



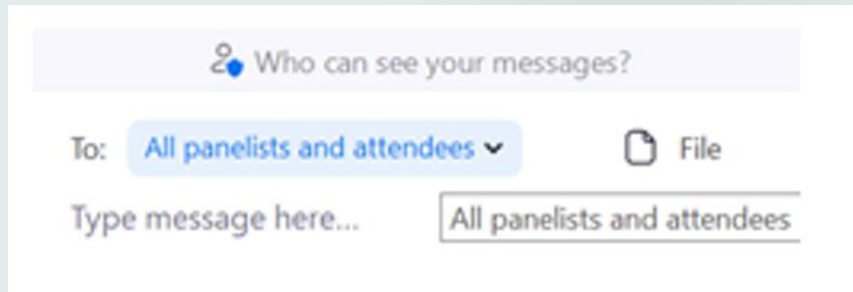
CHANGE  
GPS

# 2022 Tax Season Launch

Monday 28 February 2022

# Chat to All Attendees

1. Go to “Chat” in Zoom
2. Click on “All panelists and attendees”



**Let's make this one giant chat group!**





*The **Accounting Industry Call-to-Action**  
on behalf of the mums & dads of Australia.*

# The new ATO Trust Distribution Ruling **changes everything.**

#TrustAccountants

Monday 28 February | 1:00-2:30pm

You are proudly supported by



# Timothy Munro



1990 Founded Accounting Firm at age 19

2008 Created "ChangeGPS" in a JV with Count



2011 Established "Change Accountants & Advisors"



2015 Xero Australian Partner of the Year



2016 IPA National Member of the Year, IPA Qld Member of the Year + IPA QLD Practice of the Year



2021 Xero App Partner of the Year – ChangeGPS



2021 AFR Top 100 Accounting Firms



Former Board Member of IPA + IPA QLD President



Board Member of SAPEPAA

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# David Boyar – CEO ChangeGPS



Fellow Chartered Accountant



NAB Business Banker



TEDxMelbourne Talk on why people should listen to accountants



Co- Founded the Virtual CFO Association



Host of From The Trenches – Real Life in the Accounting Industry



World Congress of Accountants Global Ambassador



CAANZ Catalyst Innovation Advisor

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# ChangeGPS is software for practice management and compliance advisory



# 3 Key Ways ChangeGPS helps Accountants:

## 1. More Money - Most accountants don't make the MONEY they should

- Great Systems that are automatically kept up to date
- "One Way" – standardise processes across your accounting firm
- Use the ChangeGPS "VPP" Method to properly "monetise" your services

## 2. More Love - Most accountant's clients should LOVE them more for what they do

- Your clients don't understand the amazing value you give them unless you tell them (use "VPP" Method documents + emails)
- ChangeGPS reports and documents **make you look great** – gives you the professionalism of a Big 4 firm

## 3. Faster Work - Helps you do your work faster so you can get back to the "fun stuff"

- Fast client reports that look great
  - FBT / Tax Planning / Structure Advice / Year End Summary



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# 3 Key “Pillars” for 2022:



Your clients need  
you more than  
ever



Reward  
performing  
clients with your  
time

Deliver a plan for  
non-performing  
clients



Make a pre-  
emptive strike to  
get new revenue  
to replace your  
bottom 30%  
clients



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# Today's Agenda

## First Hour:

- MASSIVE ISSUE: **ATO's "attack" on Trust Distributions**
  - **Your Strategy** to assist your Clients
- 
- 2022 Tax Planning **Key Issues**
  - Launch of ChangeGPS 2022 **Tax Planning Resources**

## Second Hour

- What can Accountants to express their frustrations?
- Have YOUR SAY to our Guest Panel
  - Rebecca Mihalec + Grant Abbott join Timothy Munro + David Boyar

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# ATO's "Attack" on Trust Distributions

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- "Attack" is not our word – this is what we've seen others call it
- 4 new Tax Rulings
- It's attacking the middle class entrepreneur business owner
- We thought these rulings would be scary – and they are!
- Today we'll present a high level overview of these new rules

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# TD 2022/D1

**When will an unpaid present entitlement or amount held on sub-trust become the provision of “financial accommodation?”?**

From 1 July 2022: UPEs in the context of trusts and private companies with the same “**directing mind**” are simply loans for Division 7A purposes and should be treated in the same way all other Division 7A loans are treated.

