

# GOVERNMENT ACTION TO ADDRESS THE INTEGRITY OF TRUSTS

FOI 2437  
Document 1

TOP LINES:

s22

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<b>QTB Number</b>	QB19-000003	<b>Adviser</b>	s22
<b>Contact Officer</b>	s22	<b>Contact Number</b>	(02) s22
<b>Division responsible</b>	Individuals and Indirect Tax Division		
<b>Office Responsible</b>	Treasurer	<b>Date of Update</b>	

# s22

## *Tax Integrity — extending anti-avoidance rules for circular trust distributions*

- The Government announced, as part of the 2018-19 Budget, that it will extend to family trusts a specific anti-avoidance rule that applies to other closely held trusts that engage in circular trust distributions, from 1 July 2019.
- Currently, where family trusts act as beneficiaries of each other in a ‘round robin’ arrangement, a distribution can be ultimately returned to the original trustee — in a way that avoids any tax being paid on that amount.
- This measure will better enable the ATO to pursue family trusts that engage in these arrangements by extending the specific anti-avoidance rule, imposing tax on such distributions at a rate equal to the top personal tax rate plus the Medicare levy.

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<b>QTB Number</b>	QB19-000003	<b>Adviser</b>	s22
<b>Contact Officer</b>	s22	<b>Contact Number</b>	(02) s22
<b>Division responsible</b>	Individuals and Indirect Tax Division		
<b>Office Responsible</b>	Treasurer	<b>Date of Update</b>	

# s22

<b>QTB Number</b>	QB19-000003	<b>Adviser</b>	s22
<b>Contact Officer</b>	s22	<b>Contact Number</b>	(02) s22
<b>Division responsible</b>	Individuals and Indirect Tax Division		
<b>Office Responsible</b>	Treasurer	<b>Date of Update</b>	

# s22

**From:** s22  
**Sent:** Monday, 14 January 2019 7:46 PM  
**To:** s22  
**Subject:** RE: trusts - material for today [SEC=PROTECTED, DLM=Sensitive]

Thanks s22

Much appreciated. Let's talk first thing about Cameo's. I also have a couple of technical queries on the QTB content.

s22

Adviser (Tax and Commonwealth State Relations)  
Office of the Hon Josh Frydenberg MP  
Treasurer  
02 6277 7340  
s22

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**From:** s22  
**Sent:** Monday, 14 January 2019 5:52 PM  
**To:** s22  
**Cc:** s22; QTB; Mrakovcic, Maryanne; Writer, Simon; Maloney, Matthew; Purvis-Smith, Marisa; Fraser, Bede; s22  
**Subject:** FW: trusts - material for today [SEC=PROTECTED, DLM=Sensitive]

Hi s22

As requested, please find attached the new QTB – 'Government action to address the integrity of trusts'. s22

In respect of the requested cameos, we are discussing the work required internally and will come back to you on what, if anything, we might be able to prepare and provide.

Happy to discuss,

s22



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**From:** s22  
**Sent:** Monday, 14 January 2019 12:41 PM  
**To:** s22  
**Cc:** Fraser, Bede; RG TAD SES; s22  
**Subject:** trusts - material for today [SEC=PROTECTED, DLM=Sensitive]

Hi s22

As discussed, can you please provide up the following by the end of today:

- A QTB summarising the Government's actions to address any integrity concerns with trusts. s22  
[Redacted]
- 2-3 Cameos on use of trusts by small family businesses. Should highlight the benefits of asset protection, showing appropriately how family members are taxed at their personal marginal tax rates. Implications of a flat 30 per cent tax on discretionary trusts for those on lower taxable incomes (lower income earners, retiree – e.g. Mum or Dad's business that they have passed the operations onto the kids but still receive a distribution).

I realise the cameos might take a little longer to prepare, so would be good to get a draft outline of the cameos today to make sure it is what we need, with cleared version with numbers to then follow.

Thanks

s22

[Redacted]  
Adviser (Tax and Commonwealth State Relations)  
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Treasurer  
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s22

s22

**From:** s22  
**Sent:** Tuesday, 15 January 2019 8:34 PM  
**To:** s22  
**Cc:**  
**Subject:** RE: trusts [SEC=PROTECTED, DLM=Sensitive]

Thanks s22

Much appreciated.

s22

Adviser (Tax and Commonwealth State Relations)  
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s22

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**From:** s22  
**Sent:** Tuesday, 15 January 2019 5:30 PM  
**To:** s22  
**Cc:** Tsr DLOs; Mrakovcic, Maryanne; Purvis-Smith, Marisa; Fraser, Bede; Davy, Kathryn; s22  
**Subject:** RE: trusts [SEC=PROTECTED, DLM=Sensitive]

Hi s22

Please see attached a document setting out our comments on your suggested words.

s22

- the 2018-19 Budget measure addressing circular trust distributions was consulted on, and the attached document has been updated to reflect this.

s22

Please let us know if you have any further questions.

