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Our Reference: 9573005140948  
Your Reference: Family Trust - Distribution Statement  
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Wednesday, 31 May

Malloy Enterprises A  
24 Harbour Street  
Sydney NSW 2000  
Australia

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family-trust-distribution-statements/](https://www.legalconsolidated.com.au/family-trust-distribution-statements/)*

*– telephone us, we can help you  
complete the questions.*

*Adj Professor, Dr Brett Davies - Partner*

## **Trust Distribution Minutes for the Malloy Family Trust**

Thank you for building the Trust Distribution Minutes for the Malloy Family Trust. Please read, complete and sign them before 30 June for the relevant financial year.

If the Minutes are signed after 30 June, they are not valid.

Do not sign these Minutes until your accountant has read and approved of the Minutes.

### **How to print your Distribution Minutes**

When you are satisfied that the Minutes is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

### **Sign by 30 June – do the tax return later**

If you forget to sign your Trust Distributions Minutes by 30 June then:

1. if the Malloy Family Trust Deed sets out 'default beneficiaries' then they get the income. If your default beneficiaries are under 18 years old then the tax rate can be 66%.
2. if there are no default beneficiaries then you, as the Trustee, are taxed at the top marginal tax rate: section 99A *Income Tax Assessment Act 1936*.

The ATO is asking trustees to submit minutes for review. Previously you only needed to show Minutes when the ATO was auditing you.

While you need to sign the Minutes before 30 June, the trust accounts, prepared by your accountant, for that financial year can be done after 30 June. Your Minutes do not state a specific dollar amount. Instead, the beneficiaries are given the net income up to each of

their respective marginal tax rates. The beneficiary is therefore presently entitled to that net income. The Minutes comply because of the clear methodology for calculating the entitlement.

Your accountant, once the accounts and income tax return are finalised notifies the actual dollar amounts of the distribution as per the Minutes.

### **Need to update your family trust deed?**

There are 4 common problems, all can be fixed by updating your family trust on our website:

#### **1. Streaming different types of income and capital**

You need to check that the Malloy Family Trust Deed is up-to-date for the 'streaming' of income. This includes capital gains and franked dividends. If your trust deed is not up-to-date you can update it on our website. Check the Malloy Family Trust Deed to confirm that it enables the trustee to classify amounts of income by its source and make distributions of that classified income. It is important for the beneficiary to be 'specifically entitled' to a capital gain or franked dividend.

#### **2. Forcing Minutes to be signed after 30 June**

Some trust deeds require the trustee to sign the Minutes to distribute the trust income before 30 June or, even, more strangely, after 30 June. If you have a Brett Davies Lawyers or Legal Consolidated Trust Deed that is never the case. The problem is that the law states that the Minutes have to be signed any time before 30 June.

#### **3. The trust deed may not or may not correctly define 'income'.**

#### **4. Most trust deeds correctly require the Appointor's consent to the Minutes. While that can be verbal, if can't be done if all the Appointors are dead.**

### **Best practice for Family Trust Distribution Statements – 16-point checklist**

Legal Consolidated is not giving any taxation advice. The information in the attached Distribution Statement and in this letter is general advice only. We also do not know your individual circumstance.

Before completing the attached distribution statement, the Trustee works with the accountant to consider:

#### **1. Family Trust deed requires the distribution statement earlier than 30 June**

Does the family trust deed require the distribution decision for an income year to be made before 30 June?

Or, even more strangely, does the Family Trust deed require the distribution statement to be made only after 30 June?

To be effective in creating a 'present entitlement', the distribution minute is made and signed by 30 June. Or such earlier or later time as required by the trust deed.

You may comply with the ATO's rules. But still, fall foul of the Family Trust's rules. Upgrade the Family Trust Deed if it requires a distribution minute either before or after 30 June.

## **2. Section 100A, Reimbursement Agreements and Debt Forgiveness**

I have never recommended Reimbursements Agreements. And this has been the case since 1988. Both Legal Consolidated and the ATO have never liked Reimbursement Agreements. See section 100A *Income Tax Assessment Act 1936*.

We have, instead, recommended that your accountant consider Deeds of Debt Forgiveness. But since 2019 even Deeds of Debt Forgiveness have been attacked by the ATO.

Legal Consolidated's Annual Distribution Statement complies with section 100A. The minutes do not stop your Family Trust from retaining the wealth as UPEs. Or paying out the distribution.

