

Article Information

Author: Will Fennell

Service: Tax Consulting, Taxation

ATO clamps down on trust arrangements involving adult children

In the past 24 hours the ATO has released alarming guidance in relation to the distribution of trust income amongst family members.

A commonplace and widely accepted tax planning strategy has historically been the distribution of income to children over the age of 18 whilst those children remain subject to lower marginal tax rates. A typical example might be a child at university still living fully supported at home. The ATO now says arrangements whereby trust income is notionally distributed to those children but retained by the parents or used to pay amounts properly understood as parental expenses are of concern to them.

Specifically, in TA 2022/1 the Commissioner states the arrangement may constitute a reimbursement agreement under section 100A of the Income Tax Assessment Act 1936.

The ATO also suggest that the promoter penalty regime may apply for persons who promote such arrangements, and may also refer advisors to the Tax Practitioners Board.

The alert was released together with the following additional materials in relation to section 100A:

- TR 2022/D1 — Income tax: s 100A reimbursement agreements
- PCG 2022/D1 — Section 100A reimbursement agreements — ATO compliance approach
- TD 2022/D1 — Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'

Clients with discretionary family trusts that are considering arrangements involving distributions to children or other family members on lower marginal tax rates where the economic benefit of those distributions is ultimately enjoyed by other beneficiaries such as the parents, should contact us for advice.