Trust Tax Return Preparation Checklist 2024

# Trust Tax Return Preparation Checklist 2024

This checklist will assist public practice members in discharging their obligations in preparing 2024 trust tax returns.

This checklist should be completed in conjunction with the preparation of tax reconciliation return workpapers.

The checklist provides a general list of major issues that should be addressed but is not designed to be an exhaustive list of all issues that may warrant consideration.

This information is based on legislation current as 30 May 2024.

**About the author**

This checklist was prepared by SW Accountants and Advisors on behalf of CPA Australia.

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| ENTITY’S NAME |  |

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| **PRIOR YEAR TAX RETURN CONSIDERATIONS** | **YES** | **NO** | **N/A** |
| Has last year’s tax return been checked for reversing timing differences (e.g. accruals and prepayments)? |  |  |  |
| Has last year’s tax return been checked for recurring timing differences that may need considering in the current year (e.g. amortisation of computer software development pool or blackhole expenditure deductible in accordance with section 40-880 of the *Income Tax Assessment Act 1997 (ITAA 1997))*? |  |  |  |
| Has last year’s tax return been checked for tax losses and capital losses carried forward to the current income year? |  |  |  |
| Have you checked the prior year action sheet for prior year carry forward issues? |  |  |  |
| Comments: | | | |

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| **STATEMENT OF FINANCIAL POSITION (BALANCE SHEET)** | **YES** | **NO** | **N/A** |
| GENERAL | | | |
| Have all balance sheet items been reviewed (e.g. deductibility of consumable stores, asset write-offs, assessability of deferred income, tax treatment of bills of exchange etc.)? |  |  |  |
| Have all movements in provisions been adjusted for (e.g. provision for annual leave, provision for long service leave, provision for obsolete stock, provision for doubtful debts, provision for warranties etc.)? |  |  |  |
| Have sundry creditors been reviewed for accruals / provisions which have not been legally incurred by year end and for non-deductible accrued expenditure (e.g. accrued audit expenditure under Taxation Ruling IT 2625 and accrued superannuation expenditure)? |  |  |  |
| Have sundry debtors been reviewed for prepayments and accrued income (e.g. interest receivable) requiring tax adjustments? |  |  |  |
| Has accrued Fringe Benefits Tax (FBT) been correctly calculated on the basis that a deduction is being claimed for the FBT instalment referable to the June 2024 quarter and an amount added-back of the FBT instalment referable to the June 2023 quarter if claimed in the prior year (as per Taxation Ruling TR 95/24)?  For more information refer to CPA Australia’s [2024 FBT checklist](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cpaaustralia.com.au%2F-%2Fmedia%2Fproject%2Fcpa%2Fcorporate%2Fdocuments%2Ftools-and-resources%2Ftaxation%2F2024-year-end-resources-au%2F2024-fbt-checklist-marked-up-changes.docx%3Frev%3D6f479662b83f492ca7377408dd4360ce&wdOrigin=BROWSELINK). |  |  |  |
| DIVISION 7A | | | |
| Consider whether the trust has an unpaid present entitlement (UPE) owing either to a private company or to another trust where there is an unbroken chain of UPEs owing to a private company during the year ended 30 June 2023.  Will the UPE payable be regarded as a loan for Division 7A purposes? |  |  |  |
| Does the loan satisfy any of the exemptions under Division 7A (including being treated as an excluded loan) or is the deemed dividend reduced or eliminated because of the company’s distributable surplus or because it has been repaid before the lodgement day?  For trust entitlements arising before 1 July 2022, has it been put on a sub trust which complies with:   * Taxation Ruling TR 2010/3, and * Practice Statement PS LA 2010/4   For trust entitlements on or after 1 July 2022, has Taxation Determination TD 2022/11 been complied with?  **Note:** TR 2010/3 and PS LA 2010/4 will continue to apply to trust entitlements arising before 1 July 2022. For trust entitlements arising on or after 1 July 2022, reference should be made to Taxation Determination TD 2022/11.  The Tribunal’s decision in ***Bendel and Commissioner of Taxation [2023] AAT 3074*** treated UPEs as not being a loan under s109D(3). However, an appeal has been lodged by the Commissioner and the ATO will administer Division 7A in accordance with their views in TD2022/11 until the appeal process finalises. The case is to be listed before the Full Federal Court no earlier than August 2024.  Refer to CPA Australia’s [2024 Division 7A and Division 7A: UPE checklists](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) for more information. |  |  |  |
| Where the trust has a pre-16 December 2009 UPE or has put a post 16 December 2009 UPE on sub trust terms in compliance with PS LA 2010/4, you should consider the application of Subdivision EA of the Income Tax Assessment Act 1936 (ITAA 1936) - where the trustee makes any loan, payment or forgives a debt in favour of shareholders or associates of the private company.  Please refer to CPA Australia’s [2024 Division 7A: UPE checklist](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) for further information. |  |  |  |
| PREPAYMENTS | | | |
| Have all prepayments of less than $1,000 (GST exclusive) been claimed as an immediate tax deduction? |  |  |  |
| Have all prepayments required to be made by a Commonwealth, State or Territory law or under an order of a court (e.g. prepaid WorkCover expenditure) been claimed as an immediate tax deduction? |  |  |  |
| Have all prepayments of more than $1,000 (GST exclusive) which were not required to be made under a Commonwealth, State or Territory law or a court order been capitalised and apportioned over the eligible service period to which the prepayment relates? |  |  |  |
| Where the trust is a Small Business Entity (SBE) or medium business entity, is an immediate deduction available under the 12-month rule where the eligible service period is 12 months or less?  For prepayments made from 1 July 2023, an entity will be regarded as an SBE for the year ended 30 June 2024 if it carries on business in the 2024 year, and its aggregated turnover was less than $50 million for the year ended 30 June 2023 or its aggregated turnover is likely to be less than $50 million in the 2024 year. The aggregated turnover test not only requires the calculation of the taxpayer’s annual turnover but also that of any affiliate or entity connected with the taxpayer at any time during the year. |  |  |  |
| TRADING STOCK | | | |
| Does the trust have trading stock? |  |  |  |
| Does the opening balance of trading stock for tax purposes agree with the closing balance of trading stock in last year’s income tax return? |  |  |  |