Kind Regards

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**From:** s22  
**Sent:** Tuesday, 15 January 2019 10:10 AM  
**To:** s22  
**Subject:** trusts [SEC=PROTECTED, DLM=Sensitive]

Hi s22

As discussed, can the team please do a quick fact check of the below.

For the s 22 highlighted ones can you please update if leg has been released for consult, or introduced into Parliament.

Thanks

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s22

- Other tax integrity measures the Government has announced and is implementing include:

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- as part of the 2018-19 Budget, from 1 July 2019, extending anti-avoidance rules that apply the top marginal tax rate for circular trust distributions that engage in round robin arrangements to avoid any tax being paid.

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# s22

- [To improve tax integrity, the Government has also:](#)

# s22

- [consulted on a measure to , from 1 July 2019, extend to family trusts ~~as part of the 2018-19 Budget, from 1 July 2019, extending~~ anti-avoidance rules that ~~apply~~ imposes a tax at the top marginal tax rate ~~for on~~ circular trust distributions, ~~which are used to that engage in round robin arrangements to~~ avoid any tax being paid. ~~This measure was announced in the 2018-19 Budget, with public consultation held from 12 October to 31 October 2018.~~](#)
- [announced](#) as part of the 2018-19 Budget, that from 1 July 2019 the concessional tax rates available for minors receiving income from testamentary trusts will be limited to income derived from assets that are transferred from the deceased estate or the proceeds of the disposal or investment of those assets. This will ~~stop assets being prevent taxpayers~~ inappropriately obtaining the benefit of the concessional tax rates by ~~injecting~~ assets unrelated to the ~~deceased estate~~ into the ~~testamentary trust~~ ~~unrelated to the deceased estate.~~

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Comment s22 ]: Checked by IITD



s22

**From:** s22  
**Sent:** Wednesday, 16 January 2019 8:38 PM  
**To:** Maloney, Matthew; s22  
**Cc:** RG TAD SES; Codina, Martin; Fraser, Bede  
**Subject:** FW: examples - Trust [SEC=PROTECTED, DLM=Sensitive:Cabinet]

Hi Matt and s22

I've revised the below example below. Can Treasury please confirm the \$impacts as highlighted under the scenario below.

If we need to discuss can we do so first in the morning please as we need to complete a set of examples tomorrow.

Thanks

s22

**Simple example**

Father and son, Ryan and Jo set up a carpentry business through a discretionary trust. In 2019-20 their business makes \$110,000 income, which trust fully distributes: \$70,000 to Ryan and \$40,000 to Jo. The trust is not taxed, with Ryan and Jo being taxed on the income they received at their personal marginal tax rates. Ryan and Jo have no other income or deductions – they don't take a wage and instead choose to invest all the income in the business and receive a distribution at the end of the year from the trust. Ryan and Jo will both receive tax relief from the Government's legislated personal income tax plan and the increase to the unincorporated tax discount. Ryan receives \$1530 tax relief and will pay \$14,167 net tax. Jo also receives \$373 tax relief and will pay \$4,284 net tax.

In the example above if, if all trust income was taxed at a withholding flat 30 per cent rate (with top up tax on that income if the beneficiaries marginal rate was above 30 per cent) and Ryan and John continue to generate all their income by getting the discretionary trust to pay them a distribution as per above:

- In 2019-20, Ryan would both pay \$21,000 tax and Jo \$12,000 tax. Ryan and Jo would both miss out on the tax free threshold and the 19 cent rate that would be available to other tax payers including wage earners.

s22

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**From:** s22  
**Sent:** Tuesday, 15 January 2019 10:07 PM  
**To:** Maloney, Matthew; s22  
**Cc:** RG TAD SES; Fraser, Bede  
**Subject:** examples - Trust [SEC=PROTECTED, DLM=Sensitive:Cabinet]

Hi Matt and s22

Can Treasury please address the queries on the three examples below. Can we turn this around by 3pm tomorrow please.

s 22

Thanks

s22

### Long example

Jane starts a small business by opening a café. She is a sole trader and as her business grows, her adult children Sandra and Michael and partner Sue help out increasingly in the business. Jane gets advice from her accountant and decides to set up a discretionary trust, where she places the business and its assets. This allows Jane to protect and control the assets of the business, while also distributing income from their business to her family members who are working in the business. It also protects the business from being carved up if her son and partner separate, or if in the future she dies and her children fall out.

