimbursement agreements*
- Draft Practical Compliance Guideline PCG 2022/D1 *Section 100A reimbursement agreements – ATO compliance approach*
- Taxpayer Alert TA 2022/1 *Trusts: parents benefitting from the trust entitlements of their children over 18 years of age*
- 2014 website guidance which sets out examples for when section 100A may or may not apply.

For more information see Trust taxation – reimbursement agreement

**This is a general summary only.**
For more information, visit ato.gov.au
or speak to a registered tax professional.

This information is current as at 20 June 2022.
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