| Is the closing stock valuation method adopted by the trust acceptable for both accounting and tax purposes?  If not, can the tax valuation be justified and is it adequately documented?  Should the valuation method be reviewed to either defer or bring forward assessable income?  Consider the benefits of revaluing closing value of trading stock at year end using the lower of cost, market selling value or replacement value if seeking to reduce taxable income. This choice is available in relation to each item or category of trading stock. |  |  |  |
| Has the trust disposed of any trading stock outside the normal course of business?  If so, has the market value of the trading stock on the day of the disposal been included in the trust’s assessable income, in accordance with section 70-90 of the *ITAA 1997*? |  |  |  |
| Where stock is valued at cost price, is a full absorption costing basis being used? |  |  |  |
| Has a review been conducted to identify whether any stock is obsolete? (see Taxation Ruling TR 93/23) |  |  |  |
| Has the treatment of goods-in transit and consignment stock been considered in the valuation of trading stock? |  |  |  |
| Has a deduction been claimed for consumable stores on hand at balance date? |  |  |  |
| INTELLLECTUAL PROPERTY | | | |
| Have you considered the depreciation rules for certain intellectual property (e.g. certain patents and copyrights) under section 40-95(7) of the *ITAA 1997*? |  |  |  |
| **Comments:** | | | |

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| **STATEMENT OF COMPREHENSIVE INCOME (PROFIT AND LOSS)** | **YES** | **NO** | **N/A** |
| GENERAL | | | |
| Have all income and expense reconciliation adjustments been identified to ensure that the total net income for book and tax purposes are reconciled and correctly calculated? |  |  |  |
| Have expenses in the detailed profit and loss statement been reviewed generally for non-deductible items (e.g. for non-deductible entertainment, private expenses, donations made to entities who are not eligible gift recipients, subscriptions to private publications, capital legal expenses etc.)? |  |  |  |
| Have operating and / or finance leases and hire purchase agreements been properly treated for tax purposes? |  |  |  |
| For interest claimed, has the deductibility of the interest been considered in light of the use of borrowed funds? |  |  |  |
| Have all timing differences been identified including foreign exchange gains and losses, having regard to Division 775 for trusts not subject to the Taxation of Financial Arrangements (TOFA) and to Division 230 for those trusts that are subject to TOFA? |  |  |  |
| If the ATO notified you of a Shortfall Interest Charge (SIC) or General Interest Charge (GIC) liability, has this been claimed as a deduction? |  |  |  |
| Have penalties paid (excluding GIC or SIC) to the ATO, or as otherwise charged under an Australian or foreign law, been treated as non-deductible and interest received from the ATO brought to account as assessable income? |  |  |  |
| Has the tax treatment of discounts on short-term securities (e.g. bills of exchange, promissory notes) been considered? |  |  |  |
| Has interest received been grossed up for any Tax File Number (TFN) withholding tax deducted and a credit claimed in respect of the amount deducted? |  |  |  |
| Has the trust derived income that is exempt from tax or which is non-assessable non-exempt income (e.g. non-portfolio foreign dividends received by a resident company )? |  |  |  |
| Have you considered if any of the income recorded in the accounts could or should be regarded as unearned income in accordance with the principle in Arthur Murray and therefore should not be included in income for the current year?  Review any deferred income or other creditors shown in the balance sheet to ensure that there is no income which needs to be recognised as being derived for income tax purposes applying the principle in *Arthur Murray (NSW) Pty Ltd v FCT (1965) 114 CLR 314.* |  |  |  |
| For travel expenses, have travel diaries been kept (where applicable) along with other supporting documentation Taxation Ruling TR 2021/4? |  |  |  |
| Has the timing of income and expenditure been considered for long-term construction contracts (if applicable), having regard to Taxation Ruling TR 2018/3? |  |  |  |
| Has the potential deductibility of expenditure which has been capitalised for accounting purposes (e.g. capitalised interest) been considered? |  |  |  |
| Are management fees / consultancy fees paid to related entities calculated on an arm’s length basis and supported by appropriate documentation? |  |  |  |
| **GENERAL** | | | |
| Where the trust is carrying on a professional services business does it have a service entity, and is the service fee charged deductible under section 8-1 of the *ITAA 1997* in accordance with the principles set out in Taxation Ruling TR 2006/2?  ATO guidance [‘Your service entity arrangements’](https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/income-and-deductions-for-business/in-detail/service-entities/faqs-on-service-entity-arrangements)provides practical guidance as to whether the fees charged under a service arrangement are commercially realistic and reasonably connected to the business carried on by the professional practice including a range of ‘safe harbour’ commercial rates that could be applied as a mark-up on the cost of providing particular services. |  |  |  |
| Has the holding period rule been considered in respect of franking credits received? That is, have ordinary (preference) shares been held at risk for at least 45 (90) days?  Where appropriate, has a family trust election been lodged in order to comply with the holding period rule?  If no election has been lodged, can beneficiaries of such trusts potentially rely on the small shareholder exception to access franking credits? |  |  |  |
| Payments made or non-cash benefits provided on or after 1 July 2019 to an employee, director, religious practitioner or under a labour hire agreement are not deductible if the payer fails to withhold (or in the case of a non-cash benefit pay an amount), under the PAYG withholding system or fails to notify the ATO where required to do so. |  |  |  |
| **Limiting deductions associated with holding vacant land**  Taxpayers who incur costs in respect of holding vacant land, such as interest, land tax, council rates and maintenance costs, will not be eligible to claim a deduction unless the taxpayer is an ‘excluded entity’ or the property is used in carrying on a business as prescribed in the legislation.  Disallowed deductions may form part of the cost base of the vacant land for CGT purposes.  *Excluded entities*  The following taxpayers are excluded from these rules and can continue to claim deductions for the holding costs:   * corporate tax entities * managed investment trusts * superannuation funds (other than SMSFs) * public unit trusts * unit trusts or partnerships of which all the members are entities mentioned above.   *Carrying on a business*  A taxpayer that is not an excluded entity may be allowed a deduction for the holding costs if:   * the vacant land is used (or available to use) in a business carried on by the taxpayer (or related or affiliated entity) for the purpose of gaining or producing assessable income * the vacant land is vacant because of a natural disaster or exceptional circumstances * the taxpayer (or related or affiliated entity) carries on a primary production business on the vacant land or * the land is leased or hired (under an arm’s length dealing) and is used or available for use in carrying on a business. |  |  |  |
