Trusts - Core Concepts and Division 6

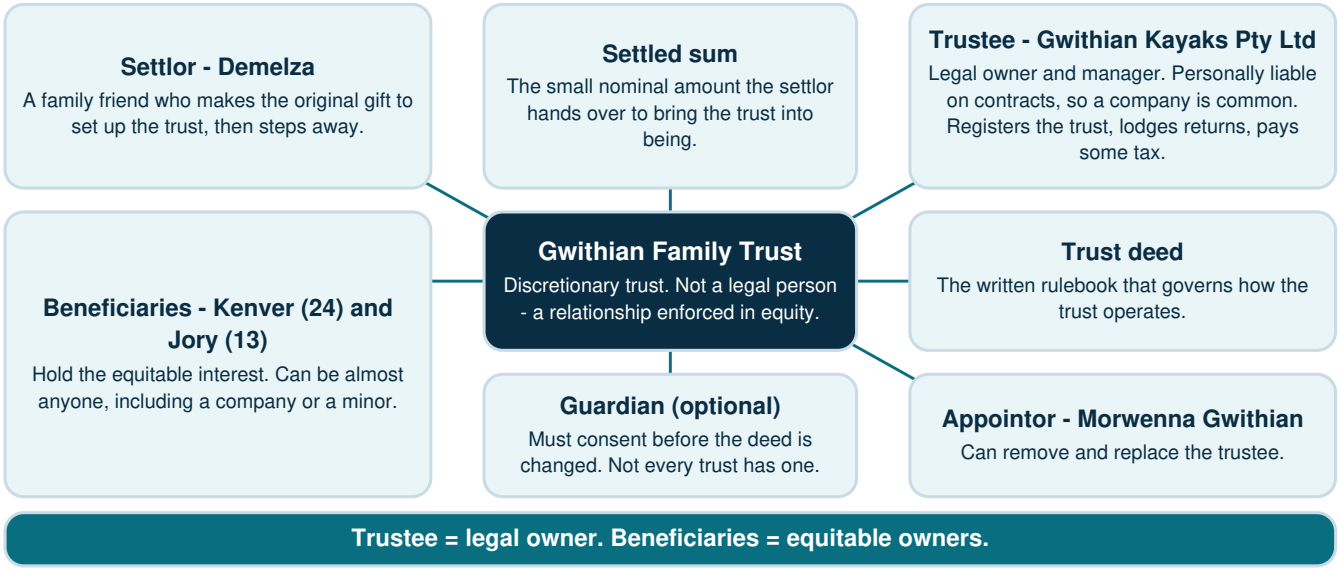
MODULE 5 | 5.7 | STUDENT COMPANION

A trust is a relationship in which a trustee holds property for beneficiaries. **Division 6** of ITAA36 taxes the trust's net income, and **present entitlement** decides who pays: the beneficiary (s 97), the trustee at the beneficiary's rates (s 98), or the trustee on income no one is entitled to (s 99A or s 99).

What a trust is

The idea. A trustee holds and manages property for beneficiaries (or a purpose), enforced in equity. The trustee is the legal owner; beneficiaries hold the equitable interest.

Who's who in a trust: the Gwithian Family Trust



Kinds of trust.

Category	Types
Express - inter vivos (between living people)	Fixed, unit, discretionary (and hybrids)
Express - created by a Will	Testamentary trusts
Non-express (no declared intention)	Implied, resulting, constructive

Fixed or discretionary. Fixed: a right to a predetermined share. Discretionary: only a right to be considered; the trustee chooses each year.

