

Marks' Trusts & Estates: Taxation and Practice, 3rd edition

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Significant stakeholder or common stakeholder

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Significant stakeholder or common stakeholder

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Individual beneficiary, not under legal disability, presently entitled and a trustee of sub-trust

Individual beneficiary, not under legal disability, deemed to be presently entitled under s 95A(2) and not a trustee of sub-trust

Individual beneficiary, not under legal disability, deemed to be presently entitled under s 95A(2) and a trustee of sub-trust

Individual beneficiary, under legal disability and presently entitled

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Non-resident beneficiary, not under legal disability, presently entitled and a trustee of sub-trust

Distributing trustee also subject to taxation

Non-resident individual beneficiary, not under legal disability, deemed to be presently entitled under s 95A(2) and not a trustee of sub-trust

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Beneficiary subject to s 100 tax rules

Non-resident individual beneficiary, not under legal disability, deemed to be presently entitled under s 95A(2) and a trustee of subtrust

Distributing trustee also subject to taxation

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Non-resident individual beneficiary, under legal disability and presently entitled

Taxation of trustee

Beneficiary subject to s 100 tax rules

Non-resident individual beneficiary, under legal disability, deemed to be presently entitled under s 95A(2)

Taxation of trustee

Beneficiary subject to s 100 tax rules

Non-resident company beneficiary, not under legal disability, presently entitled and not a trustee of sub-trust

Non-resident company beneficiary, not under legal disability, presently entitled and a trustee of sub-trust

Non-resident company beneficiary, not under legal disability, deemed to be presently entitled under s 95A(2) and not a trustee of sub-trust

Taxation of trustee

Company beneficiary may also be assessable under s 100

Non-resident company beneficiary, not under legal disability, deemed to be presently entitled under s 95A(2) and a trustee of subtrust

Distributing trustee also subject to taxation

Company beneficiary may also be assessable under s 100

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No public officer appointed

Criminal liability

PART A: OPERATION OF DIV 6 ITAA36 FOR FOREIGN TRUSTS

Australian resident beneficiaries

Section 99B

Beneficiary assessable under s 97 or 100

Trustee assessed under s 98 but beneficiary not assessable under s 100

Sections 99 and 99A

Beneficiary newly resident and entitled to accumulated trust income from non-resident trust

Capital distributions from foreign trusts

Foreign deceased estates

Role of s 6-5(2)

Temporary Australian residents

Sections 97 and 98 net income

Sections 99 and 99A

Distribution to temporary resident from foreign trust attributable to Australian source

Ultimate beneficiary in chain of trusts is Australian resident beneficiary and first distributing trust has a s 98(3) liability

Resident individual beneficiary under legal disability or deemed presently entitled under s 95A(2)

PART B: OPERATION OF DIV 6 AND DIV 6AAA ITAA36 FOR FOREIGN TRUSTS AND AUSTRALIAN RESIDENT BENEFICIARIES

Division 6AAA and foreign trusts

Transfers of property or services

Discretionary trusts

A unit trust may be a discretionary trust for sec. 102AAB purposes

Transfer

Services

Attributable taxpayer

Deceased estates

Attributable income

Reductions from attributable income

Section 102AAZD

Small amounts for trusts resident in listed countries

Transferor does not have access to foreign trust's accounts

Delayed section 102AAZD income subject to interest charge

Record-keeping requirements

Operation of Div 6AAA if Div 6 applies

Commissioner's assessing practice for Div 6AAA ITAA36 trusts

PART C: OPERATION OF DIV 6 ITAA36 FOR FOREIGN TRUSTS AND FOREIGN BENEFICIARIES

Division 6 ITAA36 extends to foreign beneficiaries of foreign trusts

Section 98(3) assessments

Trustee assessed under s 98 but beneficiary not assessable under s 100

Division 6 ITAA36 excluded for Australian source non-TAP capital gains

Section 885-10 exclusion does not apply to revenue gains

PART D: OPERATION OF DOUBLE TAX TREATIES

Double tax treaties limit Australian taxation of foreign trusts

Residence of a trust not the trustee's residence

Foreign resident beneficiaries deemed to have a permanent establishment in Australia

PART E: FOREIGN TRUSTS, FOREIGN RESIDENT BENEFICIARIES AND THE CGT REGIME

Extra-territorial scope of Australia's CGT regime

Disregarded capital gains not included in s 95 net income calculation

Indirect real property interest

Membership interest

Discretionary trusts

Non-portfolio interest test

Principal asset test

Direct participation interest

Indirect participation interest

Total participation interest

Application of principal asset test

Market valuation

Membership interests

Anti-avoidance

Non-residents can take advantage of tax-favoured capital gains

CGT roll-overs that apply to foreign residents

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