Timing Changes:

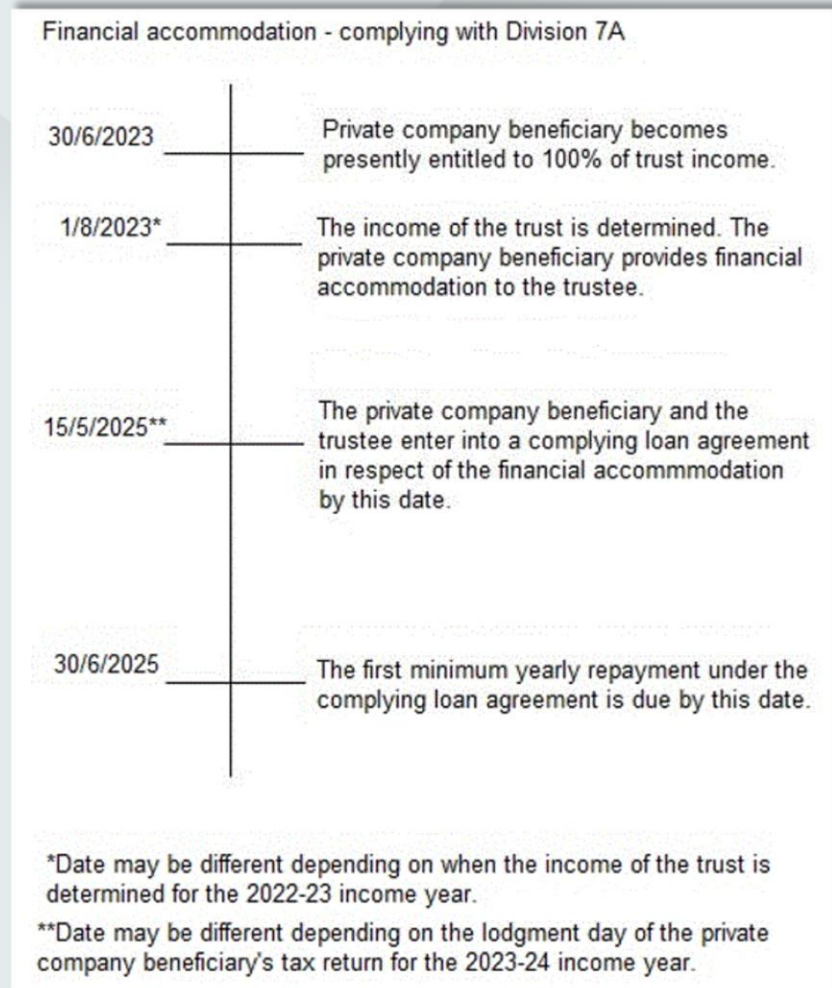
Trust Distribution of Fixed dollar amount: Loan starts at distribution time

Trust Distribution of % of Income: Loan starts when income of trust is determined



# TD 2022/D1

## Example: Trust Distribution: % of Income



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# TD 2022/D1

## Example: Trust Distribution: Fixed amount of Income

*Timeline - present entitlement to a sum certain*

27/6/2023	Private company beneficiary becomes presently entitled to \$10,000.
31/3/2024*	The trustee discharges its obligation in respect of the UPE. The private company beneficiary and the trustee enter into a new loan that meets the requirements of a complying loan agreement by this date.
30/6/2024	The first minimum yearly repayment under the complying loan agreement is due by this date.

*\*Date may be different depending on the lodgment day of the private company beneficiary's tax return.*

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# TR 2022/D1

## Section 100A Reimbursement Agreements

Applies immediately, can go back to 2015 tax year

4 requirements for s100A to apply:

1. “**Connection**” requirement – Must be a present entitlement to a share of trust income, which is in ***connection with a reimbursement agreement***
2. “**Benefit to another**” requirement – The agreement must provide for payment of money, etc to a person other than the beneficiary
3. “**Tax reduction purpose**” requirement – The purpose of one or more parties to the agreement is to pay less tax
4. “**Ordinary dealing exception**” – The agreement must not be one that is “ordinary family or commercial dealing”



# TR 2022/D1

## Section 100A Reimbursement Agreements

Tax reduction purpose requirement - Para 19:

19. Where a party acts in accordance with advice from an adviser, the purpose of that adviser can be imputed to the party.



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# TR 2022/D1

## Section 100A Reimbursement Agreements

If ATO invalidates a Trust Distribution by relying on s100A...

... the Trustee is taxed at 47% on the distribution.



