

WHITE zone

This is aimed at pre-1 July 2014 arrangements. The ATO will not look into these arrangements unless it is part of an ongoing investigation, for arrangements that continue after this date, or where the trust and beneficiaries failed to lodge tax returns by 1 July 2017.

GREEN zone

Green zone arrangements are low risk arrangements and are unlikely to be reviewed by the ATO, assuming the arrangement is properly documented. For example, the ATO suggests that when a trust appoints income to an individual but the funds are paid into a joint bank account that the individual holds with their spouse then this would ordinarily be a low-risk scenario. Or, where parents pay for the deposit on an adult child's mortgage using their trust distribution and this is a one-off arrangement.

BLUE zone

Arrangements in the blue zone might be reviewed by the ATO. The blue zone is basically the default zone and covers arrangements that don't fall within one of the other risk zones. The blue zone is likely to include scenarios where funds are retained by the trustee, but the arrangement doesn't fall within the scope of the specific scenarios covered in the green zone.

Section 100A does not automatically apply to blue zone arrangements, it just means that the ATO will need to be satisfied that the arrangement is not subject to section 100A.

RED zone

Red zone arrangements will be reviewed in detail. These are arrangements the ATO suspects are designed to deliberately reduce tax, or where an individual or entity other than the beneficiary is benefiting.

High on the ATO's list for the red zone are arrangements where an adult child's entitlement to trust income is paid to a parent or other caregiver to reimburse them for expenses incurred before the adult child turned 18. For example, school fees at a private school. Or, where a loan (debit balance account) is provided by the trust to the adult child for expenses they incurred before they were 18 and the entitlement is used to pay off the loan. These arrangements will be looked at closely and if the ATO determines that section 100A applies, tax will be applied at the top marginal rate to the relevant amount and this could apply across a number of income years.

The ATO indicated that circular arrangements could also fall within the scope of section 100A. For example, this can occur when a trust owns shares in a company, the company is a beneficiary of that trust and where income is circulated between the entities on a repeating basis. For example, section 100A could be triggered if:

- The trustee resolves to appoint income to the company at the end of year 1.
- The company includes its share of the trust's net income in its assessable income for year 1 and pays tax at the corporate rate.
- The company pays a fully franked dividend to the trustee in year 2, sourced from the trust income, and the dividend forms part of the trust income and net income in year 2.
- The trustee makes the company presently entitled to some or all of the trust income at the end of year 2 (which might include the franked distribution).
- These steps are repeated in subsequent years.

Distributions from a trust to an entity with losses could also fall within the red zone unless it is clear that the economic benefit associated with the income is provided to the beneficiary with the losses. If the economic benefit associated with the income that has been appointed to the entity with losses is utilised by the trust or another entity then section 100A could apply.