| DECLINE IN VALUE (DEPRECIATION) | | | |
| Have you ensured this year’s tax opening adjustable value balance agrees to last year’s closing adjustable value? |  |  |  |
| Has the effective life of new acquisitions been reviewed applying Taxation Ruling [TR 2022/1](https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/depreciation-and-capital-expenses-and-allowances/in-detail/effective-life/capital-allowances-effective-life-determinations-rulings-and-law)?  Is there merit in self-assessing the effective life of any acquired depreciating assets during the year (and, if so, has any documentation been retained to justify any shorter effective life applied, and disclosure been made in the return)? In determining whether to self-assess the effective life be mindful of assets where this is not allowable, e.g. certain intangible assets in section 40-95(7) of the *ITAA 1997.* |  |  |  |
| Have improvements to depreciating assets expensed for accounting purposes as repairs, been capitalised for tax purposes, and included as additions to the tax fixed assets schedule and depreciated? |  |  |  |
| Have additions been reviewed to ensure depreciation has been correctly claimed on depreciating assets? Have additions for accounting and tax purposes been reconciled? |  |  |  |
| For construction of new income-producing buildings or for building extensions, alterations, or improvements, is a capital works deduction available under Division 43 of the *ITAA 1997*? Can the trust write-off the cost of any structural improvements or environment protection earthworks under Division 43 of the *ITAA 1997*? |  |  |  |
| Do repairs to buildings which have been expensed for accounting purposes constitute alterations, improvements or extensions to existing buildings which would be capital (non-deductible) in nature and constitute deductible capital works expenditure under Division 43 of the *ITAA 1997*? |  |  |  |
| Is capital expenditure relating to buildings being correctly claimed at the rate of 2.5% or 4% (which will differ depending on when the construction expenditure was incurred and whether it relates to industrial buildings)? |  |  |  |
| Has ‘scrapped’ plant and equipment (for which a deduction has been claimed) been physically scrapped, or set aside for scrapping, during the year?  Has any salvage value been included in assessable income? |  |  |  |
| Has the trust stopped using a depreciating asset which has not otherwise been sold or physically scrapped during the 2023 year, in which case a balancing adjustment deduction may be available? |  |  |  |
| **DECLINE IN VALUE (DEPRECIATION)** |  |  |  |
| Has the motor vehicle depreciation cost limit of $68,108 been applied when calculating depreciation on a car acquired during the 2024 year for tax purposes? |  |  |  |
| Has any profit on the sale of previously leased motor vehicles been brought into account? |  |  |  |
| Have plant conversion and relocation costs been capitalised and depreciated? |  |  |  |
| Where the entity is a SBE that chooses to apply the simplified depreciation rules and the depreciating assets are not eligible for any of the immediate or accelerated depreciation deductions above, the asset can be allocated to the [general small business pool](https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/depreciation-and-capital-expenses-and-allowances/simpler-depreciation-for-small-business#Ifyoustopusingsimplifieddepreciation) and depreciated at a rate of 15% regardless of the date of acquisition during the 2024 year, provided the asset starts to be used or is installed ready for use during the 2024 year. Likewise, any second element costs incurred in the 2024 year exceeding the threshold and in respect of an asset that has been pooled in an earlier year will similarly be depreciated at a rate of 15%. For assets included in the pool at the start of the 2024 year the opening pool balance will be depreciated by 30%. Finally, where a balancing adjustment occurs, the asset’s termination value must be deducted from the pool. |  |  |  |
| Small businesses with an aggregated annual turnover of less than $10 million will be able to immediately deduct the full cost of eligible assets costing less than $20,000 that are first used or installed ready for use between 1 July 2023 and 30 June 2024.  **Note:** this incentive is contained in the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023*, which is not yet law. |  |  |  |
| Small and medium businesses with an aggregated annual turnover of less than $50 million will be able to claim an additional 20% deduction on spending that supports electrification and more efficient use of energy.  Broadly, a depreciating asset is eligible for the bonus deduction if:   * it uses electricity instead of fossil fuel * it is more energy efficient than the asset it is replacing or a comparable asset available on the market and * it is an energy storage, time-shirting or monitoring asset, or an asset that improves the energy efficiency of another asset.   Assets and expenditure that are excluded from the bonus deduction include:   * assets that use fossil fuel * assets that have a sole or predominant purpose of generating electricity (i.e. solar panels) * capital works * motor vehicles and * financing and borrowing costs.   **Note:** this incentive is contained in the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023*, which is not yet law. |  |  |  |
| **Other issues related to depreciation** |  |  |  |
| Has the trust allocated expenditure incurred on the development of in-house software which is used solely for a taxable purpose to a software development pool, rather than wait until the software is created and used or held ready for use as a depreciating asset?  Taxpayers are required to create a separate software development pool for each income year for which they incur expenditure on in-house software. Where such expenditure is incurred on or after 1 July 2015 no deduction can be claimed in the first year the expenditure is incurred but such costs will be deductible at a rate of 30% in years two to four and a rate of 10% in year five. |  |  |  |
| Have the blackhole expenditure rules in section 40-880 of the *ITAA 1997* been considered for blackhole capital expenditure incurred during the year? Such expenditure may be regarded as eligible blackhole expenditure where it is not deductible, depreciable or included in the cost base of a Capital Gains Tax (CGT) asset.  Eligible blackhole expenditure is deductible over five years in equal proportions (and there is no pro-rating of the deduction in the year the expenditure is incurred by the taxpayer).  Blackhole treatment may be available in relation to capital outgoings incurred in respect of the taxpayer’s business or in respect of a former business that used to be carried on or in respect of a business that is proposed to be carried on provided there is a sufficient and relevant connection between the expenditure incurred and the business carried on (see Taxation Ruling TR 2011/6).  Section 40-880(5) of the *ITAA 1997* also provides that no deduction is available under the blackhole deductibility rules where, amongst other things, the expenditureforms part of the cost of land or depreciating asset; it would be taken into account in working out an assessable profit, deductible loss, capital gain or capital loss; it relates to a lease or other legal or equitable right; or if it is deductible under another provision of the Income Tax Assessment Acts. |  |  |  |