# Draft PCG 2022/D1

## Section 100A Reimbursement Agreements – ATO compliance approach

Shows how the ATO proposes to differentiate risk for a range of trust arrangements

- It contains 4 risk zones: white (low risk, arrangements before 1 July 2014), green (low risk), blue (medium risk), and red (high risk).
- The ATO will not generally dedicate new compliance resources to consider s100A to white and green zone arrangements, they may review blue zone arrangements, and they will consider red zone arrangements.

For beneficiary entitlements before 1 July 2022, the ATO's 2014 Administrative Provision (on web) will still apply.

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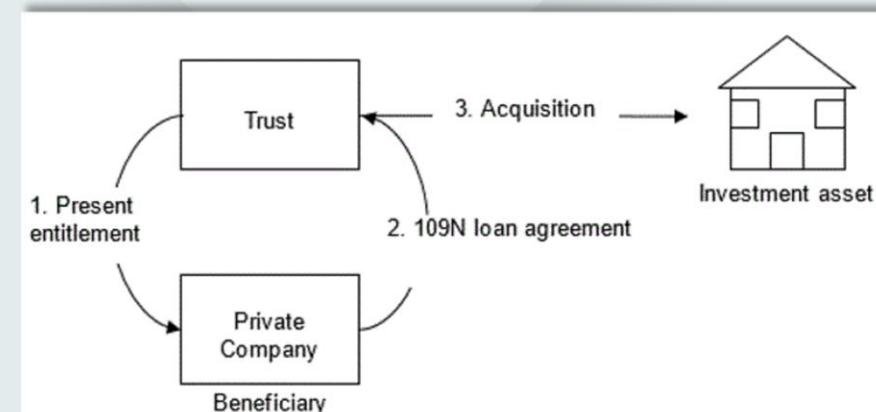
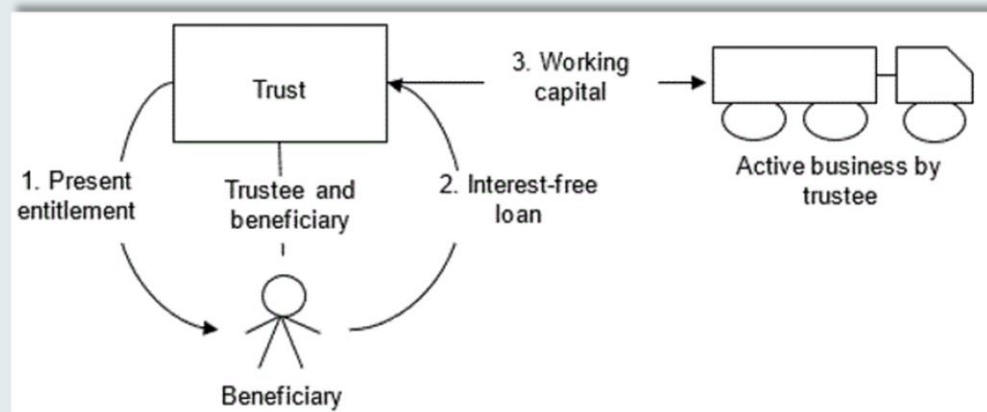
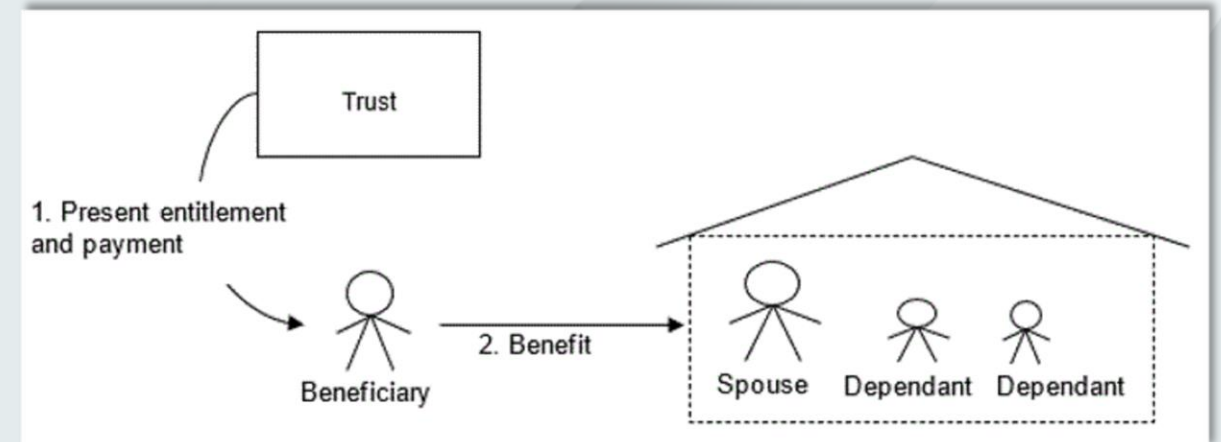
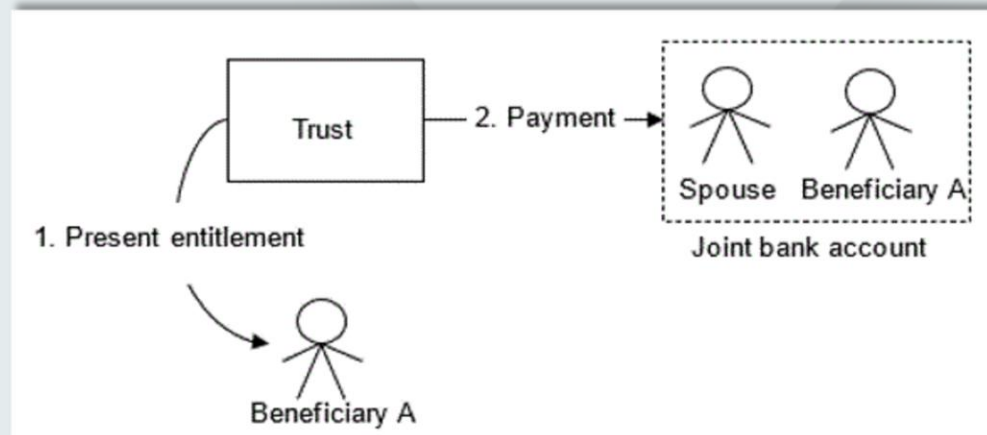
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# Draft PCG 2022/D1