And our minutes do not stop you from washing out the UPEs by reimbursement agreements (never recommended), Deeds of Debt Forgiveness or Deeds of Gift. But relying on section 100A, the ATO wants the family trust to actually transfer wealth to your children. Or, at least, keep the Unpaid Present Entitlement in the Family Trust's books. This is rather than getting rid of the UPEs with a reimbursement agreement, Deed of Debt Forgiveness or Deed of Gift.

But leaving the UPE on the books or paying them out to the child presents problems:

- the child loses the UPEs and wealth to the bankruptcy and family courts
- at the child's death, the UPE is an asset in their Will
- the ungrateful child may not give it back when you need financial help in your retirement
- and the age-old traditional problem: the Family Trust has no cash or assets to give to satisfy the distribution statement

The accountant knows your circumstances and needs to craft a solution for a personal outcome for you based on your unique set of facts. And every client is unique.

## **3. Exercise of discretion**

Do the discretionary trust minutes clearly show the trustee of the Family Trust "exercised its discretion" to distribute?

#### **4. Has mum and dad already pulled out money from the family trust, this year?**

Has any distribution of income for the current income year already been made earlier in the income year? If so, the distribution should be considered when drafting the final distribution minute.

#### **5. Family Trust destroyed by a “Family Trust Election”?**

Has a ‘family trust election’ been made? In which case your class of beneficiaries to who you can distribute is extremely limited.

#### **6. Family Trust benefits from the CGT Small Business concessions**

Are there any special income tax or CGT considerations that would mean that a distribution should or should not be made? Consider:

the CGT small business concession provisions  
the trust loss provisions and, in particular, the pattern of distributions test  
vulnerable children, children with unstable marriages and de facto relationships

#### **7. Family Trust retains income**

Does the trust deed permit the accumulation of income? (In a company, the company pays its own tax. This is at a fixed constant tax rate. Which is often 30%.) But with a Family Trust, instead, the beneficiary pays the tax. This is at its own tax rate. It is therefore common to want to remove the wealth you have personally paid tax on from the Family Trust. But there may be tax and asset protection advantages in not distributing certain types of income.

#### **8. Does the Family Trust deed allow full discretion to separate revenue and capital?**

Does the trust deed permit the characterisation of the otherwise revenue or capital nature of an amount? If not update the Family Trust Deed to allow for the new rulings on Bamford’s case.

#### **9. Family Trust distributing to its bucket company?**

Is there a distribution to a bucket company? But no cash or assets are actually transferred? Build a Division 7A Loan Deed first.)

#### **10. Ordinary vs statutory income in a Family Trust**

What are the sources of the ordinary income and statutory income derived by the trust during the income year? Is it better for different kinds of income or amounts (e.g. franked dividends or a capital gain) to be ‘streamed’?

### **11. Family trust distributing to a charity**

If a distribution is made to an exempt entity that is a beneficiary (charity), the anti-avoidance rule must be taken into account. This is as well as the fact that an exempt entity beneficiary is taken not to be presently entitled to the extent that, within two months after the end of the income year, it has neither been notified of its present entitlement nor has been paid its present entitlement.

### **12. Satisfying the Family Trust distribution with a CGT asset**

If an asset is to be distributed in specie, does the distribution results in a CGT event? Determine what the CGT consequences are. Consider trading stock or a depreciating asset. Is the beneficiary registered for GST?

### **13. Farm assets in the family trust**

Does the trust carry on a business of primary production? Is it necessary to distribute income to ensure that a beneficiary is taken to carry on the business of primary production?

### **14. Withholding rules vs Family Trust deed**

What are the Tax File Number (TFN) withholding rules for each beneficiary?

### **15. Appointor or Guardians consent**

Does the family trust deed require the consent or approval of some person? This is distribute income and capital? It is often the Guardian who consents.

### **16. Consider your 'usual' and 'default beneficiaries': Owies Case**

Consider your 'usual' and 'default' beneficiaries in your Trust Minutes. Up until 2022, the Appointor would tell the Trustee to whom to distribute. *Owies v JJE Nominees Pty Ltd* changed all that.

Now the Trust Minutes must record genuine thought to the beneficiaries. Watch out for your 'usual' or 'default' beneficiaries. While you do not have to 'talk' with these people you have to consider their financial position and circumstances.

