

Practical taxation of testamentary trusts

THE TAXATION OF A DECEASED ESTATE AND A TESTAMENTARY TRUST IS OFTEN COMPLEX. THIS ARTICLE DISCUSSES THE LEGISLATIVE FRAMEWORK AND PRACTICAL CONSIDERATIONS APPLICABLE TO THE TAXATION LIABILITY OF THE TRUSTEE OF AN AUSTRALIAN RESIDENT DECEASED ESTATE OR TESTAMENTARY TRUST UNDER DIV 6.



INTRODUCTION

The establishment of a testamentary trust is a key aspect of modern estate planning, especially where the testator has children or grandchildren under the age of 18 years or under a legal disability.

Despite the wide use of testamentary trusts, there has been only fragmented guidance provided by the Australian Taxation Office (ATO) as to the assessment and liability of a trustee of a testamentary trust for taxation purposes.

This article discusses the legislative framework and practical considerations applicable to the taxation liability of the trustee of an Australian resident deceased estate or testamentary trust under Div 6 of Part III of the *Income Tax Assessment Act 1936* (Cth) (Div 6). This article deals with distributions to Australian resident natural person beneficiaries, only not acting as a trustee beneficiary.

Legislative references are to the *Income Tax Assessment Act 1936* (Cth), unless otherwise stated to be to the *Income Tax Assessment Act 1997* (Cth) (ITAA97).

DIVISION 6 OVERVIEW

Introduction

The structure of Div 6 is to tax:

1. the beneficiary not under a legal disability that is presently entitled to the income of a trust at the beneficiary's marginal tax rate (s 97);
2. the trustee on behalf of the beneficiary under a legal disability that is presently entitled to the income of a trust at the beneficiary's marginal tax rate or minor beneficiary's special tax rate (s 98);

3. the trustee where no beneficiary is presently entitled to the income of a trust at the trustee's special marginal tax rates where the trust resulted from a testamentary act and the ATO determines it would be unreasonable to apply s 99A (s 99); or
4. the trustee where no beneficiary is presently entitled to the income of a trust at the trustee's special penalty tax rate (s 99A).

The definition of "trustee" includes the ordinary concept of trustee (such as a trustee of a testamentary trust) and also an "executor or administrator of a deceased estate" (s 6(1)). "Legal personal representative" is used where the reference does not also apply to a trustee of a testamentary trust.

Division 6 and the ATO's administration of trusts distinguish between a deceased estate and a testamentary trust in a number of respects discussed in this article.

Further, Div 6 and the ATO's administration of trusts distinguish between a person under a legal disability and a person under a legal disability who is under 18 years old (a minor) in a number of respects.

The taxation of a deceased estate and a testamentary trust is often complex.

Tax rates

The beneficiary's marginal tax rates (ss 97 and 98) and the trustee's special marginal tax rates for a deceased estate for the first three estate tax returns (s 99) for the year ended 30 June 2009 are:

For the part of the ordinary taxable income of the taxpayer that:	Marginal rate
exceeds \$6,000 but does not exceed \$34,000	15%
exceeds \$34,000 but does not exceed \$80,000	30%
exceeds \$80,000 but does not exceed \$180,000	40%
exceeds \$180,000	45%

The trustee's special marginal tax rates for a deceased estate for the tax returns after the first three estate tax returns (s 99) for the year ended 30 June 2009 are:

For the part of the ordinary taxable income of the taxpayer that:	Marginal rate
exceeds \$416 but does not exceed \$594	50%
exceeds \$594 but does not exceed \$34,000	15%
exceeds \$34,000 but does not exceed \$80,000	30%
exceeds \$80,000 but does not exceed \$180,000	40%
exceeds \$180,000	45%

The trustee's special penalty tax rate (s 99A) for the year ended 30 June 2009 is 45%.

The minor beneficiary's special tax rate only applies to non-testamentary trust income (Div 6AA). Accordingly, the minor beneficiary's special tax rate generally does not apply to a deceased estate or a testamentary trust. The minor beneficiary's special tax rates (Div 6AA) for the year ended 30 June 2009 are:

For the part of the ordinary taxable income of the taxpayer that:	Marginal rate
Exceeds \$416 but does not exceed \$1,307	66%
Exceeds \$1,307	45%

Division 6AA may apply the minor beneficiary's special tax rates where the income is non-testamentary income that is distributed by the deceased estate or testamentary trust (discussed below).