## Section 100A Reimbursement Agreements – ATO compliance approach

Green Zone examples:



# Draft PCG 2022/D1

## Section 100A Reimbursement Agreements – ATO compliance approach

Blue Zone examples:

- Beneficiary makes a gift of their trust entitlement
- Beneficiary releases the trustee from its obligation to pay their trust entitlement



# Draft PCG 2022/D1

## Section 100A Reimbursement Agreements – ATO compliance approach

Red Zone examples:

- An adult beneficiary is presently entitled to trust income and:
  - The entitlement is paid to a parent of the beneficiary in connection with expenses incurred by the parent before the beneficiary turned 18 (e.g. school fees, university fees, living costs, etc)
  - The entitlement is applied against a debit balance of the beneficiary representing expenses incurred by the trustee before they turned 18
  - The entitlement is made available to the parent by way of loan or gift
- Use of “loss trusts” prohibited
- Other examples prohibited – Hybrid Trust, issuing units, converting UPE
- **Arrangements subject to a Taxpayer Alert (e.g. TA 2022/1)**



# TA 2022/1

## Parents benefiting from the trust entitlements of their children over 18 years of age

Trust distributions to adult children are applied (with or without their knowledge) to repay amounts owed to them to their parents

ATO says these expenses are the sort that parents should be paying for their children before they turn 18 – “they are properly understood as parental expenses”

ATO is concerned these distributions are more properly explained by the tax outcomes obtained (lower overall tax for the family group) rather than ordinary family considerations.



# Who Does TA 2022/1 Affect?

- Generally, Trusts with distributable income of more than:
  - \$180,000 with single parent + adult children
  - \$360,000 with 2 parents + adult children







# The Big Problem:

# What do we say to our Clients?



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**Accountants have asked us:**

**What are the Professional  
Bodies doing about this to  
support accountants?**



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# ATO's Attack on Trust Distributions

## - The BIG Questions

---

- Does s100A apply to trust distributions to children under 18?
  - No. The \$416 a year to each child can continue.
- Do all trust distributions need to be paid in full to each beneficiary to avoid the ATO's attack?
  - Preferably yes, but without any "reimbursement".
  - No, they can be converted to Div7A Loans.
- Can unpaid trust distributions be kept in the trust for working capital or investment purposes?
  - Yes.
- Can trust distributions still be made to grandparents?
  - Yes, if actually paid to them the grandparents use the funds themselves.
- Can grandparents "gift" their trust distributions back to their children?
  - No – this would be a "reimbursement"



# ATO's Attack on Trust Distributions

## - The BIG Questions

- Can a trust distribution be offset against an adult child's private school or university fees?
  - No.
  - A Trust Distribution can be paid to an adult child who uses the funds themselves to pay university.
- Can you still use a "bucket company"?
  - Yes.
- Who pays the tax if the ATO invalidates a trust distribution?
  - The Trustee at 47%.
- How do you "unravel" everything if the ATO re-assesses back to 2015?
  - Absolutely no idea yet!