Legal Consolidated Family Trust Minutes confirm that you made enquiries in the accounting period on the needs and circumstances of each 'usual' and default beneficiary (also called primary/named/specified beneficiary).

### **Have beneficiaries quoted their tax file number?**

If not, tax file number (TFN) withholding rules apply to closely held trusts, including your family trusts. If no TFN is held, you withhold tax from the distribution. You also report the withholding amount and pay it to the ATO. A beneficiary's TFN withholding is reported to

the ATO one month after the end of the financial year. TFNs reported on the latest tax returns are not reported again. Exemptions are available for distributions made to minors, non-Australian residents and charities. There are some exceptions to the withholding rules, including where the trust is a deceased estate during the period from the death of the individual until the end of the income year in which the fifth anniversary of the death occurs.

The TFN withholding requirements for resident closely held trusts (including family trusts) were introduced from 1 July 2010 by the Tax Laws Amendment (2010 Measures No. 2) Act 2010. These TFN withholding rules apply to resident discretionary trusts and certain fixed trusts and extend to trusts for which a family trust election or an interposed entity election is made. They require trustees to withhold from certain distributions and entitlements, and to make regular reports to the ATO and to the beneficiaries.

### **Specifically mention 'classes' of beneficiaries?**

Minutes and resolutions must identify the recipients of trust distributions. Specifically name each beneficiary in the Minute. Avoid Minutes that state a class of beneficiaries (e.g. children of the Appointor).

### **Distributions to companies**

Because of Division 7A you can't just declare a distribution of income and not pay the company. This is unless you have a Division 7A Loan Deed. Build a Div 7A Loan Deed at [www.legalconsolidated.com.au](http://www.legalconsolidated.com.au).

See TR 2010/3 and practice statement (PS LA 2010/4).

### **'Subject to' ATO resolutions**

Do not make resolutions which change 'if the ATO issues an amended assessment'. They do not work and fall foul of the requirement to have resolutions that 'prescribe a clear methodology for calculating the entitlement'.

### **Do you have a complete copy of the trust deed?**

Make sure you have a complete copy of the family trust deed, including any amendments. You need to be sure that any resolution you make to distribute the trust's income or capital is consistent with the terms of the deed.

### **Who can you appoint income or capital to?**

Check the trust deed to ensure that the intended beneficiaries are within the class of persons who can benefit from an appointment of trust income (or of trust capital, if you intend to stream a capital gain that is not income of your trust) and not listed as excluded beneficiaries. For example, some trust deeds specifically exclude the trustee of the trust from being a beneficiary.

If you make an appointment in error to someone who is not a beneficiary, the default beneficiaries (if any) or you as trustee may be assessed on a corresponding part of the trust's net (taxable) income.

### **Has the trust vested?**

Check the trust deed to ensure that the trust has not yet vested. If it has, then entitlements to income will already have vested in those beneficiaries entitled to the trust

fund on the vesting date and attempted appointments of income or capital that are inconsistent with those entitlements will be ineffective.

### **Is there a “family trust election” in force for the trust?**

Family trusts can make a “family trust election”. This is to access certain tax concessions. This, sadly, reduces the number of beneficiaries down from thousands, to just a handful of people.

If the election has been made, check whether the beneficiaries to whom you intend to distribute trust income or capital are within the family group of the individual specified in the election. Appointing trust income or capital to a person outside the family group will result in a family trust distribution tax liability to you (as trustee). This is because the beneficiaries who would otherwise be assessable because of the resolution will not be assessable.

### **What if my Family Trust deed requires the Trust Distribution Minute at an earlier date?**

Sadly, sometimes a trust deed will require a resolution to be made before the end of the income year. In this case you should comply with the deed. For example, if the trust deed requires your resolution to be made by 28 June, then you should make the resolution by that date.

If your trust deed requires an earlier resolution, all references below to 30 June should be read as the earlier date required by your deed.

### **Can the entitlement be taken away?**

For a beneficiary to be presently entitled to trust income, their right to the income must be indefeasible. That is, the entitlement must not be capable of being taken away. If an entitlement to trust income can be taken away from a beneficiary then the trustee may be assessed on the corresponding part of the trust's net (taxable) income.

### **Are you ‘streaming’ capital gains or franked distributions?**

If you are ‘streaming’ capital gains or franked distributions (seeking for their character to be retained as capital gains or franked distributions in the hands of beneficiaries), check that:

- you are not prevented from doing so under the terms of the deed
- you have complied with the relevant legislative requirements relating to the creation and recording of these entitlements.