The Medicare levy and Medicare surcharge may also apply.

DECEASED ESTATES

The legal personal representative is obliged to complete an individual tax return for the deceased for the period from 1 July to the date of death (**Date of Death Return**).

For the first three tax returns of the estate or until the estate has been fully administered (whichever is earlier):

1. the beneficiary or the legal personal representative on behalf of the beneficiary is taxable on the amount to which the beneficiary is presently entitled, such as when an amount is paid (ss 97 or 98); and
2. the legal personal representative is taxable on the amount to which no beneficiary is presently entitled, at the trustee's special marginal tax rates (s 99).

For subsequent tax returns of the estate until the estate has been fully administered:

1. the beneficiary or the legal personal representative on behalf of the beneficiary is taxable on the amount to which the beneficiary is presently entitled such as when an amount is paid (ss 97 or 98); and
2. the legal personal representative is taxable on the amount to which no beneficiary is presently entitled at the trustee's special penalty tax rates (s 99A) unless the ATO determines to apply trustee's special marginal tax rates (s 99).

A deceased estate that has not been fully administered for up to a period of five years is an "excepted trust" (s 272-100) for the purposes of the trust loss and bad debt provisions (Schedule 2F).

Further, a deceased estate that has not been fully administered for up to

a period of five years is an "excluded trust" (s 102UC) for the purposes of the closely held trustee beneficiary reporting requirements (Div 6D of Part III).

Care is required to apply the three tax return period and the five-year excepted/excluded trust period correctly.

The concept of "fully administered" requires the deceased estate to make full provision for all testamentary expenses and to determine to transfer property to the beneficiaries. It is not necessary that the actual property be transferred to the beneficiaries (this can be done subsequent to the end of the income year).¹

The ATO's *Income Taxation Ruling IT 2622* ("Present Entitlement during the stages of administration of deceased estates") provides an administration concession by allowing for apportionment in the income year in which the estate is fully administered. Where the executors and beneficiaries are able to demonstrate, through the striking of accounts at the completion of administration, the actual amounts of income derived in the periods before and after the day on which the estate was fully administered, an apportionment may be made as follows:

- Income derived in the period between the beginning of the income year and the day administration was completed.
 - Assessed in the hands of the executors or administrators under s 99 of the Act.
- Income derived in the period between the day administration was completed and the end of the income year.
 - Assessed to the beneficiaries presently entitled to the income in the manner required by ss 97 or 98 of the Act.

The benefit of using this administrative concession is that some of the income in the year of full administration may be allocated to the estate's tax return. This means that tax savings may be made by using the estate's additional tax free threshold and marginal tax rates.

TESTAMENTARY TRUSTS

Introduction

A testamentary trust is a trust that is established by a will or codicil. It is important to distinguish between a testamentary trust and a deceased estate. A deceased estate consists of the assets of a person who has died, which are held in trust from the time of the deceased's death until their transfer to the deceased's beneficiaries. A testamentary trust comes into existence only once the administration of the deceased estate has been completed.

The key advantage of establishing a testamentary trust is asset protection as it provides a degree of protecting the assets of the testator from creditors of beneficiaries, family law settlements and from the assets being squandered by wayward beneficiaries.

Another significant advantage, especially where the testator has children or grandchildren, is the concessional taxation treatment afforded to the income derived by minor beneficiaries through the interaction of Divs 6 and 6AA.

Taxation of the trustee of a testamentary trust

A testamentary trust is subject to the same taxation rules that apply to trusts generally in Div 6. They provide a framework for assessing the trustee or the beneficiary on income derived through a trust.

The circumstances in which the trustee is assessed on the net income of the testamentary trust include:

1. where a beneficiary is presently entitled to a share of the net income of the trust, but is under a legal disability;²
2. where a beneficiary is deemed to be presently entitled under s 95A(2) but is not actually entitled to the distribution;³
3. where a non-resident beneficiary is presently entitled to a distribution;⁴ and
4. where no beneficiary is presently entitled to a share of the net income of the trust.⁵

A trustee is not liable to pay tax on trust income except as provided for by the Act.⁶

This article is specifically concerned with the operation of s 98(1). Section 98(1) states:

“98 Liability of Trustee

(1) Where a beneficiary of a trust estate who is **under a legal disability is presently entitled to a share of the income of the trust estate**, the trustee of the trust estate shall be assessed and liable to pay tax in respect of:

- (a) so much of **that share of the net income of the trust estate** as is attributable to a period when the beneficiary was a resident; and
- (b) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia

as if it were the income of an individual and were not subject to any deduction.”

