

# CHILD MAINTENANCE TRUSTS

Dan Bottrell

Jones Mitchell Lawyers

Southport, Gold Coast, QLD

[www.jonesmitchell.com.au](http://www.jonesmitchell.com.au)



# Income Tax Assessment Act 1936 – Section 102AG

- ▶ (2) Subject to this section, an amount included in the assessable income of a trust estate is excepted trust income in relation to a beneficiary of the trust estate to the extent to which the amount:
  - ...
- ▶ (c) is derived by the trustee of the trust estate from the investment of any property transferred to the trustee for the benefit of the beneficiary:
  - ...
- ▶ (viii) as the result of a family breakdown (see section 102AGA);..."

*Illustration:* Tax outcome in respect of a payer who is on the top marginal tax rate, with a child support obligation of \$20,000 per annum

	Without a CMT	With a CMT	Potential Annual Saving
Gross income required to fund \$20,000 PA child support	37,736	20,423	-
Tax Payable	(17,736)	(423)	17,313
Required child support	20,000	20,000	17,313

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(viii) as the result of a family breakdown (see section 102AGA);

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(2A) **Paragraph (2)(c) or subparagraph (2)(d)(ii) does not apply unless the beneficiary of the trust concerned will, under the terms of the trust, acquire the trust property (other than as a trustee) when the trust ends.**

## TR 98/4, paragraph 33:

*"Accordingly, the child must, under the terms of the trust, acquire the trust property other than as a trustee when the trust ends. Moreover, the property must pass into the child's estate, should the child die before the trust ends. However, the trust property can be applied for the child's benefit during the trust; for example, in the most extreme case, the trust property can be applied to acquire a term annuity for the child. In such cases, the trust property may be reduced over the period of the trust, but the child is still to acquire any trust property remaining when the trust ends."*

# Income Tax Assessment Act 1936 – Section 102AGA

...

(2) The transfer will be as the result of a family breakdown if:

(a) a person ceases to live with another person as the spouse of that person; and

(b) at least one of the persons:

(i) is the parent; or

(iv) has legal custody or guardianship;

of the minor or the beneficiary; and

(c) an order, determination or assessment of a court, person or body (whether or not in Australia) is made wholly or partly because the person has ceased to live as the spouse of the other person; and

(d) the effect of the order, determination or assessment is that a person (whether one of the spouses, the transferor or any other person) becomes subject to a legal obligation to maintain, transfer property to, or do some other thing for the benefit of, the minor or beneficiary or one of the spouses; and

(e) the transferor transfers the subject property to the minor, or to the trustee for the benefit of the beneficiary, in giving effect to the legal obligation (including in discharging the legal obligation if it falls on someone else, and whether or not the legal obligation could have been given effect in some other way).

(3) The transfer will also be as a result of a family breakdown if:

(a) when the minor or beneficiary is born, his or her parents are not living together as spouses; and

(b) an order, determination or assessment of a court, person or body (whether or not in Australia) is made wholly or partly because the parents are not living together as mentioned in paragraph (a); and

(c) the effect of the order, determination or assessment is that a person (whether one of the parents, the transferor or any other person) becomes subject to a legal obligation to maintain, transfer property to, or do some other thing for the benefit of, the minor or beneficiary or one of the parents of the minor or beneficiary; and

(d) the transferor transfers the subject property to the minor, or to the trustee for the benefit of the beneficiary, in giving effect to the legal obligation (including in discharging the legal obligation if it falls on someone else, and whether or not the legal obligation could have been given effect in some other way).

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- (c) the effect of the order, determination or assessment is that a person (whether one of the parents, the transferor or any other person) becomes subject to a legal obligation to maintain, transfer property to, or do some other thing for the benefit of, the minor or beneficiary or one of the parents of the minor or beneficiary; and
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## Income Tax Assessment Act 1936 - Section 102AG

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- (3) Subject to subsection (4), if any 2 or more parties to:
- (a) the derivation of the excepted trust income mentioned in subsection (2); or
  - (b) any act or transaction directly or indirectly connected with the derivation of that excepted trust income;

were not dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction, the excepted trust income is only so much (if any) of that income as would have been derived if they had been dealing with each other at arm's length in relation to the derivation, or in relation to the act or transaction.

### TR 98/4, paragraph 76:

*"The relevant question in determining the arm's length return is how much return would be expected if all parties were dealing at arm's length in relation to the return on the unit. For instance, if there was only a nominal amount of property subscribed for the unit, the arm's length income for the unit is nominal or zero".*

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# Common Child Maintenance Trust Arrangement