For example, if a trustee wants to stream a capital gain to a particular beneficiary so that the gain is assessed only to that beneficiary, the beneficiary must be entitled to all of the financial benefits referable to the capital gain. In a trust where income is equated with the trust's net (taxable) income, a resolution distributing that part of the income attributable to a discount gain will only create an entitlement to 50% of the financial benefits that arise from the capital gain – that is, the discount component of the capital gain being non-assessable will not form part of the income of the trust.

To create an entitlement to all of the financial benefits referable to the capital gain, the trustee would also need to distribute that part of the trust capital attributable to the discount component of the gain.

While tax law allows until 31 August to record the specific entitlements relating to capital gains, such entitlements cannot be created over any amount that has already been dealt with – for example, any capital gains forming part of trust income that was already dealt with by 30 June.

### **Are you seeking to ‘stream’ other types of income?**

The tax attributes of other types of income cannot be separately streamed to different beneficiaries in the way that capital gains and franked distributions may be streamed. Under the general trust-assessing provisions in tax law, each beneficiary is taxed on a proportionate share of each component of the trust's net (taxable) income and cannot be treated as having a share of net income that consists of one category of income (for example, foreign income).

### **Do you have to prepare the trust accounts by 30 June to make beneficiaries presently entitled to trust income?**

No. Your resolution does not need to specify an actual dollar amount for the resolution to be effective in making a beneficiary presently entitled, unless the trust deed specifically requires it.

A resolution is effective if it prescribes a clear methodology for calculating the entitlement – for example, the entitlement can be expressed as a amount of income up to a beneficiaries marginal tax rate. This is how your Trust Distribution Minutes have been drafted.

### **What happens if you sign the resolution after 30 June?**

If no beneficiary (including a default beneficiary) was presently entitled to trust income as at 30 June, and no beneficiary was made specifically entitled to trust capital gains (if any), then you (the trustee) are assessed on the trust's net (taxable) income. This is at the highest marginal tax rate. This is not a good outcome.

### **Have all entitled beneficiaries quoted their tax file number (TFN) to you?**

If not, TFN withholding rules apply to closely held trusts, including family trusts.

### **What if a beneficiary disclaims their entitlement to trust income or capital?**

A beneficiary may disclaim an entitlement to trust income or capital arising from a resolution within a reasonable time of becoming aware of their entitlement.

If a beneficiary has made a valid disclaimer, you (the trustee) may be assessed on a share of the trust's net (taxable) income. Again at the highest marginal tax rate.

### **Distributing to non-residents**

A modern Australian family discretionary trust has thousands of beneficiaries. They have no rights so you make the class of beneficiaries as wide as you can. It is not just family members.

A beneficiary in your family trust falls into two groups:



1. resident of Australia for tax purposes (residents); or
2. non-resident of Australia for tax purposes (non-residents).

Australia taxes residents on all income. This includes income and capital gains from other countries. Residents are taxed on their world-wide income.

In contrast, non-residents are only taxed by Australia on Australian income and capital gain.

It sounds like a good idea, if you are earning money from overseas, to be a non-resident.

### **Taxation of non-residents**

Speak to your accountant regarding:

1. Division 855 and the limits on the taxation of non-resident capital gains
2. Division 6
3. Attribution of capital gains to non-resident beneficiaries
4. Administration: withholding and payments

### **My old family trust deed is a mess, can I update it now?**

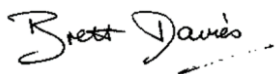
Family trust deeds are like your car. They need to be updated regularly.

Up until a few years ago it was difficult to update a family trust deed without triggering a resettlement. The ATO's view was contained in '*Creation of a New Trust – Statement of Principles August 2001*'. As is so often the case, the ATO's position was wrong.

The Full Federal Court in *FCT v Clark*, rendered the ATO's position untenable. The ATO had to then, in shame, withdraw the Statement of Principles document on 20 April 2012. The issue has been considered in TD 2012/21 which was released by the Commissioner on 24 October 2012.

You can now have your accountant update your family trust at [www.legalconsolidated.com.au](http://www.legalconsolidated.com.au).