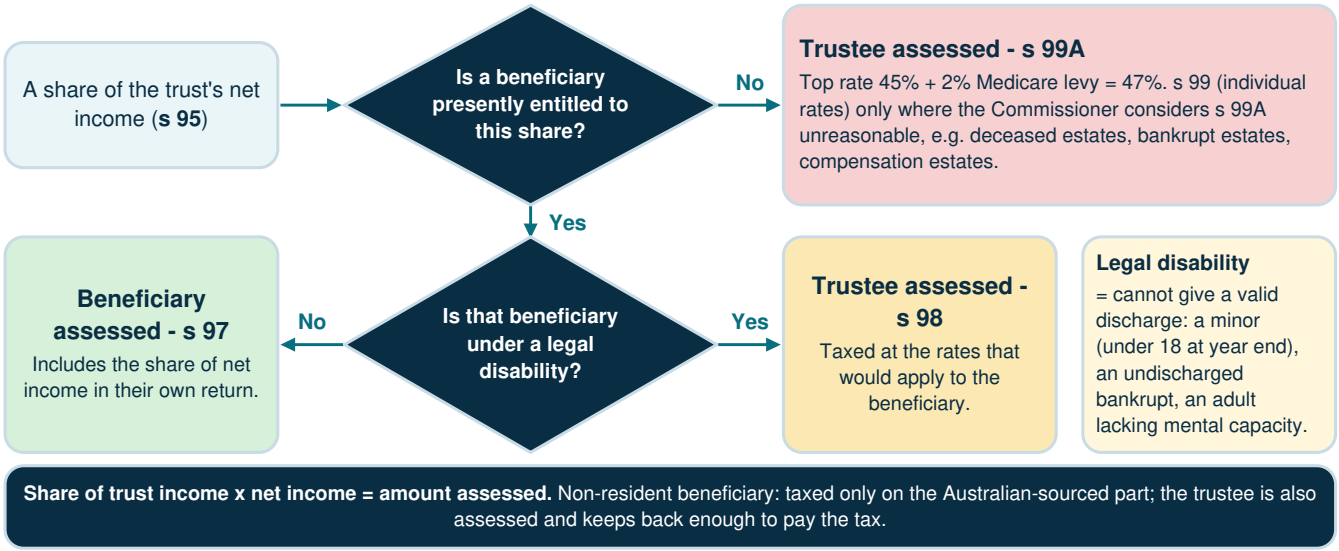
Division 6 of ITAA36

Two figures. Income of the trust estate = income for trust purposes, under the deed and trust law. Net income (s 95) = total assessable income less allowable deductions, worked out as if the trustee were a resident taxpayer. They often match, but not always.

Present entitlement. Not defined in the Act. The beneficiary must have a right to immediate payment: the trustee is legally bound to pay or apply the income for them (FCT v Whiting; Taylor v FCT).

Legal disability. The beneficiary cannot give a valid discharge (Taylor v FCT): a minor under 18 at year end, an undischarged bankrupt, a mentally incapacitated adult.

Division 6: who is assessed on each share of net income?



Share of trust income x net income = amount assessed. Non-resident beneficiary: taxed only on the Australian-sourced part; the trustee is also assessed and keeps back enough to pay the tax.

Worked illustration - Gwithian Family Trust, 2024-25. Trust income = net income = $30,000.

Beneficiary	Share	Net income	Assessed
Kenver (24)	50%	$15,000	Kenver, s 97
Jory (13)	30%	$9,000	Trustee, s 98, minor's rates
Unappointed	20%	$6,000	Trustee, s 99A: 47% x $6,000 = $2,820

Residence. Residents: all sources. Non-residents: Australian sources only, and the trustee retains enough to pay the tax. Part-year residents: Australian share plus foreign share for the resident period.

Deceased estates and testamentary trusts

Date of death (March 2025) - year of death = two returns

Administration complete

Stage 1: Income to date of death

Individual return for Ambrogio up to the date of death. Fees earned before death but paid afterwards go in a trust return: no beneficiary presently entitled (s 101A). Annual leave and long service leave paid after death: excluded (s 101A(2)).

Stage 2: During administration

Assets gathered in, debts paid. No beneficiary can demand payment, so the trustee pays tax on net income, usually under s 99. Spare income paid to a beneficiary early: that beneficiary is treated as presently entitled.

Stage 3: After administration

Assets transferred to beneficiaries: Division 6 stops. Assets still held: ss 97, 98, 99 and 99A apply as normal.

Testamentary trust (created by a Will)

Income paid to a minor is excepted trust income - ordinary rates with the $18,200 tax-free threshold.

In the year of death the executor lodges two returns: an individual return to the date of death and a trust return.