[emphasis added]

Due to the similarity in wording of ss 97 and 98, in interpreting s 98(1) many of the uncertainties identified in respect of s 97(1) are also relevant. Section 97(1) states:

“97 Beneficiary not under any legal disability

(1) ...Where a beneficiary of a trust estate who is not under any legal disability is **presently entitled to a share of the income of the trust estate**:

- (a) the assessable income of the beneficiary shall include:
 - (i) so much of **that share of the net income of the trust estate** as is attributable to a period when the beneficiary was a resident; and
 - (ii) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.” **[emphasis added]**

“Net income” is defined for tax purposes in s 95 as the total assessable income of the trust estate calculated as if the trustee were a taxpayer in respect of that income and were a resident, less allowable deductions.⁷

The undefined concepts of “presently entitled” and “income of the trust estate” and “legal disability” are discussed below.

Present entitlement

To be presently entitled to a share of the income of a trust estate, the beneficiary’s right to the income must be vested and indefeasible and the beneficiary must have a present legal right to demand and receive payment of the income.⁸

In *Dwight v FCT*, Hill J stated:⁹

“The words ‘vested’ and ‘indefeasible’ in the context of trust law are technical legal words of limitation... Estates may be vested in interest or vested in possession, the difference being between a present fixed right of future enjoyment where the estate is said to be vested in interest and a present right of present enjoyment of the right, where the estate is said to be vested in possession... An interest is said to be defeasible where it can be brought to an end and indefeasible where it cannot. Thus, a beneficiary with an interest which is not contingent but which interest may be brought to an end by the exercise of a power of appointment, would be said to have a vested but defeasible interest...”

The ATO in *Taxation Ruling IT 329* (“Discretionary Trusts: Section 101 – Resolutions of Trustee”) states that present entitlement is created as follows:

- 9. ...A declaration, resolution or other act of a trustee in an effective exercise of his discretion will amount to an application of income of a trust estate for the benefit of a beneficiary where :-
 - (a) a specific ascertainable portion of the income of the year in question is thereby **immediately and absolutely vested in the beneficiary** so that even though it might not be immediately paid to the beneficiary it becomes his absolute property and would form part of his estate in the event (sic) of his death;
 - (b) **the declaration, resolution, etc is final and irrevocable.**

...

- 11. Consistently with the directions given in paragraphs 31 and 32 of IT 328 it is accepted that a declaration, resolution, etc. which fulfils the above requirements made within two months after the close of the year of income will be effective for the purposes of section 101, i.e. it will be accepted as an application of the trust income in the year preceding the two months period. **[emphasis added]**

For s 98(1) to apply, the trustee will either pay the amount to the beneficiary or will declare or pass a resolution to appoint the income of the trust estate to the beneficiary.

Share of the net income of the trust

As discussed above, “net income” is defined for taxation purposes in s 95 as the total assessable income of the trust estate less allowable deductions.

The term “income” in the phrase “income of the trust estate” is not defined and

takes its ordinary meaning at common law to be the income of the trust estate for trust law purposes, and to this end the trust instrument can empower the trustee to determine by classification and reclassification what is income of the trust estate.¹⁰

There are two competing approaches to the allocation of the “income” of the trust for the purposes of calculating a beneficiary’s share of the net income of the trust estate, being the quantum approach and the proportionate approach.

The “quantum” approach is that a beneficiary is only capable of being presently entitled to a portion or quantum of the trust’s accounting income.¹¹ The relevant nexus is to the “amount” of income to which a beneficiary can demand payment (quantum).¹² If this approach was adopted the trustee would be assessable on the excess of the taxable income over the trust law income as no beneficiary would be presently entitled to the excess.

