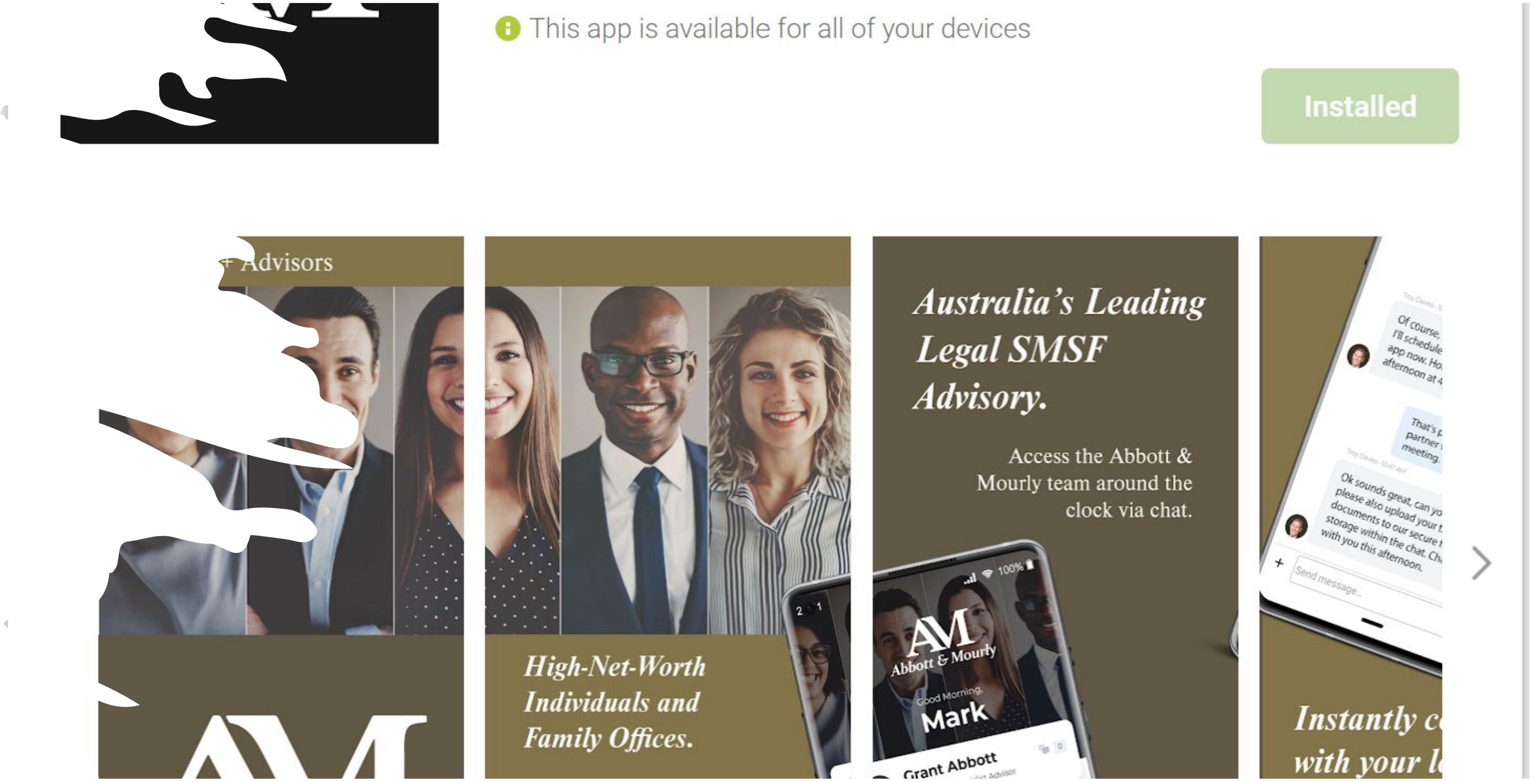
Trust Distributions – 30 June or ELSE!

If you need legal help

- The provision of tax advice is our specialty
- Abbott & Mourly can provide sign off on any LightYear documents with a legal letter of advice if you are concerned
- Download the Abbott & Mourly app and send the query or document in or you can do inside the document



What happens if you make a 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 the trustee will be assessed on the trust's net (taxable) income.

Can Trustees do it themselves? ATO requirements?

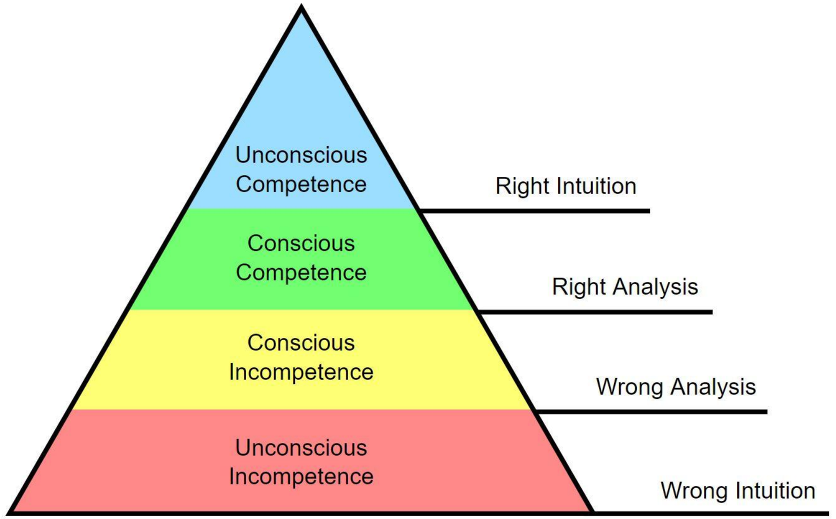
Do you have a complete copy of the trust deed?

