

Trust distribution assessable for tax despite the beneficiary's lack of knowledge and disclaimer

In [Alderton and Commissioner of Taxation \(Taxation\) \[2015\] AATA 807 \(16 October 2015\)](#), the Administrative Appeals Tribunal (AAT) upheld the Commissioner's decision to assess a trust beneficiary to tax on a distribution from the trust, despite her attempted disclaimer in November 2014 of "the entirety of any interest accrued by her in the past or which may accrue in the future in the income or corpus of the trust fund", with such disclaimer to take effect from the date of settlement of the trust.

The trust had been set up during the course of the taxpayer's relationship with Mr Trapperton, who acted as the trustee of the trust. Mr Trapperton had regularly deposited funds into the trust's bank account. The taxpayer accessed the funds in the account using a debit card provided to her by the trustee. After the relationship ended, the trust lodged its 2009 income tax return, disclosing net income of \$79,880 as having been distributed to the taxpayer.

The Commissioner sought to include that amount in the taxpayer's taxable income for the 2009 income year, together with penalties.

The AAT affirmed the Commissioner's assessment finding:

- The taxpayer was presently entitled to the net income of the trust shown by the trust's return as having been distributed to her, citing "until disclaimer, a beneficiary's entitlement to income under a trust is operative for the purposes of section 97 of ITAA36 from the moment it arises notwithstanding that the beneficiary has no knowledge of it".
- For a disclaimer to be effective it must constitute an absolute rejection of the gift. Whilst the taxpayer had sufficiently evidenced a disclaimer of her interest in the Trust, the disclaimer was not effective – "to be effective, a disclaimer must constitute an absolute rejection of the gift. Here, Ms Alderton did not reject the gift because, having accepted the benefit of it, it was no longer able to be disclaimed. She had the use and benefit of the distribution."

The decision is an important reminder that taxpayers wishing to disclaim a trust distribution must ensure that the disclaimer is unequivocal – that it is sufficiently evidenced and that they do not have the use and benefit of funds or property represented by that distribution at any time.

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