| Under the blackhole expense rules, there is a 100% immediate write off available to an SBE for capital expenditure incurred in relation to a proposed business structure or operation where the costs are incurred on or after 1 July 2015 by an SBE that is not carrying on a business in that income year.  Eligible start-up costs which can be written off include, amongst others, legal and accounting advice on how the business can best be structured and implemented. |  |  |  |
| NON-RESIDENT TRUSTS | | | |
| Has the residency status of the trust been determined? Where the trust is a non-resident, the matters listed below should be considered. |  |  |  |
| Have applicable double tax treaties been considered, particularly the articles dealing with business profits and permanent establishments? |  |  |  |
| If the trust is a non-resident trust, has income from all sources been included in assessable income? We note that a foreign trust will generally not be required to pay tax on foreign income where it is not distributed or has been distributed to foreign beneficiaries. |  |  |  |
| Have the CGT implications of a sale of taxable Australian property by a foreign resident trust been considered? Taxation Determinations TD 2017/23 and TD 2017/24 provide that the distribution of a capital gain on non-taxable Australian property derived by a foreign resident trust to a resident beneficiary will be assessed under section 99B of the *ITAA 1936* and that such a capital gain cannot be reduced under the 50% CGT discount or by capital losses. |  |  |  |
| FOREIGN RESIDENT CGT WITHHOLDING | | | |
| A 12.5% non-final withholding tax applies to vendors selling certain taxable Australian property which needs to be retained by the purchaser at settlement from the purchase price of the property which must be subsequently remitted to the ATO.  However, such tax will not need to be retained from the purchase price of the property if the vendor obtains a clearance certificate from the ATO prior to settlement or if an exemption or variation otherwise applies.  The foreign resident CGT withholding obligation does not arise in relation to a CGT asset if the market value of the CGT asset that is real property is less than $750,000 or if the CGT asset is not taxable Australian real property or not an indirect taxable Australian real property interest. |  |  |  |
| **CGT DISCOUNT FOR NON-RESIDENT TRUSTS** | | | |
| Has the non-resident trust crystallised any capital gains after 7:30 pm on 8 May 2012 that may be eligible for the CGT Discount? If so, has the trust calculated the ‘pre’ and ‘post’ 8 May 2012 portions of their capital gain, where applicable?  If the taxpayer is a foreign resident, it will not be eligible for the CGT discount on any capital gain that accrued after 8 May 2012. Where the foreign resident acquired ‘taxable Australia real property’ before 8 May 2012 it is recommended that a valuation is obtained to determine the market value of the asset on 8 May 2012, which will enable the CGT discount to be applied to discount the gain (if any) that accrued from acquisition until this date. |  |  |  |
| **SUPERANNUATION** | | | |
| Have all superannuation contributions claimed for the year been received by a complying fund before year end?  If not, have accrued superannuation contributions been added back? |  |  |  |
| Has any Superannuation Guarantee Charge (SGC) amount been paid by the entity? If so, has the amount been added back as non-deductible?  If a late superannuation contribution was offset against the superannuation guarantee charge, the offset amount is not deductible. |  |  |  |
| **REPAIRS AND MAINTENANCE** | | | |
| Have repairs and maintenance claims been reviewed to ensure they are of a revenue nature and contain no capital items?  Further guidance as to when repair expenditure will be deductible under section 25-10 of the *ITAA 1997* is set out in Taxation Ruling TR 97/23.  An amount will not be regarded as being a deductible repair where it constitutes capital expenditure relating to the replacement of an entire asset (as opposed to part of an asset), a capital improvement or an initial repair (e.g. to improve the state of the asset beyond the state that it was acquired in). |  |  |  |
| **BAD DEBTS** | | | |
| Have bad debts written off during the year been claimed as a tax deduction? Is there documentation on file evidencing the company’s inability to collect the debt? Have any of these debts been compromised or released before being written off, in which case a bad debt deduction will not be available?  For bad debts claimed as deductions during the year has:   * the debt been physically written off prior to balance date, or is there a Trustee minute authorising the writing-off of the debt prior to year-end, confirming that the debt is irrecoverable? * the debt either previously been returned as assessable income by the trust or does it represent a loan made in the ordinary course of a money lending business?   the trust satisfied the trust loss provisions (Schedule 2F of the *ITAA 1936)* during the period from when the debt was created to when the debt is proposed to be written off as bad? |  |  |  |

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| **TAX RETURN FORM COMPLETION** | **YES** | **NO** | **N/A** |
| FAMILY TRUST / INTERPOSED ENTITY ELECTION STATUS (FRONT COVER) | | | |
| Has the trust made a family trust election (FTE)? If so, in what year was the FTE made? |  |  |  |
| Has the trust made an interposed entity election (IEE)? If so, in what year was the IEE made?  A trust may be required to make an IEE to be included in the family group of a trust that has made an FTE. |  |  |  |
| Where a trust that has made an FTE distributes income or capital to another trust which is not part of the family group, the distribution may be subject to family trust distributions tax (FTDT) which is currently levied at a rate of 47% on the trustee of the family trust. For certain entities, it may be necessary for an IEE to be made relative to the distributing trust to be included in the family group of the distributing trust.  Note that subsequent distributions by a trust that has made an IEE of income to entities outside the same family group may also attract FTDT. |  |  |  |