Make sure you have a complete copy of the 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 thetrust) 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.



Hierarchy of Competence

Does a resolution have to be in writing?

Whether the resolution must be recorded in writing will depend on the terms of ythe trust deed. However, a written record will provide better evidence of the resolution and avoid a later dispute, for example with the ATO or with relevant beneficiaries, as to whether any resolution was made.

A written record will be essential if the Trustee wants to effectively stream capital gains or franked distributions for tax purposes. This is because a beneficiary can only be specifically entitled to franked dividends or capital gains if this entitlement is recorded in writing in the records of the trust either:

- by 30 June for franked dividends
- by 31 August for capital gains.

A beneficiary cannot be made specifically entitled to a capital gain included in the income of the trust estate after 30 June if, as a result of the operation of the trust deed, another beneficiary (including a default beneficiary) was presently entitled to it before that date.

How should you calculate and report the income of the trust?
Watch out for pre-Bamford Trusts!

Make sure you understand how the income of the trust is calculated and that the resolution reflects this – for example, if the deed defines the income of the trust to be an amount equal to the trust's net (taxable) income, the resolution should not then seek to appoint accounting income.

If the trust deed equates the trust's income with its net (taxable) income, you should note the ATO's view (set out in <u>Draft Taxation Ruling TR 2012/D1</u>) that income cannot generally include notional amounts such as franking credits.

The income of the trust needs to be reported on the trust tax return, along with each beneficiary’s share of that income. This requirement is in addition to reporting the net (taxable) income of the trust and each beneficiary's share of that net (taxable) income. We use this additional information to check each beneficiary’s share of the trust’s net (taxable) income and to consider whether anti-avoidance provisions may apply.

Division 7A Loan Issues for Company Beneficiaries

SUM CERTAIN

Timeline - present entitlement to a sum certain

27/6/2023	*Private company beneficiary becomes presently entitled to $10,000.*
*31/3/2024**	*The trustee discharges its obligation in respect of the UPE. The private company beneficiary and the trustee enter into a new loan that meets the requirements of a complying loan agreement by this date.*
30/6/2024	*The first minimum yearly repayment under the complying loan agreement is due by this date.*

**Date may be different depending on the lodgment day of the private company beneficiary's tax return.*

PERCENTAGE

Timeline - present entitlement to a percentage share

30/6/2023	*Private company beneficiary becomes presently entitled to 100% of trust income.*
*1/8/2023**	*The income of the trust is determined. The private company beneficiary provides financial accommodation to the trustee.*
*15/5/2025***	*The trustee discharges its obligation in respect of the UPE. The private company beneficiary and the trustee enter into a new loan that meets the requirements of a complying loan agreement by this date.*
30/6/2025	*The first minimum yearly repayment under the complying loan agreement is due by this date.*

**Date may be different depending on when the income of the trust is determined for the 2022-23 income year.*

***Date may be different depending on the lodgment day of the private company beneficiary's tax return.*

Section 100A and Adult Children – ATO Alert

- The trustees of a discretionary trust (Trust), or the directors of a corporate trustee, are either one or two individuals who are the parents in a particular family (Parents).
- Income derived by the Trust is used during the year of derivation to meet the expenses of the Parents. These may be recorded as beneficiary loans made from the trustee to the Parents throughout the year.
- Resolutions of the trustee for the year show one or more of the Children presently entitled to a share of the income of the Trust.
- The entitlements are for substantial amounts but do not generally result in the Children's taxable income exceeding the threshold for the top marginal tax rate ($180,000).
- Amounts are not paid to the Children. Rather, at the actual or purported direction of the Children, the entitlements are satisfied by the amounts being either:
  - paid to their Parents, or
  - applied against any beneficiary loans owed by the Parents.

Section 100A and Adult Children – ATO Alert

- The parties contend that the entitlements are paid or applied in this manner because:
  - the Children are required to repay their Parents for expenses incurred in relation to their upbringing or while they were minors (for example, school fees, school uniform costs or their share of the family holidays)
  - the Children are required to pay or repay their Parents amounts to meet their share of family costs for the current year in excess of amounts it would reasonably be expected an adult child would meet for their personal living expenses while they remain living at home or otherwise supported to some extent by their Parents (those amounts being, for example, a reasonable rate for their board, lodgings or rent if living away from home, or car expenses), or
  - there is an agreement that the Parents will manage the pooled family members' entitlements from the Trust for the benefit of the family members.
- There is no expectation or understanding that the Children's income they derive from sources other than the Trust distributions will be used to either repay their Parents for expenses incurred when they were a minor or pay more than their reasonable share of the household expenditures, or be placed in a pool to be managed by the Parents for the benefit of the family members.