In 2019-20 Jane works full time in her business, Sandra works full time, Michael part-time and Sue part-time. The business makes \$200,000 income. The trust distributes all the income \$90,000 to Jane, \$60,000 to Sandra, \$30,000 to Michael and \$25,000 to Sue reflecting their contributions. Jane and Sandra have no other income, Michael separately have part-time jobs where they both earn \$50,000. Under the current law, their trust income will be taxed with their other income at their marginal tax rates. They will be among the more than x million Australian taxpayers who will benefit from the Government's legislated personal income tax plan. They will also benefit from the Government's legislated increase to the unincorporated tax discount. Jane paying \$x tax and receiving \$x tax relief (compared to the old system), Sandra paying \$x tax and receiving \$x tax relief (compared to the old system), Michael paying \$x tax and receiving \$x tax relief (compared to the old system), and Sue paying \$x tax and receiving \$x tax relief (compared to the old system). The trust itself is not taxed.

Through their hardwork and investment the business keeps growing, and by 2022-23 they have expanded to three restaurants investing in new capital and employing more staff with the Jane, Michael, and Sue all working full time in the business and Sandra part time. The business make \$400,000 income after tax in 2022-23 and the trust distributes all the income - \$150,000 to Jane, \$100,000 to Michael, \$120,000 to Sue and \$30,000 to Sandra. In that year this is all their income and they each pay tax according to their personal marginal tax rates. The Trust itself is not taxed. Jane, Michael, Sue and Sandra will all benefit from the Government's legislated personal income tax plan (including the changes in 2022-23) and the accelerated unincorporated tax discount. They will each get tax relief of (Jane: \$x, Michael \$x, Sue \$x and Sandra \$), leaving tax paid of (Jane: \$x, Michael \$x, Sue \$x and Sandra \$x).

In the example above if the Government's personal income tax plan was not legislated, the un-incorporated discount was not enhanced and fast tracked as legislated, and all trust income was taxed at a withholding flat 30 per cent rate (with top up tax on that income if the beneficiaries marginal rate was above 30 per cent):

- Jane would pay \$x more tax in 2019-20 (\$x from personal income tax change, \$x from not getting unincorporated tax discount, \$x from her trust income being taxed at the flat 30 per cent rate)

In 2022-23 she would be \$x more tax (\$x from.....)

[Repeat for Sandra, Michael, and Sue ]

It's important to point out that from changes to the taxation of trusts in 2022-23, Jane, Sandra, Michael and Sue would all pay a minimum 30 cents in the dollar tax from the first dollar earned and would not get any benefit from the tax free threshold or lower rates on income up to \$41,000 that would be available to other tax payers earning their income from a wage.

### Simpler example

Brother and sister, John and Ann set up a fitness business. They decide to establish their business through a discretionary trust, that means all the assets are protected in the one place but they can also continue to be taxed as sole traders at their personal marginal tax rates. In 2019-20 the business makes an income of \$180,000 and the discretionary trust distributes all the income, \$90,000 to John and \$90,000 to Ann. The trust is not taxed, with John and Ann being taxed on the income they received at their personal marginal tax rates. John and Ann have no other income or deductions. John and Ann will both receive tax relief from the Government's legislated personal income

tax plan and the increase to the unincorporated tax discount. John receives \$x tax relief and will pay \$x net tax. Ann also receives \$x tax relief and will pay \$x net tax.

In 2022-23, due to their hard work and investment the business income has increased to \$300,000. The discretionary trust distributes all the income, \$150,000 to John and \$150,000 to Ann. The trust is not taxed, with John and Ann being taxed on the income they received at their personal marginal tax rates. John and Ann have no other income or deductions. John and Ann will both receive tax relief from the Government's legislated personal income tax plan (including the 2022-23 changes) and the increase to the unincorporated tax discount. John receives \$x tax relief and will pay \$x net tax. Ann also receives \$x tax relief and will pay \$x net tax.

In the example above if all trust income was taxed at a withholding flat 30 per cent rate (with top up tax on that income if the beneficiaries marginal rate was above 30 per cent):

- John and Ann would both each pay \$x more tax in 2019-20 and \$x more tax in 2022-23.

