

ATO issues final ruling on changes s100A

BUSINESS

The decision comes after accountants had to rely on basic guidance for 30 June deadlines.

By [Josh Needs](#) • 08 December 2022 • 6 minute read

After extended consultation the controversial s100A ruling has been released by the ATO.

The anti-avoidance provision will impact those who are beneficiaries of trust income where it has been agreed that another person will benefit.

Section 100A applies in cases in which a beneficiary has become presently entitled to trust income where it has been agreed that another person will benefit, and that agreement is made by any of its parties with a purpose that some person will pay less or no income tax as a result.

The ruling stated that it would “apply to so much of the share of trust income that a beneficiary is presently entitled to, and/or that has been paid to them, or that has been applied for their benefit (that share) as:

- Satisfies the, connection requirement, benefit to another requirement, and the tax reduction purpose requirement
- Does not satisfy the ordinary dealing exception”

The ruling relied on current and prior case law when making its ruling as the ATO outlined below.

“At the date of publication of this Ruling, there are two Federal Court decisions which concern section 100A that are subject to appeal in the Full Federal Court. Those decisions are Guardian and BBlood.

In Guardian, trust income was distributed to a corporate beneficiary, returned as a franked dividend to the trustee (the sole shareholder) in the following year and then distributed to a non-resident individual. The effect of the transactions was to convert the original trust income into franked dividend income, which had the result of capping the tax on the income at the corporate rate, compared to the higher rates that would have applied if the original trust income had been distributed to that individual directly. The Commissioner contended the transactions occurred as a series of steps under an agreement which was a 'reimbursement agreement' to which section 100A would apply.

The Court allowed the taxpayer's appeals. His Honour concluded that on the evidence, including the testimony of witnesses, the agreement contended by the Commissioner did not exist at the time when the present entitlement of the corporate beneficiary arose. That is, the connection requirement was not satisfied in respect of the agreement contended by the Commissioner.

His Honour did, however, find that a narrower agreement that did not include the payment of a dividend by the corporate beneficiary to the trustee or the following steps existed at the relevant time. This narrower agreement was not a reimbursement agreement as it was entered into in the course of ordinary family or commercial dealing such that the ordinary dealing exception applied. His Honour made further observations that there could otherwise be no reimbursement agreement because the benefit to another requirement was not satisfied (it provided only for the payment of money to a beneficiary). His Honour made further comments on the operation of the ordinary dealing exception and the tax reduction purpose requirement.

In BBlood, the trustee of a trust received proceeds in excess of \$10 million from a buy-back of shares in a company it controlled. As a consequence of amendments to the trust deed made shortly before the buy back was conducted, these proceeds were excluded from the definition of trust income. The trustee resolved to make a newly formed corporate beneficiary presently entitled to trust income, being approximately \$300,000 received from related entities. The effect of the arrangement, apart from the operation of section 100A and other integrity rules, was that the corporate beneficiary was liable to tax on the taxable receipts of the trust including the buy-back dividend of \$10 million. As the share buy-back dividend was fully franked, the corporate beneficiary paid no further tax on it. The buy-back proceeds, to which the corporate beneficiary was not entitled, were retained as corpus of the trust and used for group purposes.”