The “proportionate” approach is that the beneficiary’s share of the net income of the trust is calculated by reference to the beneficiary’s share in proportionate terms of the income of the trust for trust law purposes to which that beneficiary is presently entitled.¹³ In this case, a beneficiary who is presently entitled to 10% of the trust’s trust law income will be entitled to 10% of the taxable income of the trust (including any excess over accounting income attributable to taxation adjustments such as addbacks for non-deductible items). The proportionate approach is now generally accepted as being the correct approach.¹⁴

Legal disability

A person under a legal disability may be presently entitled to income. In *Taylor v FCT* Kitto J stated:¹⁵

“... a beneficiary may be ‘presently entitled’ to income notwithstanding that he is under a legal disability. A disability from what? Since the consequence which the section attaches to the disability is that the trustee is to be assessed instead of the beneficiary the inference is clearly that the disability is from obtaining from the trustee income to which the beneficiary is presently entitled. It is therefore impossible to suppose that the learned Judges who decided *Whiting’s* case meant that a person whose title to a specific amount of income is absolute but who

is under a disability from obtaining payment of it is for that reason to be held not 'presently entitled' to it... 'presently entitled' refers to an interest in possession in an amount of income that is legally ready for distribution so that the beneficiary would have a right to obtain payment of it were he not under a disability."

A legal disability is one that stems from the legal (as opposed to physical) status of the beneficiary. Minors, bankrupts and mentally incapacitated persons fall into this class of persons.¹⁶

ASSESSMENT UNDER SECTION 98(1)

Introduction

When a trustee is assessed under s 98(1), the trustee's duty is to do all things required by the tax law in relation to the income received by the trustee on behalf of the beneficiary.¹⁷

The trustee must lodge an income tax return in respect of the testamentary trust even though the trust is not assessed as if it were an entity. The taxation liability in respect of the net income of the testamentary trust is then imposed on either the trustee in a representative capacity and/or the beneficiaries in respect of their respective proportions of the trust's income.

When the trustee is assessed under s 98(1), the trustee is liable for tax on the beneficiary's proportionate share of the net income of the trust.

The procedures to be undertaken by a trustee of a testamentary trust who is to be assessed under s 98(1) can be summarised as follows:

- Step 1 – determine the "income" of the trust estate for trust law purposes;
- Step 2 – determine the "net income" of the trust estate for tax purposes under s 95;
- Step 3 – determine whether beneficiaries are presently entitled to the income calculated under step 1 and attribute to those beneficiaries the proportion of the net income to which they are entitled;
- Step 4 – identify any beneficiaries who are presently entitled but under a legal disability;

- Step 5 – complete the income tax return for the trust estate; and
- Step 6 – retain and pay tax on behalf of the beneficiary under a legal disability (as well as the portion of the net income to which no beneficiary is presently entitled).

The considerations associated with steps 1 to 4 have been discussed above. Steps 5 and 6 are discussed below.

Practical aspects of completing the income tax return – step 5

The ATO's guidance on this subject is contained in the *Partnership and Trust Tax Returns Instructions 2009* (Appendix 10).¹⁸

Where the trustee of a testamentary trust is assessed under s 98(1), the trustee is required to undertake the following three tasks (in addition to completing the income tax return for the trust as usual):

1. Answering Part B of the questions provided in Appendix 10

Appendix 10 provides that if any part of the trust income is "excepted income" under Div 6AA, the trustee must answer Part B of the questions provided in Appendix 10 and retain the answers to those questions with the trust's tax records.¹⁹

These questions basically require the trustee to allocate the excepted income according to the source of derivation based on the categories of income listed in s 102AG(2).

2. Disclosing "excepted income"

The trustee is also required to disclose the amount of the "excepted income".²⁰ For the 2008-09 income year, this amount is to be disclosed in the trust's income tax return at item 14 ("Other Australian Income") in the label "excepted net income".²¹

3. Statement of distributions

The trustee is also required to attach a statement to the trust's income tax return detailing the distribution of excepted income to each recipient beneficiary.²²

Assessment of the trustee

All deceased estates and testamentary trusts are required to obtain a Tax

File Number and lodge tax returns.

The deceased estate and testamentary trust may also have to apply for an Australian Business Number if conducting an enterprise. If the trustee is not liable for any tax, the ATO can be requested to provide a "non-taxable advice".