# Possible Strategies

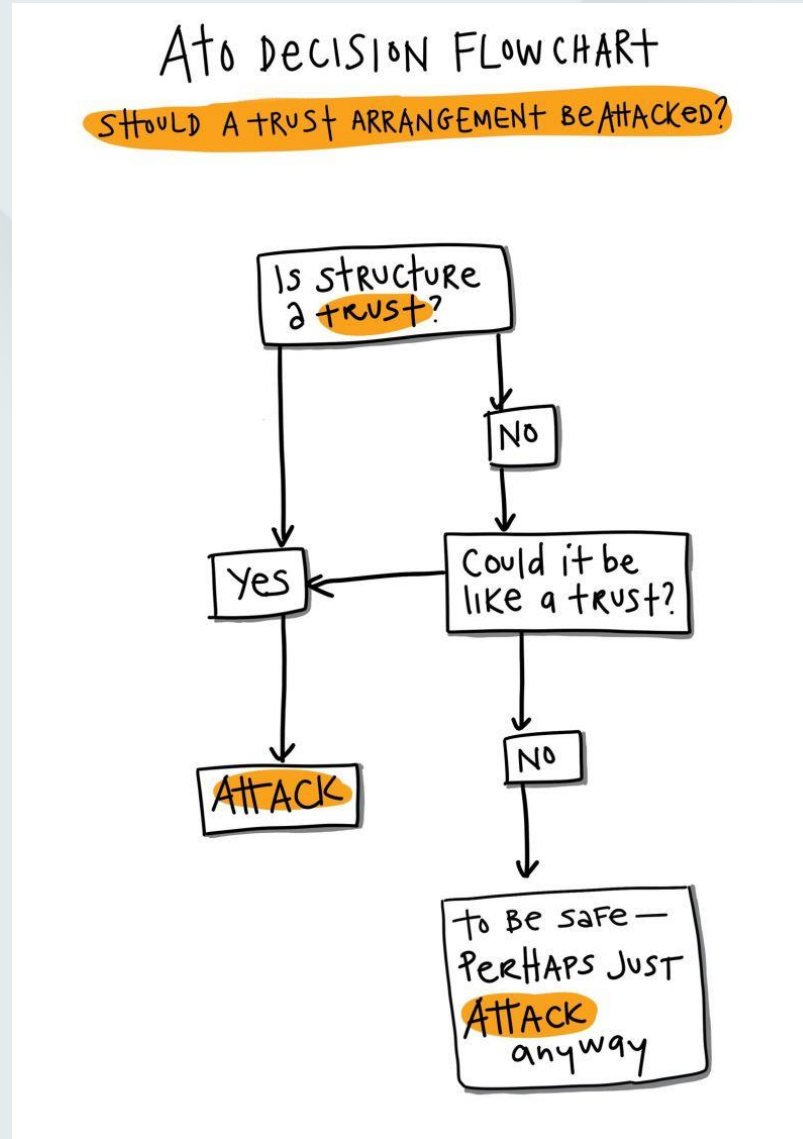
## Bucket Company with different Share Classes

1. Trust distributes to Bucket Company.
2. Trust pays the cash to the Bucket Company.
3. Bucket Company pays tax on the Trust Distribution (25% or 30%).
4. Bucket Company has a different class of share for each Adult Child.
5. Bucket Company pays a fully franked dividend to each Adult Child.
6. Adult Child can do whatever they want with their dividend - no different to having a dividend from listed company shares. No issues with gifting these funds.

## Wages paid to Children for work



# Matthew Burgess – Trust Lawyer



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# Quote from Matthew Burgess



Matthew Burgess

Author

44m ...

viewlegal ♦ director ♦ author ♦ speaker(csp\*) ♦ entrepreneur ♦ fellow...

[Simon A. Benson](#)

Thank you as always.

Try this on for size, in relation to the decision of Logan J, the Tax Office state in the draft ruling: 'In our view, the observations of Logan J in Guardian at [144-5] are illustrative of a type of dealing that is not ordinary family or commercial dealing; and are not strictly contrary to the view that there may be other categories of dealing which similarly cannot be so classified.'

