

# TRUST

## STEP 1: CLASSIFICATION OF TRUST

<b>Private trust</b> <ul style="list-style-type: none"><li>- intended to benefit private individuals</li><li>- e.g: family trust</li></ul>	<b>Public trust</b> <ul style="list-style-type: none"><li>- intended to benefit a public purpose</li><li>- e.g: charitable trust</li></ul>
<b>Inter vivos trust</b> <ul style="list-style-type: none"><li>- settlor is a living person</li><li>- created in the lifetime of settlor</li></ul>	<b>Testamentary (will) trust</b> <ul style="list-style-type: none"><li>- creator has died and created the trust in his/her will</li><li>- deceased estates (created upon death)</li></ul>
<b>Fixed trust</b> <ul style="list-style-type: none"><li>- beneficiary's interests in income and capital are fixed</li></ul>	<b>Discretionary trust</b> <ul style="list-style-type: none"><li>- trustee decided how much income each beneficiary gets at the end of the each year</li></ul>

## STEP 2: NET INCOME OF TRUST – assessable ordinary income under s. 6-5(1)

- s. 95(1): Net income = assessable income – allowable deduction, calculated as if trustee were a resident taxpayer, prior year losses are deductible
- *Doherty v FCT*: Losses cannot be distributed to beneficiaries, carried forward in trust

### Income no one is entitled to: Deceased estate + income received after death

- s. 101A(1): deems certain amounts received by trustee of a deceased estate to be income to which NO BENEFICIARY is presently entitled
- Where an estate received an amounts such as billed fees outstanding at time of death of a cash receipts taxpayer, this amount will be caught by s. 101A(1) - Only relevant for income on cash basis
- Assessable to trustee under s. 99
- *Single v FCT*: income received by trustee is subject to assessment by being deemed income under s. 101A(1)
- *Henderson v FCT*: WIP is not included in assessable income until it has matured into a recoverable debt
- *Stapleton v FCT, FCT v Grant*: where a retiring partner is paid out of his or her share of WIP, payment is assessable income in hands of retiring partner

## STEP 3: PRESENT ENTITLEMENT

*FCT v Whiting*: legal right of the beneficiary to demand immediate payment of his/her share of net income from trustee, requirement: beneficiary is full legal capacity, fully vested interest, income is legally available for distribution

*Taylor v FCT*: legal right of beneficiary to demand payment of his/her share of net income from trustee if were under legal disability, requirement: beneficiary is under legal disability, fully vested interest, income is legally available

Entitlement depends on trust type:

- Deceased estate – (*Whiting*) entitled when administration finished or debts paid and residue determined
- Fixed – (deceased or inter vivos) entitled to terms set down in trust instrument (will or deed)
- Discretionary – (deceased or inter vivos) entitled when Trustee exercises discretion (s. 101). Must be done before June 30. Trustees meet & sign resolution
- Accumulations – accumulate beneficiary's entitlement until reaches a certain age, usually for legal disability
  - If beneficiary were to die before turning 21, accumulation was to be held in trust for beneficiary's personal representatives in their respective capacities → an absolutely vested interested in income → presently entitled: *Taylor*
  - If beneficiary were to die before turning 21, not able to specify who obtains accumulation → not presently entitled: distinguishable from *Taylor*
  - Held in trust = accumulation would form part of beneficiaries deceased estate if were to die before turning 21