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD  
National Taxation Partner  
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS



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## **Discretionary Trust Income Minutes for the Malloy Family Trust**

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## Trust Distribution Minutes for the Malloy Family Trust

Malloy Enterprises ACN 456 345 896  
24 Harbour Street, Sydney NSW 2000, Australia

(Trustee)  
as Trustee of the Malloy Family Trust (Trust)

For the financial year to end 30 June ..... (Tr

Held on ..... (Date)

(These Minutes are completed at any time **BEFORE** the end of  
signed before midnight 30 June.)

Present:

Malloy Enterprises ACN 456 345 896  
24 Harbour Street, Sydney NSW 2000, Australia

(Trustee)

**Quorum:** It was noted that a quorum was present a

**Notice of Meeting:** It was noted that all Trustees re  
all consent to the meeting being held and waive an  
of the notice of the meeting. It was resolved un  
constituted regardless of any failure to give n  
Constitutions or the Corporations Act.

**Person chairing the meeting:** It was resolved tha  
the person chairing the meeting (Person chairing the meeting).

**Minutes:** The minutes of the previous meeting of the Trustee were read and confirmed.

**Exercise of powers:** The chairperson noted that the resolutions to be passed at this meeting are pursuant to the powers and discretions conferred on the Trustee as trustee at law and by the deed of settlement establishing this trust together with any amendments of the **Malloy Family Trust**.

### Allocating trust income

Under the Malloy Family Trust, the Trustee is empowered to select trust beneficiaries to receive the net accounting and the net taxable income of the Trust Fund. This is for amounts for which no beneficiary is, yet, presently entitled.

### Where an allocation is not applicable

Where an allocation below is not applicable (for example, because there are no children under 18 or there is no franked dividends) or a space is not required then such spaces are left blank and don't apply.

### Lawyer only acting for trustee and gives no taxation advice

The trustee and controllers of the Family Trust (including Appointors, Guardians, Controllers, Principals) (**parties**) covenant that they have read and has made themselves fully aware of the cover letter to these minutes, content and legal effect of the Family

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*Dr Brett Davies  
Partner*

*Legal Consolidated Barristers & Solicitors*

Trust Deed, any amendments, the accounts and these minutes relating to the Malloy Family Trust.

In respect of the Malloy Family Trust, each such person acknowledges and agrees that:

- The solicitor who prepared these minutes (**Solicitor**) is a Solicitor of the Supreme Court of New South Wales (in the Trustee's personal capacity only) and not a Solicitor of the Supreme Court of New South Wales at times where there is more than one trustee the Solicitor is a Solicitor of the Supreme Court of New South Wales trustee, and only in their personal capacity;
- The parties have each been advised by the Solicitor that the parties are opposed to each other and are opposed to each other accordingly, the Solicitor's representation of the Trustee may not be in the best interests of the parties;
- The Solicitor has provided no taxation, similar advice or specific advice; and

Notwithstanding the above, the parties:

- desire the Solicitor to represent the Trustee for the purposes of preparing these minutes; and
- jointly and severally forever waive any claim that the Solicitor's representation of the Trustee for the purposes of preparing these minutes constitutes a conflict of interest.

### **Get accounting advice before signing these Minutes**

The Solicitor has advised that these Minutes NOT be signed until they are checked and discussed with the accountant.

### **Checklist**

The Trustee gave consideration to the following before making a distribution.

1. Does the trust deed require the distribution decision for an income year to be effected by a particular time and, if so, what is that time? (To be effective in creating a present entitlement, the distribution minute is made by 30 June (or such earlier time as required by the trust deed). Amend the family trust deed if it requires a distribution minute after 30 June).
2. Does the trust deed require the consent or approval of some person to a distribution of income, either generally or in particular circumstances? (Usually the guardian should consent).
3. Has any distribution of income for the current income year already been made earlier in the income year? (If so, the distribution should be considered when drafting the final distribution minute).
4. Has a 'family trust election' been made? (In which case your class of beneficiaries who you can distribute to is extremely limited).
5. Are there any special income tax or CGT considerations that would mean that a distribution should or should not be made? (Consider:
  - (a) the CGT small business concession provisions;
  - (b) the trust loss provisions and, in particular, the pattern of distributions test; and
  - (c) children with unstable marriages and defacto relationships.

