

1. I wish to suggest the following concept be accepted into the amendments to give clarity to a problem that currently exists with distribution minutes in respect of discretionary trusts.

As I understand the position, currently the Trust Distribution minutes are required to be made prior to 30th June with the ATO giving an administrative concession to allow the minute to be prepared until 30th August in respect of the prior year.

In practical terms, the Trustee has difficulty in making the distribution decision when the actual Trust income has not yet even been calculated.

**I recommend that this could be resolved, subject to the deed allowing it, that the distribution of trust income must be determined within 30 days of the final accounts of the Trust being completed.**

2. There has been much talk that "share of Trust income" refers to a proportion of the whole and cannot be defined as a quantum amount. With deceased estates, assets are held on a Trust created under a Will and the assets and income from that Trust can be dealt with in various ways eg

- (a) Specific amounts to some individuals and the balance to others
- (b) Equally between 3 beneficiaries
- (c) The first \$10000 to beneficiary A and the balance to B etc

I fail to understand why an "intervivous trust" should be dealt with any differently than the long established common law treatment of Trusts. It would appear to me that the argument that the legislator must have been considering a "proportional approach when drafting the law is incorrect. Surely years of common law cannot be ignored and surely the legislator would have to respect the long established principles that "share" can mean many things and can be used differently in different situations as shown above in the context of deceased trust estates.

Once the rewrite has established in a clear manner how distributable income will be calculated and accepted by the ATO as "trust taxable income".....the general concepts used in deceased trust estates should also be available to use in addressing the distribution of income from "intervivous estates" in respect of what a "share" of income can be interrupted as.

Regards  
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