| If an FTE has not yet been made, should the trust make an FTE in order to ensure tax losses are claimable, pass on franking credits, satisfy the continuity of ownership test in respect of a subsidiary company’s tax losses or to be excluded from the trustee beneficiary reporting rules?  The trust loss measures in Schedule 2F of the *ITAA 1936* do not apply to the carrying forward of capital losses.  An FTE may also be required to be made where one or both of the parties seeking to apply the CGT small business restructure rollover relief under Subdivision 328-G of the *ITAA 1997* is a non-fixed trust. |  |  |  |
| Comments: | | | |
| MANAGED INVESTMENT TRUST – CAPITAL ACCOUNT ELECTION (FRONT COVER) | | | |
| Is the trust a managed investment trust pursuant to Division 275 of the *ITAA 1997*?  Has the trust made an election to have its eligible assets (e.g. shares, units, and real property) treated exclusively on capital account?  Managed investment trusts that have made the irrevocable election to have their eligible assets on capital account will have the CGT provisions apply to disposals of eligible assets exclusively. |  |  |  |
| Comments: | | | |
| CAPITAL GAINS TAX (CGT) (ITEM 21) | | | |
| Have all capital gains arising under the CGT provisions for the 2024 year been correctly identified? Are any of these capital gains exempt? |  |  |  |
| Did the trust apply any CGT rollover relief in respect of disposals of CGT assets during the 2024 year?  A trust which is an SBE may apply small business CGT restructure rollover relief where the eligibility conditions set out in Subdivision 328-G of the *ITAA 1997* have been satisfied. A trust will be an SBE for the purposes of Subdivision 328-G the 2024 year where it carries on business and its aggregated turnover is less than $10 million. |  |  |  |
| Have all elements of the cost base of a CGT asset been considered for a CGT event occurring in relation to that CGT asset for the year ended 30 June 2024? In particular, have all eligible incidental costs on acquisition and disposal be considered as well as any capital improvements in the cost base of the asset? Do the market valuation substitution rule, or any other cost base modifications apply? |  |  |  |
| Are the capital proceeds received on the disposal of the CGT asset under the CGT event being correctly determined? Do the market value substitution rule or other modifications to capital proceeds apply? |  |  |  |
| Where pre-CGT acquired assets were sold during the 2024 year, were there any sales of related separate post CGT assets (particularly taking into account the 2024 CGT improvement threshold of $174,465)? |  |  |  |
| Have all capital gains calculations been reviewed for their correctness? |  |  |  |
| Has a book-to-tax reconciliation been performed to reconcile the difference between the accounting and tax capital gains? |  |  |  |
| Have you considered whether capital gains are eligible for the 50% CGT discount reduction, and how the distribution of any such gains may impact beneficiaries? Can such a capital gain be streamed under the trust deed to specifically entitled beneficiaries?  Has the application of the rules grossing-up capital gains been considered by the trustee? Where the trust is a discretionary trust, are capital gains being distributed appropriately to specifically entitled beneficiaries? It should be noted that any company beneficiary receiving a discounted gain will not be entitled to claim the CGT discount on any grossed-up amount of the gain which the company receives. |  |  |  |
| **CAPITAL GAINS TAX (CGT) (ITEM 21) (CONTINUED)** | | | |
| Have you considered whether capital gains may be able to be reduced / eliminated in accordance with the small business CGT concessions? Have you considered the impact of any distribution of the gain sheltered by those concessions on beneficiaries?  For more information on the eligibility conditions for these concessions refer to CPA Australia’s [Basic Company Tax Return Preparation Checklist](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists)2023 tax preparation checklist. |  |  |  |
| Have any capital gains been distributed to foreign resident beneficiaries?  Taxation Determination 2022/13 provides that if the trust is a non-fixed trust, Division 855 will not apply to exempt the foreign resident beneficiary from CGT even if the disposal is in relation of an asset that is not Taxable Australian Property.  Whilst a temporary resident can disregard a capital gain made directly under Division 855, a gain which a temporary resident is taken to have under Subdivision 115-C cannot be disregarded under Division 855 whether the trust is a fixed or non-fixed trust. |  |  |  |
| Has any sale consideration been received during the year under an eligible earnout arrangement relating to the prior year disposal of a CGT active asset in which case the consideration received is disregarded in the 2024 year but will form part of the capital proceeds relating to the disposal of that asset in that earlier year?  Care should be taken to ensure that all the requirements of being an eligible earnout arrangement under Subdivision 118-I of the *ITAA 1997* are satisfied. |  |  |  |
| Has the trust received any financial benefits representing a capital gain which has been streamed from another trust? |  |  |  |
| **Comments:** | | | |
| **ATTRIBUTED FOREIGN INCOME (ITEM 22)** | | | |
| Did the trust have a direct or indirect interest in a foreign trust, controlled foreign company or transferor trust?  If the answer is yes, has an International Dealings Schedule (IDS) been prepared for the year ended 30 June 2024? |  |  |  |
| Comments: | | | |
| **LOSSES INFORMATION (ITEMS 25 and 27)** | | | |
| Have the trust loss provisions in Schedule 2F of the *ITAA 1936* been reviewed to ensure the deductibility of a bad debt or a prior year tax loss claimed by the trust?  Prior to being eligible to recoup a tax loss deduction, a trust is required to satisfy various tests. Separate loss recoupment rules apply to fixed trusts, non-fixed trusts, and family trusts under Schedule 2F of the *ITAA 1936* as follows:  *Fixed trusts* – fixed trusts are trusts where beneficiaries have vested and indefeasible interests in all of the income and capital of the trust. Fixed trusts are required to satisfy the income injection test and the 50% stake test. Where the 50% stake test cannot be satisfied, an alternative loss recoupment test may be available under section 266-45 of Schedule 2F of the *ITAA 1936* where a non-fixed trust (other than a family trust) holds 50% or more of the fixed entitlements to the income or capital of the fixed trust. In these circumstances, the non-fixed trust holding the interest in a fixed trust must be able to pass the pattern of distributions test, the control test and the 50% stake test as if it had notionally incurred the tax losses instead of the fixed trust. |  |  |  |