It's important to point out that from changes to the taxation of trusts, John and Ann would all pay a minimum 30 cents in the dollar tax from the first dollar earned in both 2019-20 and 2022-23. i.e they do not benefit from the tax free threshold where no tax is paid on the first \$18,2000 like other taxpayers who get their income from wages. They would also miss out on the next \$20,000 of their income being taxed at the 19 per cent rate.

### **Simple example**

Father and son, Ryan and Jo set up a carpentry business through a discretionary trust. In 2019-20 their business makes \$110,000 income, which trust fully distributes: \$70,000 to Ryan and \$40,000 to Jo. The trust is not taxed, with Ryan and Jo being taxed on the income they received at their personal marginal tax rates. Ryan and Jo have no other income or deductions. Ryan and Jo will both receive tax relief from the Government's legislated personal income tax plan and the increase to the unincorporated tax discount. Ryan receives \$x tax relief and will pay \$x net tax. Jo also receives \$x tax relief and will pay \$x net tax.

In the example above if all trust income was taxed at a withholding flat 30 per cent rate (with top up tax on that income if the beneficiaries marginal rate was above 30 per cent):

- In 2019-20, Ryan would both pay \$x more tax and Jo \$x more tax.

Ryan and Jo would both miss out on the tax free threshold and then the next \$x of their income being taxed at the 19 cent rate, that would be available to other tax payers including wage earners.

# s22

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From: s22  
Sent: Thursday, 17 January 2019 2:01 PM  
To: Maloney, Matthew; s22  
Subject: RE: Trusts example [SEC=PROTECTED, DLM=Sensitive]

Many thanks Matt and s22

s22

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From: Maloney, Matthew  
Sent: Thursday, 17 January 2019 1:42 PM  
To: s22  
Cc: Mrakovic, Maryanne; Purvis-Smith, Marisa; Fraser, Bede; RG TAD SES; s22  
Subject: FW: Trusts example [SEC=PROTECTED, DLM=Sensitive]

Hi s22

Please find below an updated version of the Trusts example. IITD have made some technical changes to the wording and we have corrected some of the calculated numbers.

We note that that this has been prepared under the assumptions in the second last paragraph, specifically that Ryan and Joe continue to receive trust distributions rather than be paid salary or wages.

In practice, were we to consider policies of this kind, any behavioural change would be an important feature for us to consider from a costing perspective. We note that this example is prepared on the basis of no behavioural change. Assumptions used to build this example are not a reflection of those used in costing a similar alternative policy, and as such no linkage should be drawn between these.

Regards

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Father and son, Ryan and Joe set up a carpentry business through a discretionary trust. In 2019-20 their business makes \$110,000 of profit (net income)

Due to the uncertainty around the profits of the business in its first year of operation, Ryan and Joe don't take a wage and instead, the trustee resolves to make distributions from the trust at the end of the year to reward Ryan and Joe for their work. Ryan receives \$70,000 and Joe, \$40,000.

Ryan and Joe are taxed on the income they receive from the trust at their individual marginal tax rates and, as the trust has not retained any net income, it does not pay tax. Ryan and Joe have no other income or deductions.

Ryan and Joe will both receive tax relief from the Government's legislated personal income tax plan and the unincorporated tax discount. Ryan receives \$1,530 tax relief and will pay \$14,167 net tax. Joe also receives \$654 tax relief and will pay \$4,293 net tax.

In the example above if, if all trust income was taxed at a minimum 30 per cent rate, withheld by the trust from distributions (with top up tax on that income if the beneficiaries marginal rate was above 30 per cent) and Ryan and Joe continue to receive trust distributions rather than be paid salary or wages:

- In 2019-20, \$21,000 of tax would be paid on Ryan's distribution from the trust and \$12,000 of tax would be paid on Joe's distribution from the trust. In effect, Ryan and Joe would no longer benefit from the tax free threshold and the 19 per cent rate that would be available to other tax payers including wage earners.

s 22

**From:** s22  
**Sent:** Friday, 18 January 2019 3:36 PM  
**To:** s22  
**Cc:** s22; Mrakovcic, Maryanne; Purvis-Smith, Marisa; s22; RG TAD  
SES; s22  
**Subject:** Individuals receiving discretionary trust distributions [SEC=PROTECTED]

Hi s22

You requested data on the recipients of discretionary trust distributions with taxable income less than \$80,000 –

Individuals with a taxable income of \$80,000 or less account for more than 55 per cent of taxable individuals receiving discretionary trust distributions. This estimate is based on 2015-16 trust and individual tax returns.

Regards

s22

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