

**Decision and  
Reasons for Decision**

**Applicant:** Darren Bennetts

**Respondent:** Commissioner of Taxation

**Tribunal Number:** 2024/6110

**Tribunal:** General Member J Dunne

**Place:** Melbourne

**Date:** 22 July 2025

**Decision:** The Tribunal affirms the decision under review.

.....[SGD].....

General Member J Dunne

## **Catchwords**

*TAXATION – Timing of derivation of interest on contributions to the Construction Industry Long Service Leave Fund – decision affirmed*

## **Legislation**

*Construction Industry Long Service Leave Act 1997 (Vic)*

*Income Tax Assessment Act 1936 (Cth) s 170(1)*

*Income Tax Assessment Act 1997 (Cth) s 6-5*

*Taxation Administration Act 1953 (Cth) s14ZZK*

## **Cases**

*Arthur Murray (NSW) Pty Ltd v Federal Commissioner of Taxation* (1965) 114 CLR 314

*Brent v Federal Commissioner of Taxation* (1971) 125 CLR 418

*Commissioner of Taxes (South Australia) v The Executor Trustee Agency Company of South Australia Ltd; Carden's case* (1938) 63 CLR 108

*Federal Commissioner of Taxation v Clarke* (1992) 24 ATR 230; 92 ATC 4561

*Federal Commissioner of Taxation v McNeil* [2007] HCA 5

*Federal Commissioner of Taxation v White* [2010] FCA 730

*Hedges v Federal Commissioner of Taxation* [2023] FCAFC 105.

*Permanent Trustee Co and another (executors of the estate of Frederick Henry Prior, deceased) v Federal Commissioner of Taxation* (1940) 6 ATD 5

*Sent v Federal Commissioner of Taxation (No.2)* [2012] FCAFC 187

## **Secondary Materials**

Construction Industry Long Service Leave Fund Trust Deed (1 July 2014) - applicable to all periods prior to September 2021 - <https://leaveplus.com.au/wp-content/uploads/2021/01/3.-Trust-Deed-1-July-2014.pdf>

Rules of the Construction Industry Long Service Leave Fund (22 October 2019)

Australian Taxation Office Taxation Ruling TR 98/1 *Income tax: Determination of income; receipts versus earnings*

## Statement of Reasons

### ISSUE

1. The issue in this case is the timing for tax purposes that Mr Bennetts derived interest on contributions he made to the Construction Industry Long Service Leave Fund ("**Fund**") in Victoria.
2. The interest payment was received by Mr Bennetts on 6 July 2021. The tax year at issue is the 2022 year ("**Relevant Year**").
3. Mr Bennetts says that the relevant statutory provisions, Trust Deed and the Rules of the Fund operate so that he derives the interest payments for tax purposes each year that it is included in his account. This, he says, stretches back to 1988, 1989<sup>1</sup> or the early 1990s. Many of those years are now time barred under section 170(1) of the *Income Tax Assessment Act 1936* (Cth) ("**ITAA 1936**").
4. Because of that view, Mr Bennetts did not return the interest that he received on 6 July 2021 in his tax return for the Relevant Year which was filed on 2 August 2022.<sup>2</sup> An original assessment was issued by the Commissioner consistent with that return.<sup>3</sup>
5. The Commissioner says that Mr Bennetts is not correct about when he derived the interest for tax purposes, and says that Mr Bennetts derived that interest when it was received by him i.e., 6 July 2021.
6. On 22 November 2023, the Commissioner issued an Amended Assessment which increased Mr Bennetts' taxable income for the Relevant Year by the interest payment he received and calculated tax accordingly.<sup>4</sup>
7. Mr Bennetts objected on 14 December 2023,<sup>5</sup> and the Commissioner disallowed that objection on 19 June 2024.<sup>6</sup> I note that Mr Bennetts' objection relies upon and attaches a version of the Rules that is different to the applicable version which Mr Gerardson later

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<sup>1</sup> It is noted that the Applicant's Statement of Facts, Issues and Contentions dated 11 March 2025 ("**Applicant's SFIC**") refers to interest from 1992 and because headings are missing it is unclear from T10-205 and T10-206 whether the 1988 and 1989 year dates refer to when the interest was calculated.

