



**PRACTICE
STATEMENT No. 19
2nd release**

SUBJECT	REVENUE COLLECTION DIVISION: TAXATION OF TRUSTS
DATE OF EFFECT	1 January 2004
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Income Tax Act</i> Section 2, 7, 11, 14, 15, 33, 42
PRACTICE CO-ORDINATOR	Chief Assessor, Manager Technical Services

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INTRODUCTION

1. This statement sets out the practice of the Revenue Collection Division in relation to the taxation of trusts. It is issued with the authority of the Chief Executive Officer of the Fiji Islands Revenue and Customs Authority, who is also Commissioner of Inland Revenue.

LEGISLATIVE BASIS

2. The *Income Tax (Budget Amendment) Act 2004*, passed by Parliament in March 2004, amended several provisions into the *Income Tax Act* in relation to the taxation of trusts. These changes can be summarised as follows:

Section/ Schedule	Changes
2	Inserts a non-exhaustive definition of “trust” for the purposes of the Act.
7	Adds a “trustee” as a type of taxpayer who is charged with normal tax.
11	Includes in the income of a beneficiary income to which deemed presently entitled under subsection 14(c) - which refers to income under subsection 15(4) – this covering “sham” trusts which are not real trusts covered by the new provisions.
14	Paragraph (b) repealed so that only section 42 gives the rules for taxing trust income, thereby removing ambiguity from having two sets of rules.
15	Extending subsection (4) – covering “sham” trusts” - to trusts, which are made revocable at any time, not just upon settlement.
42	Inserting the modern terms “presently entitled” and “legal disability” in place of antiquated terms.
Fourth Schedule	Changes to the heading to clarify that only the beneficiary or trustee is taxable, not the trust itself.

3. The purpose of the new provisions was to remove loopholes and ambiguities. The basic method of taxing trusts has not changed, that is:
 - (i) if trust income is not distributed, or is distributed to a beneficiary who is under a legal disability, the trustee is taxed on the income; and
 - (ii) if trust income is distributed to a beneficiary who is not under a legal disability, the beneficiary is taxed on the income.

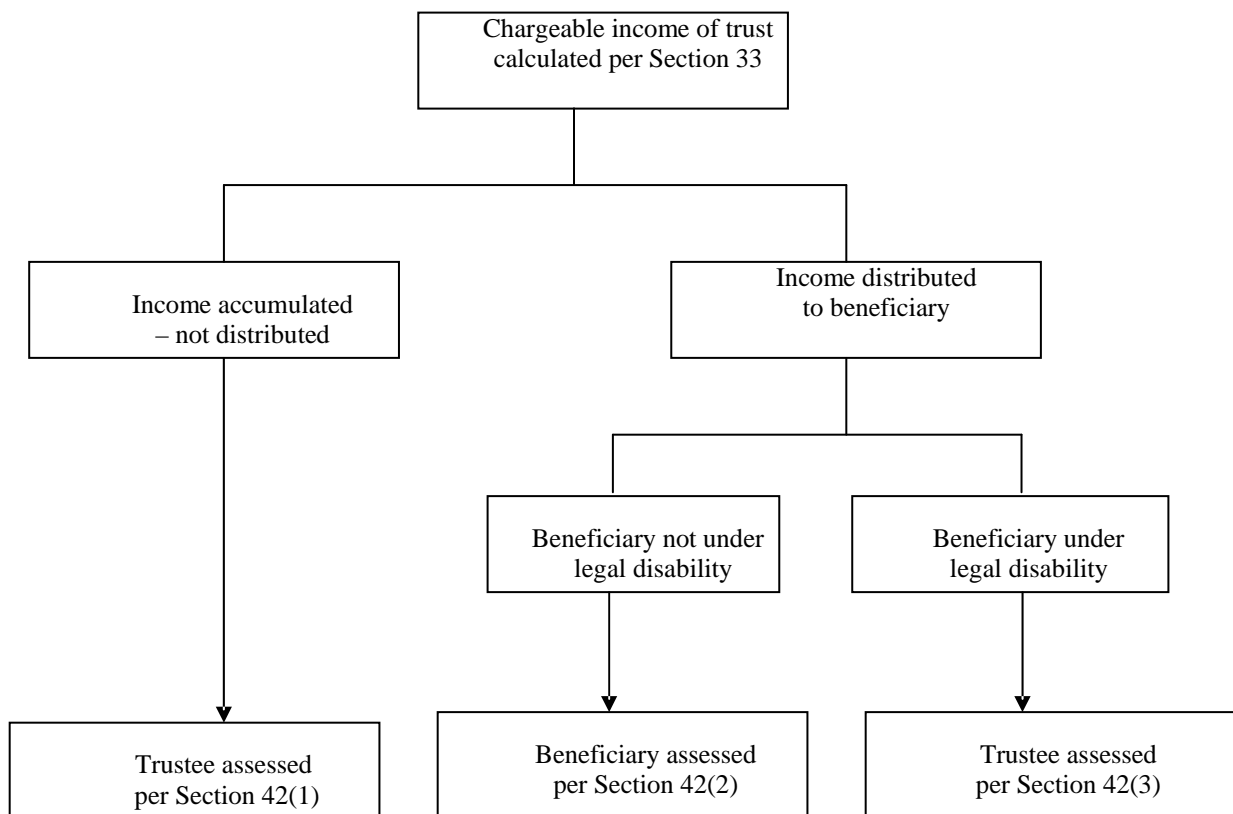
TAXATION OF TRUSTS

4. Under the *Income Tax Act* trust income is taxed in the following way:

- section 42 determines whether the trustee or the beneficiary is to be assessed. Note that the trust itself is not capable of being taxed because its legal nature is a fiduciary relationship and not an entity;
- a trust can only distribute profits, not losses. Losses are accumulated within the trust and used to reduce future profits or corpus of the trust;
- under section 33 the chargeable income of a trust equals its total income; and
- under paragraph 11(p) income from a trust is included in a beneficiary's total income.