You can build this document here:

<https://www.legalconsolidated.com.au/family-trust-distribution-statements/>

6. Does the trust deed permit the accumulation of income? (There can be tax advantages in not distributing certain income).
7. Does the trust deed permit the characterisation of the otherwise revenue or capital nature of an amount? (If not update the family trust deed to allow for the new rulings on Bamford's case).
8. Is there a distribution to a company? (Build Division 7A Loan Deeds at [www.legalconsolidated.com.au](http://www.legalconsolidated.com.au)).
9. What are the sources of the ordinary income and statutory income derived by the trust during the income year? (Is it better for different kinds of income or amounts (e.g. franked dividends or a capital gain) to be 'streamed')?
10. If a distribution is to be made to an exempt entity that is a beneficiary (charity), the anti-avoidance rule must be taken into account, as well as the fact that an exempt entity beneficiary is taken not to be presently entitled to the extent that, within two months after the end of the income year, it has neither been notified of its present entitlement nor has been paid its present entitlement.
11. If an asset is to be distributed *in specie*, does the distribution results in a CGT event? (Determine what the CGT consequences are. Consider trading stock or a depreciating asset. Is the beneficiary registered for GST for GSTD 2009/1).
12. If the trust carried on a business of primary production, is it necessary to distribute income to ensure that a beneficiary is taken to carry on the business of primary production?
13. What are the TFN withholding rules for each beneficiary?
14. Such matters touching on Section 100A *Income Tax Assessment Act 1936*, Reimbursement Agreements, Unpaid Present Entitlements, Debt Forgiveness and deemed loans to companies and Division 7A *Income Tax Assessment Act 1936*.

### **Have and reviewed a complete copy of the trust deed**

The Trustee confirms that the Trustee and the other parties have and read a complete copy of the trust deed, including any amendments. And that the resolutions to distribute the trust's income or capital is consistent with the trust deed.

### **Consideration of Beneficiaries**

The trustee made enquiry of the default beneficiaries (also known as the primary beneficiary) and of other beneficiaries who have previously been beneficiaries of the Family Trust including in respect of the distribution of income. The trustee considered their circumstances, medical, financial, mental state, age, government and other benefits, previous distributions and other factors, and otherwise, as the case required and as appropriate.

Such consideration is confidential and there is no reason or record of the reasons for any decisions to any person or persons. No reasons are given to any person. This includes for any capital, income or other distributions.

The trustee is not required to give reasons or notification to any person. The exercise of its discretion was carried out and the real and genuine reasons have been given.

*The minutes allow distributions to all the income categories. For example, you can stream income (such as net capital gains and franked distributions) to specific beneficiaries. Our minutes includes comprehensive notes. There is also our law firm letter signing off on the Minutes.*

The due consideration, appropriateness and sufficiency of the Trust information are also confidential and not required to be provided to persons.

All such real and genuine considerations and exercise of discretion be in writing. And may be decided verbally and from time to time production and passing of these trust minutes.

The Trustee confirms that it has acted in good faith, responsibly

The Trustee has informed itself, before making a decision, of matters to the decision. These matters may not be limited to simple matters occasion include taking advice from appropriate experts, whether lawyers, accountants, actuaries, surveyors, scientists or whomsoever

*The Trustee signs an Annual Family Trust Minute of Distribution. This is before the end of the financial year. It declares how Family Trust income is distributed for the current financial year.*

**Resolution to allocate Trust Income**

The Trustee resolves that:

**1. Determining Net Income**

the **net income** for the Trust Year is calculated in the same manner as net income is calculated under the *Income Tax Assessment Act 1936* (Cth) and *the Income Tax Assessment Act 1997* (Cth), provided that where, in so calculating the net income, it is necessary to:

- (a) gross up income, including tax offsets, foreign tax credits and franking credits;
  - (b) include assessable income; and
  - (c) but unless required to do so, not including a deemed deduction
2. such of the net income and capital as constitutes net income for the trust year be paid, applied or allocated to or for the benefit of the following person or persons.
  3. it is confirmed that all of such intended beneficiaries are beneficiaries of the Malloy Family Trust and entitled to receive income and capital of the trust.
  4. all such intended beneficiaries are resident of Australia for taxation purposes.
  5. the intended beneficiaries are set out in order of priority for allocation of available net taxable income:

**The under 18 (not disabled or receiving Testamentary Trust) distribution**

(Beneficiaries under 18 years of age - not suffering a disability or not receiving the income or capital through a will or testamentary trust. The sum of \$416 is applied. It is the maximum amount of non-excepted income for under 18 Australian residents. It is usually received tax free.)