In other words they simply unilaterally ignore aspects of court decisions that are inconvenient.

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# Grant Abbott – Chairman of SAPEPAA

- LightYear Docs Co-Founder
- Abbott & Mourley Lawyers
- SAPEPAA Chairman – Succession, Asset Protection, Estate Planning Advisor's Association

Grant has written 5 books on SMSF's and conducted more than 2,000 presentations on Trusts, SMSF's, Estate Planning and Asset Protection

Grant has a Masters of Law specializing in Taxation

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# We are Talking Tax Avoidance

**From the Explanatory Memorandum to the Tax Laws Amendment Bill (No 5) 1978 introducing section 100A by Treasurer John Howard:**

*The provisions of the Bill are designed to counter tax avoidance.*

## **Section 100A:**

*A feature of several of the schemes is a very wide power given to the trustee under the terms of the trust instrument as to the distribution or application of trust income. In reliance on this power, the trustee agrees with promoters of tax schemes and other compliant parties to distribute or apply the bulk of the trust income - either directly or through an interposed trust - for the apparent benefit of specially introduced beneficiaries who do not pay any, or any substantial, amount of tax on the amount distributed or applied.*

*In some cases the nominal beneficiary selected is a tax-exempt body, such as a charitable institution or sporting association. In other cases, it is a company, set up for the purpose by the promoters of the scheme, that by one means or another escapes payment of tax on the income. One technique is to set artificially-created paper 'losses' off against the income received from the trust. Another technique is to strip assets from the recipient company so that tax assessed on the income cannot be collected.*

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# Key Takeaways

- An arrangement or understanding *at the time of making the distribution* to the beneficiary who was involved. This may be imbued from adviser motivation. For example a gift of a UPE to a Family Protection Trust by beneficiary to protect for family law purposes – where does that stand?
- Another person is going to benefit from that arrangement not being the beneficiary – don't get caught up in the term reimbursement
- Tax reduction purpose requirement - a purpose of one or more of the parties to the agreement must be that a person would be liable to pay less income tax for a year of income.
- Ordinary dealing exception - the agreement must not be one that has been entered into in the course of 'ordinary family or commercial dealing'.



# What is the Real Purpose of s100A?

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- In *FCT v Prestige Motors Pty (1998) 38 ATR 568* there was an elaborate arrangement where, in one part, a unit trust deed was reconstituted with new Unit Class owned by a tax exempt life company, who subscribed for units with the proceeds going overseas in a zero interest loan to members of the Group associated with the Trust. Held to be tax avoidance purpose.
- In *Guardian AIT Pty Ltd ATF Australian Investment Trust v Commissioner of Taxation [2021] FCA 1619*, the trust structure which focused on asset protection and estate planning morphed over time to using a bucket company as the main distribution beneficiary with franked dividends washed up to Trust to be distributed to the non-resident Principal or controller of the trust who was transitioning to retirement.

# This from the Guardian case:

*Para 152 For those in business, trade or private practice in a profession or other occupation, risk minimisation is not just a consideration at the point of embarking on such a venture or even while one is actively embarked on the venture. At least amongst the prudent, and Mr Springer is a member of that class, it endures as a consideration as one transitions into retirement and in retirement. One obvious reason for this is that limitation periods for civil proceedings do not cease on an individual's retirement. The risk minimisation benefits of the limited liability company either alone or in conjunction with a discretionary trust described by Heerey J in Rippon are not confined to the outset of a venture. Also at the other end of a venture, their employment does not necessarily bear the stamp of tax avoidance. More aptly, in terms of the language employed in the definition of "agreement" in s 100A(13), their employment is not necessarily incompatible with an "ordinary family or commercial dealing". In this particular case, and for the reasons given, the incorporation of AITCS, its appointment as a member of the eligible beneficiary class and the resolution to make a distribution to it of trust income were each nothing more than an ordinary family or commercial dealing.*



# Really? Why Release Now?

---

*Note: At the time of the release of this draft Ruling[3], the decision of the Federal Court in Guardian AIT Pty Ltd ATF Australian Investment Trust v Commissioner of Taxation [2021] FCA 1619 (Guardian), referred to in this Ruling, is the subject of an appeal.*





# The SCARY Truth for Accountants

TA 2022/1 – “Promoter” penalties for advising that Trusts should distribute in a tax efficient manner. Really?

## Overview

1. We are currently reviewing trust arrangements where parents enjoy the economic benefit of trust income appointed to their children who are over 18 years of age (Children). The common feature of the arrangements is that trust income is appointed between members of the family group but in substance it is the parents who exercise control over and enjoy the economic benefit of the income.