| *Non-fixed trusts* – non-fixed trusts (that are not family trusts – see following) are trusts that do not meet the definition of a fixed trust. In respect of revenue losses, non-fixed trusts are required to satisfy the income injection test, the pattern of distributions test, the 50% stake test (if applicable) and the control test.  *Family trusts* – family trusts are trusts that have made a family trust election in accordance with section 272-80 of Schedule 2F of the *ITAA 1936*. In respect of revenue losses, family trusts are only required to satisfy a modified (and concessional) version of the income injection test.  The legislative distinction between fixed and non-fixed trusts became somewhat blurred following the Federal Court decision in *Colonial First State Investments Ltd v Commissioner of Taxation* (2011) FCA 16. However, the Commissioner of Taxation may exercise a discretion to treat a trust as a fixed trust in certain circumstances. Practical Compliance Guideline PCG2016/16 provides practical guidance on how the Commissioner exercises this discretion including the application of safe harbours that allow trustees of certain trusts to manage their tax affairs on the basis that the Commissioner has exercised a discretion to treat the trust as a fixed trust. |  |  |  |
| Note that capital losses of a trust are not subject to the recoupment tests referred to above.  If the trust has tax losses and net capital losses totalling in excess of $100,000 or is a listed widely held trust and fails the majority ownership test for a loss, has a Losses Schedule been completed? |  |  |  |
| Does the trust have an interest in a controlled foreign company that has 2024 losses greater than $100,000, or has it deducted or carried forward a loss greater than $100,000 to later income years? If so, a Losses Schedule must also be completed. |  |  |  |
| **Comments:** |  |  |  |
| **OVERSEAS TRANSACTIONS / THIN CAPITALISATION (ITEM 29)** | | | |
| Have the transfer pricing provisions in Division 815 of the *ITAA 1997* (i.e. the need for commercial arm’s length principles) been applied to cross-border transactions with international related parties? |  |  |  |
| Are the arm’s length conditions of cross-border transactions consistent with the arm’s length methodologies approved by the OECD as effectively required under section 815-135 of *ITAA 1997?* |  |  |  |
| Has the trust prepared contemporaneous documentation in respect of the arm’s length conditions of any cross-border transaction setting out the arm’s length methodology used in identifying the arm’s length conditions and pricing of such a transaction?  Does such documentation satisfy the requirements of Subdivision 284-E of Schedule 1 of the *Taxation Administration Act (TAA 1953)* and Taxation Ruling TR 2014/8? |  |  |  |
| Is the trust eligible to elect to apply the simplified transfer pricing record keeping options under Practical Compliance Guideline PCG 2017/2 to reduce the amount of contemporaneous transfer pricing documentation administratively required to be retained in order to ensure that a penalty for a failure to maintain a reasonably arguable position will not be imposed? |  |  |  |
| Was the aggregate amount of your transactions or dealings with international related parties greater than $2 million? If so, has a 2024 IDS been completed? |  |  |  |
| **OVERSEAS TRANSACTIONS / THIN CAPITALISATION (ITEM 29) (CONTINUED)** | | | |
| Have the thin capitalisation provisions in Division 820 of the *ITAA 1997* been considered? The following entities are subject to the thin capitalisation provisions:   * Australian entities with certain overseas operations, and their associate entities (outward investors) * Australian entities that are foreign controlled (inward investors) * Foreign entities with operations or investments in Australia that are claiming debt deductions (inward investors).   Check whether the outward investor’s foreign assets represent less than 10% of its total assets. If so, the exemption in section 820-37 of the *ITAA 1997* may apply.  Checkwhether the sum of thetrust’sdebt deductions together with all the debt deductions of its associate entities is $2 million or less. If so, the exemption under section 820-35 of the *ITAA 1997* may apply. Refer to Taxation Determination TD 2019/12 for the ATO’s views as to the type of costs that are debt deductions.  Does the entity need to work out its maximum allowable debt under the thin capitalisation provisions in Division 820 of the *ITAA 1997*?  **Thin Capitalisation Rules Changes**  For income years commencing from 1 July 2023, new thin capitalisation rules apply to introduce new tests, being:   * Fixed Ratio Test (FRT) * Group Ratio Test) * Third Party Debt Test (TPDT)   Does the entity need to work out its maximum allowable debt under thin capitalisation provisions in Division 820 of the ITAA 1997?  The FRT is the default test that limits debt deductions to 30% of a taxpayer’s Tax EBITDA. The Tax EBITDA is broadly calculated as the taxable income of the taxpayer adjusted for interest deductions, losses and tax depreciation.  If the thin capitalisation provisions apply, has a 2024 IDS been completed? |  |  |  |
| Do the debt deduction creation rules apply to the entity?  Broadly, the debt deduction creation rules may apply to deny deductions on related party debt in the two below cases:   * The first case is where related party related party debt is used to fund the acquisition of a capital gains tax (CGT) asset or a legal or equitable obligation from an associate * The second case is where related party debt has been used (in the current and prior years) to pay to an associate:   + a dividend or other profit-like distribution   + a capital return, or   + a royalty or similar payment for the use of, or right to use, an asset |  |  |  |
| Has the entity paid any interest or royalties to overseas entities? If yes, has a 2024 IDS been prepared? |  |  |  |
| Section 815-140 of the *ITAA 1997* essentially provides that the transfer pricing provisions under Subdivision 815-B may apply to reduce any interest rate charged on related party debt to an arm’s length amount which may result in reduced debt deductions. The thin capitalisation provisions under Division 820 of the *ITAA 1997* are then applied after any transfer pricing benefit has been cancelled to determine whether an entity’s adjusted average debt exceeds its maximum allowable debt. |  |  |  |
| **OVERSEAS TRANSACTIONS / THIN CAPITALISATION (ITEM 29) (CONTINUED)** |  |  |  |
| Was any beneficiary who was not a resident of Australia at any time during the year ‘presently entitled’ to a share of the trust income?  If the answer is yes**,** an attachment should be prepared that includes the following information in relation to the beneficiary:   * the beneficiary’s name and residential address * details of any distribution to the beneficiary, including amounts of interest, royalties, franked and unfranked dividends * if a withholding amount has been paid and remitted to the ATO from the distribution, the amount of the distribution and the withholding amount paid * if the beneficiary’s residency status changed during the year, detail when the beneficiary ceased to be an Australian resident * if tax has been deducted by the trustee from income not subject to withholding tax, the amount of any credit for such tax remittance * if the trust is a fixed trust and at least 90% of its assets, held either directly or indirectly, are not taxable Australian property * details of any non-Australian sourced income derived whilst the beneficiary was a non-resident. |  |  |  |