The highest sum of money or income so that the child under 18 years of age is under the taxation bracket requiring for the payment of any tax – i.e. pays no tax on this amount (The type of income is best to be free of refundable credits, such as net interest). This income is to be applied for the benefit of:

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....

**Franked Dividends**

For franked dividends received by the Malloy Family Trust (including franking credits) sufficient distributions from the trust for the taxpayers being:

- 1. .... 2. ....
- 3. .... 4. ....

so that each of their taxable incomes (considering their personal income, if any, from all other sources) are respectively increased up to their next applicable tax rate (including Medicare), and so forth for each tax rate, up to the highest tax bracket.

**Non-Discounted Capital Gains Distribution**

For capital gain received by the Malloy Family Trust sufficient distributions from the trust for the taxpayers being:

- 1. .... 2. ....
- 3. .... 4. ....

so that each of their taxable incomes (considering their personal income, if any, from all other sources) are respectively increased up to their next applicable tax rate (including Medicare), and so forth for each tax rate, up to the highest tax bracket.

**Discounted Capital Gains Distribution**

For discounted capital gain arising from the sale of an asset by the Malloy Family Trust sufficient distributions from the trust for the taxpayers being:

- 1. .... 2. ....
- 3. .... 4. ....

so that each of their taxable incomes (considering their personal income, if any, from all other sources) are respectively increased up to their next applicable tax rate (including Medicare), and so forth for each tax rate, up to the highest tax bracket.

*Since 1994, as a tax lawyer, I have provided an Annual Family Trust Minute for each financial year. I attend a lot of ATO audits. My doctorate was in tax. The tax laws change. The ATO changes its mind. We prepare the Family Discretionary Trust Minute of Distribution that reflect those rules for each unique financial year.*

**Distribution to a person who is not an Australian resident for tax purposes (non-resident)**

Being a non-resident only affects the amount on which the beneficiary (or the trustee on the beneficiary's behalf) is assessable if the net income for the income year is wholly or partly attributable to foreign sources. In that event, to the extent that the share of the beneficiary's net income is attributable to a period when the beneficiary was not a resident and to sources out of Australia, it will not be assessable to the beneficiary (or to the trustee on the beneficiary's behalf) (ss 97 and 98 ITAA36).

Non-resident being: ..... as to:

- ( ) Percentage of the income being ..... %; or
- ( ) So much of the income up to a tax .....
- ( ) Fixed amount being: \$.....
- ( ) Foreign source income being .....

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– telephone us, we can help you complete the questions.  
  
Adj Professor, Dr Brett Davies - Partner

If you have foreign-source income and a beneficiary is a non-resident, you may elect to have the foreign-source income to be distributed to the non-resident. A trust derived foreign source income on which the trustee has paid tax is eligible for a refund of tax if the income is subsequently distributed to the beneficiary (s 99D ITAA36).

**Tax-exempt charity**

Tax-exempt charity being: ..... as to:

- ( ) Percentage of the income being .....%; or
- ( ) Fixed amount being: \$.....

**General Distribution based on tax payable for each individual income tax rate**

Sufficient distribution from the trust for the taxpayers being:

- 1. .... 2. ....
- 3. .... 4. ....
- 5. .... 6. ....

so that each of their taxable incomes (considering their personal income, if any, from all other sources) are respectively increased up to their next applicable tax rate (including Medicare), and so forth for each tax rate, up to the highest tax bracket, and then

**Remaining surplus income resolution**

After their highest tax brackets (including Medicare) are reached, then the remainder to (and where more than one equally):

- 1. .... 2. ....
- 3. .... 4. ....
- 5. .... 6. ....



The above persons are all trust beneficiaries. They are entitled to receive fixed and discretionary distributions of the income and capital of the Malloy Family Trust.

**IT WAS RESOLVED** that the relevant amounts be set aside in the Malloy Family Trust records for the absolute benefit of the above named beneficiaries.

**Payments made during the trust year**

Any income paid to any beneficiary during the trust year made according to the above resolutions and are not in accordance with the above resolutions.

If future Trust Distribution Minutes (or whatever they be called) are invalid or not prepared, for whatever reason, then these minutes shall be deemed to be the true and correct minutes of the trust distribution minutes, and where permitted the tax returns shall reflect the intent of these minutes.

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There being no further business, the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting.

..... Person chairing the meeting

Further, all Trustee(s) agreed and signed:

.....

Further, all controllers (including Appointors, Guardians, Controllers, Principals) agreed and signed:

.....

.....