29. Penalties may apply to participants in, and promoters of, this type of arrangement. This includes serious penalties under Subdivision 290-B of Schedule 1 to the *Taxation Administration Act 1953* for promoters. Registered tax agents involved in the promotion of this type of arrangement may be referred to the Tax Practitioners Board to consider whether there has been a breach of the *Tax Agent Services Act 2009*.

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# What Accountants Feel is Unfair

- Is the ATO trying to make it illegal to take actions to distribute in a tax efficient manner?
  - It appears every action needs to have a “commercial reason” rather than using tax laws legally to pay less tax
- **Is the ATO now overturning Trustees of Trusts from exercising their common law legal right to make distributions?**



# What Accountants Feel is Unfair

- Accruing school fees + child expenses in the Trust accounts before the child is 18, then allocating trust income to offset this after the child turns 18
  - ATO is saying that school fees are a usual expense of the parent and NOT the child
    - Isn't this the Trustee's decision being taken away from them?
- ATO can review back to 2015 Tax Returns and invalidate trust distributions
  - Accountants acted on basis of the application of the laws at the time
    - Why didn't the ATO act from 2015 on this if their interpretation is correct? Tax Audit Insurance needed?
  - Why is ATO only acting NOW back to 2015 with these new rulings?
    - Unfair to use new ruling against past decisions
    - Clients won't blame the ATO! Will they?

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# Your TA 2022/1 Client Strategy

1. Help your Team to **understand** the issues
  - “Guardian” Case on Appeal
  - Probably another 12 to 18 months of uncertainty
2. Develop a **firm-wide POLICY** for all client Trust Distributions
3. **Educate** your Clients about the changes
  - Confirm your **previous advice was correct** at the time
  - Prepare Clients for **higher tax payable** in 2022 and future years
  - Use ChangeGPS VPP email
4. Show clients the tax they would have paid in 2022 and the extra tax they will now have to pay as a result of this Tax Ruling
  - Use ChangeGPS **TaxPlan** to easily show **Scenarios**
5. Give every client a **TaxFlow Plan NOW** (18 month tax payment forecast)
6. **Don't feel bad** or apologise to your clients
  - Tax changes are part of being in business

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# Question:

**How do you communicate  
VALUE to your clients?**



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# The ChangeGPS “VPP Method”

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Peace of Mind / Less Stress

**P – Plan** – the story about what you need to do

**P – Price**



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# 2022 Key Tax Planning Issues

- ATO's "Attack" on Common Trust Distributions - TA 2022/1
- Div7A – Need a plan to pay out all Div7A Loans
- Dividend Payments to pay out Div7A Loans – Must declare before 30 June 2022
- Higher Concessional Super Contributions - \$27,500
- New Tax Ruling - Professional Practice Income
- Minimal Depreciation claims in 2022 – plan for higher tax
- Temporary Full expensing finishing on 30 June 2022
- TaxFlow Plan (tax payments cashflow) is VITAL for 2022/2023
- Federal Budget on 29 March 2022
- Federal Election in May 2022?

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# ChangeGPS 2022 Tax Planning Resources

**Let's have a look...**

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# Using TaxPlan Plus to Educate Clients

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# Your TA 2022/1 Client Strategy

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An aerial photograph of the Gold Coast, Australia, showing the city skyline with several tall skyscrapers, a large harbor filled with boats, and a wide sandy beach in the foreground. The sky is blue with some light clouds.

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Sheraton Mirage, Gold Coast

# Guest Panel

Join the chat and have YOUR say...

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*The **Accounting Industry Call-to-Action**  
on behalf of the mums & dads of Australia.*

# The new ATO Trust Distribution Ruling **changes everything.**

#TrustAccountants

Monday 28 February | 1:00-2:30pm

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Australian Taxation Office

# The new ATO Trust Distribution Ruling **changes everything.**

#TrustAccountants

Monday 21 March | 1:00-2:30pm

*The **Accounting Industry Call-to-Action**  
on behalf of the mums & dads of Australia.  
**With an Association Commissioner from the ATO***

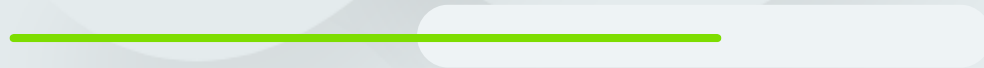
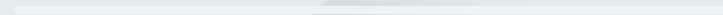