Administration and reporting

- **Closely held trusts (s 102UC):** any discretionary trust (family trusts included), or 20 or fewer individuals holding 75% or more of income or capital. Excluded: complying super funds, ADFs and PSTs; deceased estates for 5 years after death; unit trusts with only exempt beneficiaries; ASX-listed unit trusts.
- **TFN withholding:** no TFN quoted -> trustee withholds 47%; the beneficiary claims a credit. Not required for: distributions under $120 for a full year (pro rata for part years); non-residents; beneficiaries under a legal disability; certain income from earlier years.
- **Reporting:** TFN report within one month after the quarter in which a TFN was quoted; PAYG withholding registration where required; annual TFN withholding report; annual trustee payment report (the trust return's statement of distribution); payment summaries within 14 days of the annual report's due date.

Key figures for 2024-25

Item	Figure
s 99A rate	45% + 2% Medicare levy = 47%
Legal disability - minor	Under 18 on the last day of the income year
TFN withholding rate	47%
TFN withholding exclusion	Distribution under $120 for the year
Closely held trust	20 or fewer individuals, 75% or more
TFN report	Within 1 month after the quarter ends
Payment summary	Within 14 days of the annual report due date
Tax-free threshold (testamentary trust minors)	$18,200

Practice questions

MODULE 5 | 5.7 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - Who's who in the Bellweather trust

In 2019 Caradoc Quorn, a family friend, gave $10 to establish the Bellweather Family Trust under a written deed. He is not a beneficiary. The trustee is Bellweather Orchards Pty Ltd, a company whose directors are Tegwen Bellweather and her husband. The deed gives Tegwen the power to remove the trustee and appoint a new one, and says the deed cannot be amended without the written consent of Tegwen's sister, Elestren. The beneficiaries are Tegwen's children, Cadoc (19) and Brython (11), and any company that Tegwen controls. Each year the trustee decides how the trust's income is shared among the beneficiaries. (a) Identify the settlor, the settled sum, the trustee, the appointor, the guardian and the beneficiaries. (b) Classify the trust: express or non-express; inter vivos or testamentary; fixed or discretionary. (c) Why might a company have been chosen as trustee? (d) What right does Cadoc have to the trust's income before the trustee makes its decision for the year?

Question 2 - Division 6 in action

The Wenlock Trust is a discretionary trust whose trustee is Wenlock Nominees Pty Ltd. For 2024-25 its income of the trust estate and its net income (s 95) are both $80,000, all from Australian sources. On 30 June 2025 the trustee validly resolves to appoint the trust income as follows. The rest is left unappointed, and the Commissioner does not consider it unreasonable to apply s 99A.

Beneficiary	Details	Share of trust income
Femke Wenlock	Age 35, Australian resident	40%
Joost Wenlock	Age 16, Australian resident	25%
Sjoerd Wenlock	Age 29, non-resident for the whole year	15%
Not appointed	-	20%

For each share: state who is assessed, under which section, and on how much net income. Calculate the tax payable by the trustee on the unappointed share, and explain the trustee's extra obligation in relation to Sjoerd.

Question 3 - The Fairlight estate

Gaspard Fairlight, a freelance sound engineer who also taught part-time at a college, died on 14 November 2024. His Will appoints his cousin, Rhodri Fairlight, as executor and leaves everything equally to his two adult daughters, both Australian residents. Gaspard returned his freelance fees on a cash basis. During 2024-25 Rhodri received:

Item	Amount
Fees for recording work Gaspard did in October 2024, paid by a studio in December 2024	$5,200
Payment from the college for Gaspard's unused annual leave, December 2024	$1,800
Interest credited to Gaspard's savings account between 15 November 2024 and 30 June 2025	$900

In June 2025, satisfied that $600 of the interest would not be needed to pay debts, Rhodri paid that $600 to the elder daughter. Administration was completed on 31 August 2025, when the estate's shares were transferred to the daughters. (a) What returns must Rhodri lodge for 2024-25? (b) How is each amount treated, and who is assessed? (c) What total is the trustee assessed on for 2024-25, and under which section is the Commissioner likely to assess it? (d) What is the position once the shares have been transferred?