The trustee's liability under s 98(1) is in a representative capacity²³ and the assessment is issued to the trustee as trustee on behalf of the minor beneficiary.²⁴ The trustee is empowered to retain an amount sufficient to pay tax which is or will become due in respect of the income, profits or gains of the trust estate²⁵ as a means of facilitating the payment of the tax liability. The trustee is personally liable for the tax payable in respect of the income, profits or gains to the extent of any amount that he has retained, or should have retained pursuant to s 254(1)(d), but is not otherwise personally liable for the tax.²⁶

The trustee is to be assessed on that share of the net income attributable to the individual interest of the beneficiary separately from any other shares of the net income of the trust, and where there is more than one beneficiary on whose behalf the trustee is assessed under s 98(1), the assessments and calculation of tax payable are performed separately in respect of each corresponding share of the net income of the trust.²⁷ Further, amounts assessable under s 98 are not aggregated with any assessment issued to the trustee under ss 99 or 99A, as these sections are intended to be complementary and mutually exclusive.²⁸

If the beneficiary does not derive any other income apart from income dealt with under s 98(1), the assessment to the trustee under s 98(1) will finalise the tax assessment in respect of that income.²⁹

Assessment of the beneficiary

The ATO has stated in *Taxation Determination TD 92/159* that a beneficiary is not required to lodge an income tax return or pay tax where the distribution from the trust is the beneficiary's only source of income. The trustee is then eligible for all tax offsets³⁰ to which the beneficiary would have been entitled including concessional rebates (which are not available if the assessment were under s 99³¹) and to a refund of excess franking credits under s 67-25 ITAA97. Additionally,

the Medicare levy³² is payable on that part of the trust income that is assessed to the trustee.³³

Where the beneficiary is a beneficiary of more than one trust estate or derives income from any other source (such as salary and wages), the beneficiary must complete an income tax return disclosing the income from each such source.³⁴ The beneficiary will be provided a credit in the beneficiary's personal assessment for the tax paid by the trustee pursuant to s 98(1).³⁵

Payment of tax – step 6

The final task required of the trustee is payment of tax on behalf of the beneficiaries under a legal disability (as well as on the portion of the income to which no beneficiary is presently entitled).

TAXATION LIABILITY OF MINOR BENEFICIARIES

Division 6AA imposes tax on a "prescribed person" that is not an "excepted person" at the minor beneficiary's special tax rates in respect of the net income of the trust that is not "excepted trust income".³⁶

A minor (that is, under the age of 18 years) is a "prescribed person".³⁷ A minor is not a prescribed person if an excepted person (that is, engaged in full-time employment, is in receipt of or the subject of certain *Social Security Act 1991* (Cth) benefits or is medically certified as permanently disabled and unlikely to be engaged in a full-time occupation).

If Div 6AA applies, other than for a nominal tax free amount³⁸ the minor beneficiary is liable to pay tax at the highest individual marginal tax rate³⁹ on the beneficiary's share of the net income of the trust estate that is not excepted trust income.

The Div 6AA minor beneficiary's special tax rates only apply to the minor beneficiary's share of the net income of the trust that is not "excepted trust income" in relation to that beneficiary.⁴⁰ Excepted trust income is taxed at the beneficiary's marginal tax rates (adult rates).

An amount included in the assessable income of a trust estate is "excepted trust income" in relation to a beneficiary to the extent to which the amount was derived from the situations detailed in s 102AG(2), including where the amount is:

1. assessable income of the trust estate that resulted from a will, codicil or court order that varied or modified the provisions of a will or codicil;⁴¹ or
2. derived by the trustee from the investment of property that devolved for the benefit of the beneficiary from a deceased estate.

Accordingly, s 102AG(2) will preclude Div 6AA from operating where a minor beneficiary derives income through a testamentary trust. In this situation, s 98(1) will operate to tax the trustee on the minor beneficiary's share of the net income of the testamentary trust at the beneficiary's marginal tax rates (adult rates).

The following example illustrates the tax saving that the use of a testamentary trust can have where there are minor beneficiaries.

Example⁴²

Amy is a 15 year old beneficiary of a testamentary trust established under her father's will. For the 2008/09 income year the share of the net income of the trust to which she is presently entitled is \$20,000. The Trustee of the testamentary trust will be liable under Part 1 of Schedule 7 of the *Income Tax Rates Act 1986* for tax of \$2,100 (\$20,000 – \$6,000 x 15%) on her behalf. If the trust were an ordinary discretionary trust, the trustee's tax liability would be assessed under s 13(2) of the *Income Tax Rates Act 1986* at approximately \$9,000 (\$891 x 66% + \$18,693 x 45%). The use of the testamentary trust has enabled a tax saving of approximately \$6,900.