<sup>2</sup> T3.

<sup>3</sup> T4.

<sup>4</sup> T7.

<sup>5</sup> T8.

<sup>6</sup> T2.

rightly corrected the Commissioner on.<sup>7</sup> On 13 August 2024<sup>8</sup> Mr Bennetts filed an application in this Tribunal<sup>9</sup> to review the Commissioner's objection decision. Mr Bennetts bears the onus of proving on the balance of probabilities that the Commissioner's objection decision should not have been made or should have been made differently.<sup>10</sup>

8. I have concluded that Mr Bennetts has not met that burden of proof, and I affirm the Commissioner's decision.
9. Before setting out the factual background and my detailed reasons, I record my thanks to the parties' representatives Ms Paull and Mr Gerardson. This case was well managed and presented. Each party's respective case was set out in a focused and clear manner, focusing only on the interpretive issue and not on extraneous skirmishes. Each party treated each other's technical position with respect and courtesy. I record this because it made the Tribunal's job easier.

## **FACTUAL BACKGROUND**

### **General background**

10. There is no dispute as to the facts, which can be set out in brief.
11. Mr Bennetts was a bricklayer. He worked in the building and construction industry in Victoria for a considerable period. He retired in July 2021 due to ill health.<sup>11</sup> He was a beneficiary of the Fund.
12. The Fund was established in Victoria in 1983 and is set out in the *Construction Industry Long Service Leave Act 1997* (Vic) ("**the Act**"). There was a former *Construction Industry Long Service Leave Act 1983* (Vic) which was repealed and replaced by the Act.<sup>12</sup>

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<sup>7</sup> This is clear from T1-12 and the version of Rule 28.2 annexed which comes from the 2024 version of the Rules.

<sup>8</sup> T1.

<sup>9</sup> On 14 October 2024, the Administrative Appeals Tribunal became the Administrative Review Tribunal. Under the transitional provisions in the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* proceedings that were not finalised before 14 October 2024 are continued and finalised by the Administrative Review Tribunal. Anything done in relation to any such proceeding before 14 October 2024 is taken to have been done by the Administrative Review Tribunal.

<sup>10</sup> Section 14ZZK of the *Taxation Administration Act 1953* (Cth). The civil standard of proof. The balance of probabilities is applicable: *Commissioner of Taxation v Ross* [2021] FCA 766 [46]; *Bai v Federal Commissioner of Taxation* [2015] FCA 973 [31]; *Bai v Federal Commissioner of Taxation (No.2)* [2015] FCA 1083 [2].

<sup>11</sup> Applicant's SFIC [5].

<sup>12</sup> Section 20 of the Act.

13. Employers in the building and construction industry are required to make contributions to the Fund, and Working Sub-Contractors can voluntarily elect to participate in the Fund. Contributions can be made to the Fund.<sup>13</sup> Once 7 to 10 years (as applicable) of eligible service is completed, a Long Service Leave Benefit may be claimed by a Working Sub-Contractor.<sup>14</sup>
14. The Fund is managed under a Trust Deed (as defined in the Act)<sup>15</sup> (the “**Deed**” or “**Trust Deed**”) and by rules set out in Schedule 2 of the Trust Deed (the “**Rules**”).<sup>16</sup> The applicable Rules to the Relevant Year are those dated 2019.<sup>17</sup>
15. Contributions were made to the Fund when Mr Bennetts was an employee, and contributions were also made to the Fund when Mr Bennetts was a Working Sub-Contractor. It is accepted that Mr Bennetts made the necessary election when a Working Sub-Contractor in accordance with Rule 17 of the Rules.<sup>18</sup>
16. The Fund operates in accordance with the Act, Trust Deed and the Rules. In terms of the interest payments at issue, interest accrues on contributions made to the Fund by Working Sub-Contractors. Its calculation and payment is dealt with under the Rules.

#### **The relevant clauses in the Trust Deed and the relevant Rules**

17. The relevant clauses relied upon by the parties are set out below.

##### *Trust Deed*

18. In the Trust Deed:

#### **1 Definitions**

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<sup>13</sup> Subsections 4(1), 4(1A), 4(4) of the Act.

