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Capital gains included in net income to which a beneficiary is presently entitled

- Situations in which Commissioner’s practice applied
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Deceased's final year includes CGT gains and losses for disposals to exempt entities, superannuation funds and foreign residents: CGT event K3
  Exempt entity
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   Trustee can stream distributions to beneficiaries to access exemptions and concessions
   Distributions to beneficiaries are non-income receipts

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   Trustee will not pass on death benefit termination payment to beneficiary
   Trustee can stream distributions to beneficiaries to access exemption and concession
   Distributions to beneficiaries are non-income receipts
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- Realisation of asset or profit-making scheme
- Trading stock
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Dispensation by legal personal representative if condition 1 satisfied but not condition 2

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**Part 9 - Trusts Administration and Practice**

**Chapter 37 Trust termination**

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

Individual beneficiary may also be assessable under s 100

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

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

Taxation of trustee

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Liability to pay withholding tax

Tax effect to recipient of payment subject to withholding tax

Sham distributions to take advantage of withholding tax rates

  Commissioner’s practice

No withholding tax if trustee already assessed under s 99 or 99A

No withholding tax if trustee already assessed under s 102

Withholding tax payable on distributions from trusts subject to Div 6A ITAA36 tax

No withholding tax on distributions if trustee already assessed on FTDT
No withholding tax on distributions if trustee already assessed on TBN DT

Trust distributions of dividends, interest and royalties to foreign charities

Distributions of dividends, interest and royalties to foreign trusts

**PART L: MANAGED INVESTMENT TRUSTS**

Double tax treaties

Division 275 ITAA97

Recipients with Australian permanent establishment are outside withholding tax regime

Managed investment trusts

Fund payments

Penalty tax for delayed fund payments

Withholding tax liability

Withholding tax rates

Custodians

Other intermediaries

Information notices

Ultimate beneficiary’s tax liability

Ultimate beneficiary’s current and carry-forward losses and tax off-sets

**Chapter 40 Foreign trusts**

Scope of this chapter

- Foreign and non-resident trusts
- Australian resident beneficiaries
- Foreign resident beneficiaries
- Australian source income
- Family trust election
- Foreign entities may be classified as trusts
- Trusts and Subdiv 115-C election

Four key situations

Attribution rules for foreign trusts with Australian beneficiaries that accumulate profits

- Transferor trust rules in Div 6AAA ITAA36
- Controlled foreign company rules in Pt X ITAA36
Overlapping provisions of Div 6, Div 6AAA and Pt X ITAA36 for Australian residents

Section 255 applies to trustees of foreign trusts

Foreign trusts may have to appoint Australian resident public officer

   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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