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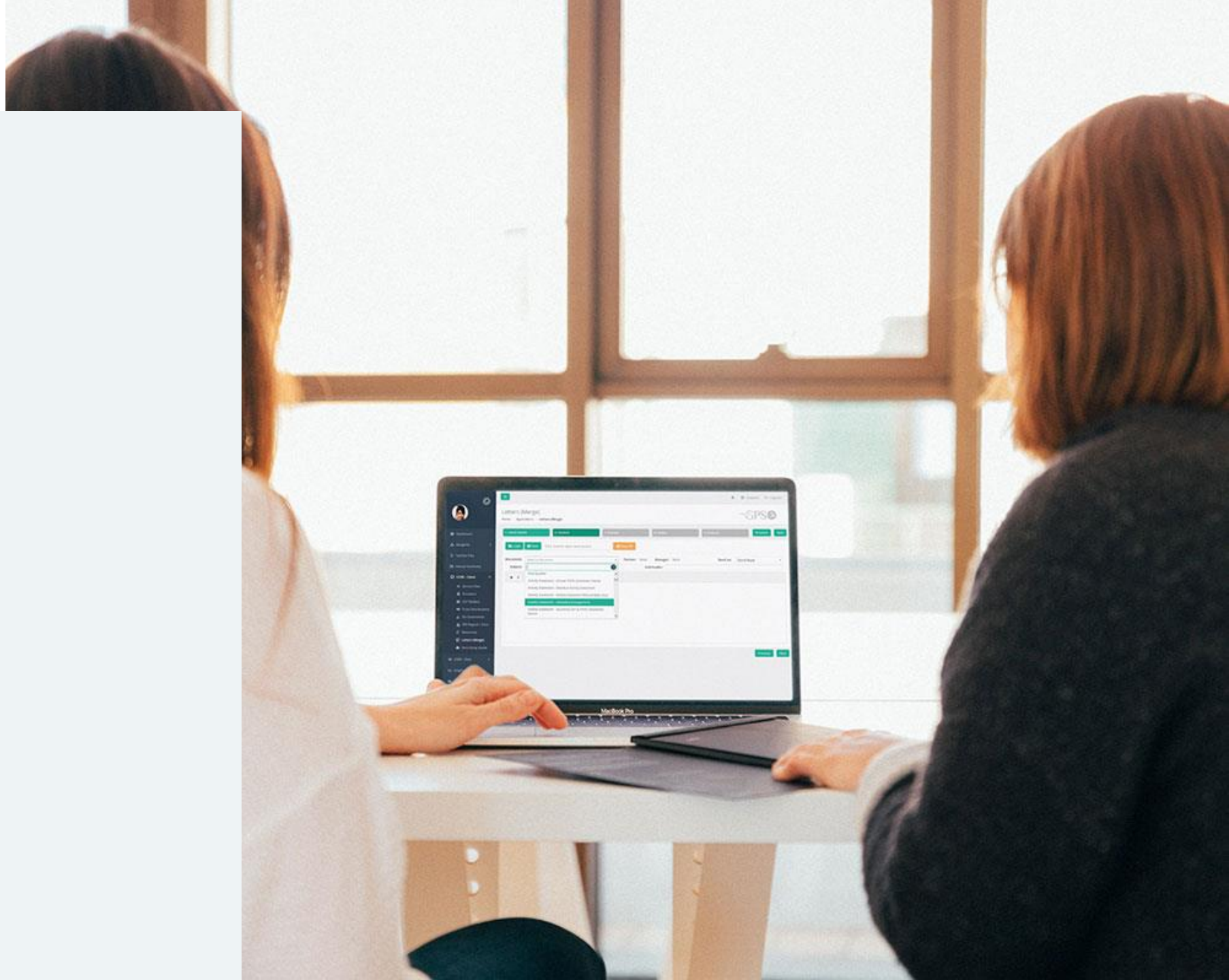
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# Top 10 2022 Tax Planning Strategies

1. Maximise concessional super contributions - \$27,500
2. Double Super – Use a Contributions Suspense Account strategy
3. Trust Distribution Resolutions – Signed before 30 June 2022
4. Dividends Declared – Sign before 30 June 2022
5. Use a “Bucket Company” strategy and pay the cash across
6. Prepayments – Accounting Fees!



# TaxPlan Plus Updates

- TaxPlan Reminders – Updates for 2022
- TaxPlan Strategies – First update for 2022
- Div7A Loan Repayment Advice report
- Professional Income Tax Advice report

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