Question 4 - TFN withholding

Ignore the resolution in Question 2. Suppose instead that the Wenlock Trust makes the following distributions for the full 2024-25 year to beneficiaries who have not quoted a TFN: (a) $5,000 to Wessel Wenlock, an adult Australian resident; (b) $90 to an adult resident cousin; (c) $3,000 to Joost Wenlock, aged 16. For each, state whether the trustee must withhold and how much. Then, if Wessel quotes his TFN to the trustee on 12 August 2025, state the latest date for the trustee's TFN report.

Worked answers

MODULE 5 | 5.7 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Answer 1 - Who's who in the Bellweather trust

- **(a)** Settlor: Caradoc Quorn, who made the original gift to set up the trust. Settled sum: the $10. Trustee: Bellweather Orchards Pty Ltd, the legal owner and manager of the trust property. Appointor: Tegwen, who can remove and replace the trustee. Guardian: Elestren, whose consent is needed to change the deed. Beneficiaries: Cadoc, Brython and any company Tegwen controls.
- **(b)** Express (created deliberately by a deed); inter vivos (created by living people, not by a Will); discretionary (the trustee decides each year how income is shared).
- **(c)** A trustee is personally liable for the contracts it enters into, with only a right of indemnity from trust assets when acting within its powers. A company limits that liability. (The trustee also carries the tax duties: registering the trust, lodging returns and paying some tax.)
- **(d)** A discretionary beneficiary can only ask the trustee to consider them. No income is theirs until the trustee appoints it.

Answer 2 - Division 6 in action

Share	Net income	Who is assessed	Section
Femke 40%	40% x $80,000 = $32,000	Femke, in her own return	s 97 - presently entitled, no legal disability
Joost 25%	25% x $80,000 = $20,000	The trustee, at the rates that would apply to Joost (a minor's rates)	s 98 - presently entitled but under a legal disability (under 18 at 30 June 2025)
Sjoerd 15%	15% x $80,000 = $12,000	Sjoerd, on the Australian-sourced share (all $12,000 here) at non-resident rates; the trustee is also assessed on this share	s 98 - the trustee is assessed and pays tax on a non-resident beneficiary's share
Unappointed 20%	20% x $80,000 = $16,000	The trustee	s 99A

Check: $32,000 + $20,000 + $12,000 + $16,000 = $80,000.

Tax on the unappointed share: 47% x $16,000 = **$7,520**.

Sjoerd: because he is a non-resident, the trustee must keep back enough of his distribution to pay the tax on it and make sure that tax is paid to the ATO.

Answer 3 - The Fairlight estate

- **(a)** Two returns: an individual return for Gaspard covering 1 July 2024 to 14 November 2024 (his income to the date of death), and a trust return for the estate.
- **(b)** See the table below.

Item	Treatment
$5,200 fees	Would have been assessable to Gaspard had he received them while alive. Under s 101A it goes in the trust return as income to which no beneficiary is presently entitled: assessed to the trustee.
$1,800 annual leave	Excluded by s 101A(2). Not taxed in either return.
$900 interest	Earned during administration, when no beneficiary is presently entitled, so assessable to the trustee - except the $600 paid early.
$600 paid to the elder daughter	Paid because it was clearly not needed for debts, so she is treated as presently entitled to it. She includes $600 in her own return at her own rates (s 97).

- **(c)** Trustee: $5,200 + ($900 - $600) = **$5,500**. Because this is the estate of a deceased person, expect the Commissioner to assess it under s 99 (individual rates) rather than s 99A.
- **(d)** Administration is complete and the assets have passed to the daughters, so Division 6 stops applying to them. Income from the shares is now the daughters' own income. (Had Rhodri kept holding the assets, income the daughters were presently entitled to would be assessed under s 97, and any other income to the trustee under s 99 or s 99A.)

Answer 4 - TFN withholding

The Wenlock Trust is a discretionary trust, so it is a closely held trust and the TFN withholding rules apply.

- **(a)** Wessel is an adult resident with no TFN quoted, and $5,000 is well above $120. The trustee must withhold 47% x $5,000 = **$2,350**. Wessel claims a credit for it in his return.
- **(b)** $90 is under $120 for the full year, so no withholding is required.
- **(c)** Joost is under a legal disability (a minor), so no withholding is required.

TFN report. Wessel quoted his TFN on 12 August 2025, in the quarter ending 30 September 2025. The report is due within one month after that quarter ends: by **31 October 2025**.