CONCLUSION

The taxation of a deceased estate and a testamentary trust is often complex. Whilst s 98(1) imposes additional duties on the trustee in respect of minor beneficiaries and other beneficiaries under a legal disability, as the above example illustrates, the use of a testamentary trust can result in significant taxation advantages where there are minor beneficiaries.

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Reference notes

- 1 *FCT v Whiting* (1943) 68 CLR 199.
- 2 *Section 98(1)*.
- 3 *Section 98(2)*.
- 4 *Section 98(3)*.

5 *Sections 99 and 99A*.

6 *Section 96*.

7 *Except deductions under Schedule 2G and in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate, or in respect of any life tenant, and the deductions allowable under Div 36 ITAA97 in respect of such of the tax losses of previous years as are required to be met out of corpus – refer s 95.*

8 *FCT v Whiting* (1943) 68 CLR 199 at 214-216; *Harmer v FCT* (1991) 173 CLR 264; *Richardson v FCT* 46 ATR 285

9 (1992) 92 ATC 4192 at 4202.

10 *Cajkusic v FCT* (No. 2) 2006 ATC 4752 at 4758; *Bamford v FCT* [2009] FCAFC 66 (subject to special leave to appeal). See also Wickenden, N., *Effective Trust Distributions: Get Them Right*, Taxation Institute of Australia 2008 Annual Tax Forum, Sydney, 2008, pp. 5-6.

11 *Merkel J in Richardson v FCT* (1997) 80 FCR 58.

12 *Jorgensen, R., Administration of SME Trusts*, Taxation Institute of Australia 2009 National Convention, Sydney, 2009, p.7.

13 *Finkelstein J in Richardson v FCT* (2001) 46 ATR 285 at 287.

14 *Cajkusic v FCT* (No. 2) (2006) ATC 4752 at 4758 and *Bamford v Commissioner of Taxation* [2009] FCAFC 66 (subject to special leave to appeal).

15 (1970) 70 ATC 4026 at 4029-4030; see also *Taxation Ruling IT 319*.

16 *Cassidy, J., Concise Income Tax, 4th edn*, The Federation Press, Sydney, 2007, p. 407.

17 *ATO Private Binding Ruling Authorisation Number 5763*.

18 "Instructions To Trustees Where Beneficiary Is Under 18 Years Of Age – Other Than Trustees Of Deceased Estates".

19 *ATO Partnership and Trust Tax Returns Instructions 2009*, Page 117.

20 *Excluding any net capital gains disclosed at Label A Net Capital Gain item 21 – refer ATO Partnership and Trust Tax Returns Instructions 2009*, p.55.

21 *ATO Partnership and Trust Tax Returns Instructions 2009*, p.57.

22 *ATO Partnership and Trust Tax Returns Instructions 2009*, pp 55 and 118.

23 *Section 254(1)(a)*.

24 *Stewart, M., Flynn, M., & Kreyer, R., Death & Taxes Tax-effective Estate Planning*, Thomson ATP, Sydney, 2004, at [8 070]; see also <www.taxpoint.com.au> [95/0150].

25 *Section 254(1)(d)*.

26 *Section 254(1)(e)*.

27 <www.taxpoint.com.au> [95/0405].

28 *ibid*

29 <www.taxpoint.com.au> [95/0405].

30 *Such as the private health insurance tax offset*.

31 *Section 159H(1)(b)*.

32 *Such as the Medicare levy or the Medicare levy surcharge*.

33 *Section 251S(1)(b)*.

34 *Section 100(1)*.

35 *Section 100(2)*.

36 *Section 102AG(1)*.

37 *Section 102AC(1)(a)*.

38 \$416 for the 2008-09 year of income – refer s 13 and Schedule 11 of the *Income Tax Rates Act 1986*.

39 45% for the 2008-09 year of income – refer s 13 and Schedule 11 of the *Income Tax Rates Act 1986*.

40 *Section 102AG(1)*.

41 *Section 102AG(2)(1)(a)(i)*.

42 *The low income tax offset will be increased to \$1,350 from 1 July 2009 which means the effective tax free threshold for taxpayers eligible for the full low income tax offset will increase from \$14,000 to \$15,000 (Assistant Treasurer Media Release No. 10 (30 June 2009)*.