5. The following diagram summarises this:

Figure 1: Flowchart of the operation of section 42.



TRUST TAX IDENTIFICATION NUMBER (TIN)

6. The following ranges of Tax Identification Numbers (TINs) applies to various types of trusts:

TIN range	Type of entity
50	Companies and unit trusts
60	Non-profit bodies including charitable trusts
70	Deceased estates
75	Trading trusts, superannuation funds

7. The “TIN range” refers to the first two digits of the TIN issued by FIRCA. It is important that different types of trusts are allocated a TIN in the correct range as this affects the rules in the Fiji Integrated Tax System (FITS) for assessing the return.
8. When a trust registers, a copy of the trust deed should be given to FIRCA for their records. The residency status of the trustee needs to be ascertained, as this affects the tax rate in the event that the trustee is assessed.
9. A project is currently under way within the FIRCA Income Matching Unit to identify all trusts and, if necessary, re-allocate the trust a TIN in the correct range.

TRUST RETURNS

10. Unit trusts should lodge a Form C as they are taxed as companies. All other trusts (TIN ranges 60, 70 and 75) should lodge a Form E.
11. If an individual taxpayer dies part way through their fiscal year, their legal representative must lodge an individual return from the start of the year up to the date of death. If the individual’s estate carries on business after the date of death, the trustee must lodge a trust return from the day after the date of death to the end of the year, and for any subsequent fiscal years that the trust carries on business.
12. Trading trusts should include in their returns the usual financial statements that businesses are required to supply, such as profit and loss account and balance sheet.

TRUSTEE ASSESSMENTS

13. Trusts are not taxable themselves, only the trustee and the beneficiaries, depending on the criteria mentioned above. Where the trustee is taxed, he or she will **not** be taxed in their own right, but in their capacity as trustee. The trust’s income is not added to the trustee’s other income, but rather a separate assessment is made.

14. Where the trustee is an individual, he or she will be assessed under the special 27 series of TINs, under the name of, for example, “Henry Smith as trustee for the Jones Family Trust”, and the tax applied will be at the individual rate. Where the trustee is a company, it will have a normal 50-series TIN and be taxed as a trustee at the company rate of tax.

BENEFICIARY ASSESSMENTS

15. Where a beneficiary is taxed on their share of the trust distribution, the trust income is added to the beneficiary’s other income. The beneficiary is assessed under their usual 1 to 26-series TIN, where 1 = A through to 26 = Z, the numeric representing the first letter of the taxpayer’s surname. Beneficiaries should lodge a Form B, and the trust income they receive will be subject to provisional tax. Trust income distributed retains its characteristics in the hands of the beneficiary. For example, if a discretionary trust receives dividend and other income, the trustee can “stream” the dividend income to a particular beneficiary, and it retains the characteristics of dividend income in the hands of the beneficiary.

GLOSSARY OF TERMS

The following terms relate to trust law in general or are found in the sections of the *Income Tax Act* which affect the taxation of trusts.

Term	Meaning
Beneficiary	A person for whose benefit the trust property is held, and who may receive a distribution of income or capital from a trust (may be an individual, a company or another trust). A trustee can also be a beneficiary, but not the sole beneficiary.
<i>Bona fide</i>	(Latin) Honest intention.
Corpus	The trust property (as opposed to the income that property generates).
Deceased estate	A form of trust resulting from the death of a person – the person's assets are managed by the trustee for the benefit of the beneficiaries, and the assets of the deceased person ultimately distributed to the beneficiaries.
Discretionary trust	A trust where the trustee can decide on how the corpus and trust income will be distributed among the beneficiaries.
Executor	A person appointed to finalise the affairs of a deceased estate, equivalent to a trustee.
Fiduciary relationship	A relationship where a person (such as a trustee) holds property (the trust property) for the financial benefit of a third person (the beneficiary).
Fixed trust	A trust where the beneficiaries are entitled to fixed percentages of the trusts income or corpus.
<i>Inter vivos</i> trust	(Latin) A trust formed within the lifetime of a person, as opposed to a deceased estate.
Legal disability	Persons under a legal disability include minors, the insane and undischarged bankrupts.
Minor	A person who is less than 21 years of age on the last day of the trust's fiscal year.
<i>Mutatis mutandis</i>	(Latin) With necessary alterations and changes (when comparing cases).
Presently entitled	A beneficiary is presently entitled to trust income when the trustee has exercised their discretion to entitle, pay, credit or apply trust income for the benefit of the beneficiary.

Revocable trust	A trust where the settlor can demand return of the trust property, as opposed to an irrevocable trust where no such demand can be made.
Settlement	The act of settling property in a trust for the benefit of another person i.e. the creation of a trust.
Settlor	The person who devises (i.e. gives) the trust property to the control of the trustee for the benefit of the beneficiaries.
Superannuation fund	A type of trust, which is established for the purposes of providing funds after a person's retirement.
Trust	An equitable obligation under which a person (the trustee) must deal with property (the trust property) for the benefit of another (the beneficiary). A trustee may be a company. A trustee cannot be a beneficiary of the same trust. The settlor (The person who gave the trust property) cannot be a trustee or a beneficiary.
Trust Deed	A legal instrument setting out the terms of a trust.
Trustee	The person who holds the legal title to trust property. The trustee has a fiduciary duty to deal with the trust property for the benefit of the beneficiaries.
Unit trust	A scheme that has the purpose or effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers or purchasers as members of the public in income of the trust.

*****End of Practice Statement*****