| **Comments:** |  |  |  |
| **PERSONAL SERVICES INCOME (PSI) (ITEM 30)** | | | |
| Does the income of the trust include income, which is an individual’s PSI, having regard to TR 2022/3? If yes, the trust must complete the PSI disclosures at Item 30.  PSI is included in the individual’s personal income tax return. PSI is income that is mainly a reward for an individual’s personal efforts or skills. Please refer to [CPA Australia’s PSI / PSB self-assessment checklist](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cpaaustralia.com.au%2F-%2Fmedia%2Fproject%2Fcpa%2Fcorporate%2Fdocuments%2Ftools-and-resources%2Ftaxation%2F2023-year-end-tax-resources-au%2F2023-psi-or-psb-self-assessment-checklist.docx%3Frev%3D1fca2192046c44b79198b96854af6d61&wdOrigin=BROWSELINK) for further information as to when PSI derived via a trust will be regarded as being derived by an individual. |  |  |  |
| **Comments:** |  |  |  |
| **TAXATION OF FINANCIAL ARRANGEMENTS (TOFA) (ITEM 31)** | | | |
| Have you considered the application of the TOFA rules to the trust?  The TOFA rules apply to the following entities:   * authorised deposit-taking institutions, securitisation vehicles, and financial sector entities with an aggregated turnover of $20 million or more * a superannuation entity, a managed investment scheme or entities with a similar status under foreign law, if the value of the entity’s assets is $100 million or more * any other entity (excluding individuals) which satisfies one or more of the following:   + an aggregated turnover of $100 million or more   + assets of $300 million or more or   + financial assets of $100 million or more.   Trusts that do not meet the above can elect into the TOFA regime.  If the trust has previously been subject to TOFA, this does not change if the thresholds above are no longer satisfied.  The aggregated turnover test includes the annual turnover of any entity a trust is connected with, or any affiliate of the trust (including foreign resident companies and trusts). |  |  |  |
| **Comments:** |  |  |  |
| **KEY FINANCIAL INFORMATION AND BUSINESS AND PROFESSIONAL ITEMS (ITEMS 33-49)** |  |  |  |
| Have all the appropriate disclosures on key financial information been made? |  |  |  |
| Has the trust disclosed all payments made during the year (including salaries, wages, commissions, superannuation contributions and allowances) to associated persons? |  |  |  |
| Has total salary and wages expenditure been disclosed and reconciled to Label W1 on the BAS? |  |  |  |
| From the 2024 income year it is necessary to disclose the aggregated turnover of the entity and the aggregated turnover range, if the trust is claiming TFE or any of the small business entity concessions. |  |  |  |
| **Comments:** |  |  |  |
| CAPITAL ALLOWANCES (ITEM 50) | | | |
| Did the trust hold any depreciating assets (tangible or intangible) during the year? If so, have the appropriate disclosures been made in relation to the trust’s capital allowances? |  |  |  |
| **Comments:** | | | |
| SMALL BUSINESS ENTITY SIMPLIFIED DEPRECIATING ASSETS (ITEM 51) | | | |
| If the trust is a small business entity, has the appropriate small business entity depreciating assets and small business depreciation claim been disclosed? Refer to the above ‘decline in value’ for further information. |  |  |  |
| **Comments:** | | | |
| **INCOME OF THE TRUST ESTATE (ITEM 56)** | | | |
| What is the trust’s ‘income’ for the 2024 year?  The income of the trust estate is the trust’s income according to trust law concepts. Following the High Court’s decision in *FCT v Bamford* [2010] HCA 10 it is necessary to consider any definition of income contained in the trust deed to determine what the trust’s income will be. Such trust income may differ from the trust’s accounting income and/or the net income of the trust for tax purposes. In addition, it is also necessary to consider the Commissioner of Taxation’s view on the meaning of the income of the trust contained in Draft Taxation Ruling TR 2012/D1 (including the Commissioner’s comments issued in the Addendum to TD 2012/22). |  |  |  |
| Comments: | | | |
| **STATEMENT OF DISTRIBUTION (ITEMS 57 to 60)** | | | |
| What share of the income of the trust estate will be allocated to each beneficiary?  *Allocation of share of trust income (and share of net income)*  Where the trust deed requires the trustee to make a beneficiary presently entitled to trust income by way of a resolution, this resolution **must** be made by the end of the income year (i.e. 30 June).  This resolution will determine each beneficiary’s share of the trust income which in turn will establish who is to be assessed on share of the trust's net income (i.e. taxable income). If the trust deed requires a resolution to be made at a date before 30 June, the trustee should comply with the requirements of the deed. For further information refer to CPA Australia’s [Trustee Guidance Resolutionsfact sheet](https://www.cpaaustralia.com.au/professional-resources/taxation/trusts).  *Streaming of capital gains and franked distributions*  Trustees are permitted to stream capital gains and franked distributions in certain circumstances. Trustees should be aware that the ability to stream such amounts is dependent on the terms of the trust deed, the trustee making a resolution making beneficiaries specifically entitled to such amounts by the required dates and satisfying various conditions relating to the streaming of franked dividends and capital gains under Subdivisions 207-B and 115-C of the *ITAA 1997* respectively. For further information refer to CPA Australia’s [Trust Streaming Manual](https://www.cpaaustralia.com.au/professional-resources/taxation/trusts). |  |  |  |
| **STATEMENT OF DISTRIBUTION (ITEMS 57 to 60) (CONTINUED)** | | | |
| If the trust is a unit trust, have you considered the potential application of CGT Event E4 where a non-assessable amount is paid to unitholders, e.g. where TFE has been claimed? If applicable, this section will operate to reduce cost base of the units and may potentially give rise to a capital gain. Refer to sections 104-70 and 104-71 of the *ITAA 1997* for further details as to how and when CGT event E4 may apply. |  |  |  |
| Check whether an individual beneficiary may be entitled to the small business income tax offset for the year ended 30 June 2024 where that individual is assessed on a share of trust income earned by a trust which is a small business entity. The offset is available for 13% of the income tax payable on the portion of an individual’s taxable income that is their share of the trust’s ‘total net small business income’ which is based on their proportional share of trust income. A trust is a small business entity if it carries on business and its aggregated turnover for the 2023 year for the purposes of the offsetis less than $5 million. Trustees and certain prescribed persons are not entitled to the offset. |  |  |  |
| Check whether a beneficiary has been made presently entitled to trust income due to a reimbursement agreement with a third party. If so, section 100A of the *ITAA 1936* may deem a beneficiary not to be presently entitled.  The Commissioner has considered the application of s100A and issued the following tax rulings / compliance guidelines:   * Taxation Ruling 2022/4 – Income tax: section 100A reimbursement agreements * Taxpayer Alert TA 2022/1 – Parents benefitting from the trust entitlements of their children over 18 years of age * Practical Compliance Guideline 2022/2 – Section 100A reimbursement agreements – ATO compliance approach |  |  |  |
| **STATEMENT OF DISTRIBUTION (ITEMS 57 to 60) (CONTINUED)** |  |  |  |
| If a tax-exempt entity is being made presently entitled to a proportion of trust income, the trustee should ensure that a similar proportion of the net income (i.e. taxable income) is attributed to the entitlement. If the tax-exempt entity has not received a payment in respect of their entitlement within two months of the end of the year, the trustee should ensure that the tax-exempt beneficiary is notified of this entitlement in writing.  If there is a mismatch between the proportion of trust income compared to the proportion of net income, or if the trustee fails to notify the exempt entity of their entitlement, then sections 100AA and 100AB of the *ITAA 1936* may deem the exempt entity to not be presently entitled to the income of the trust estate. The trustee will therefore pay tax on net income at the effective highest marginal rate being currently 47%. |  |  |  |
| If the trust is a resident trust have you considered the applicability of section 115-230 of the *ITAA 1997* which can allow the trustee to be assessed on a capital gain that would be otherwise assessed to an income beneficiary? |  |  |  |
| Where an FTE has been made, is the trust distributing only to family group members or entities that have made the appropriate IEE?  Distributions by a trustee of a trust that has made an FTE, or by an entity that has made an IEE, to persons and entities outside the family group are potentially taxed under the FTDT which is currently levied at 47%. |  |  |  |
|  |  |  |  |
| Section 272-60 of Schedule 2F of the *ITAAA 1936* provides that a trustee ‘distributes’ income or capital to a person outside the family group if it pays or credits income or capital to such a person; transfers property to that person, or allows the use of that property by the person; deals with money or property for or on behalf of a person or as the person directs; applies money or property for the benefit of the person; or extinguishes, forgives, releases or waives a debt or other liability owed by the person. Further guidance as to what constitutes a distribution to an entity outside the family group is set out in Taxation Determination TD 2017/20*.* |  |  |  |
| Have TFNs or addresses been obtained for all beneficiaries?  Has the ATO been previously notified of the TFNs of such beneficiaries? |  |  |  |
| Is a trustee beneficiary statement required, i.e. where a closely held trust that distributes certain untaxed or tax-preferred amounts to trustee beneficiaries? |  |  |  |
| For closely held trusts that are not excluded, will the trust be required to lodge an Annual TFN Withholding Report in respect of any tax withheld under the TFN withholding rules? |  |  |  |
| **Comments:** | | | |
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| --- | --- | --- | --- |
| OTHER ATO FORMS / ELECTIONS | YES | NO | N/A |
| **NOTICES AND ELECTIONS** | | | |
| Have all the relevant notices and/or elections relied on by the entity been properly prepared? |  |  |  |
| Where applicable, have you completed the following schedules: |  |  |  |
| * CGT schedule |  |  |  |
| * Family trust election, revocation, or variation? |  |  |  |
| * Interposed entity election or revocation? |  |  |  |
| * Losses schedule? |  |  |  |
| * Non-individual PAYG payment summary schedule? |  |  |  |
| * Rental property schedule? |  |  |  |
| **NOTICES AND ELECTIONS** | | | |
| * International Dealings Schedule? |  |  |  |
| * TFN Report – for trustees of closely held trusts? |  |  |  |
| Have all notices and / or elections, where lodgement is not required, been appropriately sighted, and retained on record? |  |  |  |
| **INTERNATIONAL DEALINGS** | | | |
| Will the foreign resident beneficiaries of the trust be presently entitled to any unfranked dividends, interest, or fund payment amounts?  If so, has the appropriate amount of tax been withheld and remitted to the ATO in relation to each foreign resident beneficiary? |  |  |  |
| Has all foreign sourced income been identified and returned as assessable income?  If so, has foreign income been grossed up for the appropriate taxes? |  |  |  |
| Has withholding tax been deducted from interest, royalties and unfranked dividends paid to non-residents or offshore / foreign ‘branches’ of resident trusts during the year? |  |  |  |
| Have management fees, software licence fees etc. paid to overseas entities been examined to determine whether they are within the definition of royalties? |  |  |  |
| Have insurance premiums been paid by the entity to non-resident insurers?  If so, has the appropriate amount been deducted and a return been furnished in respect of the foreign premiums as required under Division 15 of the *ITAA 1936*? |  |  |  |
| Have you considered the CFC rules in relation to the attribution of income? |  |  |  |
| Have you considered the ‘transferor trust’ rules in relation to the attribution of income? |  |  |  |
| TAXATION OF FINANCIAL ARRANGEMENTS (TOFA) | | | |
| If the trust is subject to the TOFA rules in the 2024 income year, has it prepared elections for this year, including elections to apply the elective tax-timing methods to its financial arrangements? |  |  |  |
| GENERAL VALUE SHIFTING REGIME | | | |
| Have the value shifting rules been considered in respect of:   * any acquisitions or disposals of equity or debt interests in the trust (or the trust’s subsidiaries, if appropriate) * creation of rights in non-depreciating assets * non-arm’s length dealings with related parties? | | | |
| OTHER TAX ISSUES | | | |
| Do the amounts disclosed in the Labels on the Business Activity Statements of the trust reconcile to the relevant accounts of the trust? |  |  |  |
| Has the carry forward action sheet (attached to this checklist) been completed? |  |  |  |
| **Comments:** | | | |

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| --- | --- | --- | --- |
| **ENTITY’S NAME** |  | **INITIAL** | **DATE** |
| Preparer | |  |  |
| Reviewer | |  |  |
| Partner | |  |  |
|  | |  |  |

**Year ended 30 June 2024**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **CARRY FORWARD ACTION SHEET** | | | | |
| DATE | ITEM CARRIED FORWARD | $ | WORKING PAPER REF | CHECKED BY |
|  | Net revenue losses carried forward |  |  |  |
|  | Net capital losses carried forward |  |  |  |
|  | CGT small business rollover amount |  |  |  |
|  | Other CGT rollover |  |  |  |
|  | Other assessable income amount |  |  |  |
|  | Other deductible expenses (i.e. prepayments) |  |  |  |
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| **POINTS FOR PARTNER REVIEW** | | |
| DATE | REVIEW POINT | CHECKED BY |
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