<sup>14</sup> Rule 26.1.3 and rule 26.2 of the Rules, definition of “Continuous Service”, rules 31 and 35.

<sup>15</sup> Definition of “trust deed” in section 3 of the Act, and the purpose provision in section 1 of the Act. The Supplementary T Documents include a Trust Deed at ST2 that appears to be a version from 27 September 2023 – that is, after the Relevant Year. It is unclear to the Tribunal whether this is the applicable version of the Trust Deed and what, if any, changes were made to the Trust Deed over time. In the abundance of caution, the Tribunal has considered the version of the Trust Deed that was applicable from 2014 to September 2021 to ensure the Trust Deed applicable at the time Mr Bennetts received the interest payment is considered. This is found at <https://leaveplus.com.au/wp-content/uploads/2021/01/3.-Trust-Deed-1-July-2014.pdf>.

<sup>16</sup> Definition of “Rules” in clause 1 of the Trust Deed.

<sup>17</sup> ST1. Applicant’s SFIC [10].

<sup>18</sup> ST3. Applicant’s SFIC [2]-[3]. Commissioner’s Statement of Facts, Issues and Contentions dated 8 April 2025 (“**Commissioner’s SFIC**”) [5]. The contributions that were made were not made voluntarily by Mr Bennetts but by the relevant Contractor that sub-contracted him: A5 Letter from Mr Bennetts to the ATO dated 23 January 2025 (“**Applicant’s 23 January Letter**”) [16]. The Tribunal notes that the Applicant’s 23 January Letter and the Commissioner’s 17 January 2025 letter to which it responds do not appear in the T documents or the Supplementary T Documents. They ought have been included but it is of no consequence, as the Tribunal has access to those documents.

*Beneficiary - means a person, who, under the Rules, is entitled to a payment out of the Fund ....*

### **2.3 Beneficiaries' entitlement**

*Notwithstanding anything in this deed:*

- (a) the Beneficiaries as a whole do not have any right, title or interest of any nature to or in the Fund or any part of the Fund or any Income; and*
- (b) an individual Beneficiary does not have any right, title or interest to or in the Fund or any Income unless and until the Trustee declares that the Beneficiary is presently entitled to it under clause 3.3 (Application) ....*

### **3.1 Allocation**

*The Trustee may in each Financial Year determine in accordance with the Rules the amount, proportion or percentage, if any, of the Income or, where clause 3.4 (Classes of Income) applies, any class of Income for that Financial Year which is to be:*

- (a) applied to Beneficiaries ('Applicable Income');*
- (b) transferred to a distribution reserve ('Accumulated Income'); and*
- (c) appropriated under clause 3.8 (Appropriation). ...*

### **3.3 Payment of Applicable Income**

*The Trustee must pay Applicable Income to such one or more of the Beneficiaries (exclusive of the others) as the Trustee determines in accordance with the Rules. ...*

### **3.4 Full discharge**

*In the exercise of the Trustee's power under clause 3.3 (Payment of Applied Income), any payment of Applied Income by the Trustee, with or without the execution of a receipt, will constitute a full and final discharge to the Trustee in relation to the trusts of this deed. ....*

### **3.5 Power exercisable at any time**

*The Trustee may exercise the power conferred by clause 3.1 in accordance with the Rules at any time and from time to time during the Financial Year. ....*

### **3.7 Present entitlement**

*It is a condition of entitlement of each Beneficiary to whom Applicable Income has been applied that the Beneficiary include in his or her assessable income the proportion of the net income of the Fund for that Financial Year (as defined in section 95 of the Tax Act) that the Beneficiary's share of Applied Income bears to the total Income. ....*

### **3.9 Absence of Trustee's determination**

*If the Trustee does not make a determination under clause 3.1 (Allocation) in respect of all or any of the Income, then so much of the Income which:*

- (a) is neither Applicable Income nor Accumulated Income;*
  - (b) being Applicable Income, is not applied to a Beneficiary; or*
  - (c) is not appropriated for the purposes of clause 3.8 (Appropriation),*
- must be treated as Accumulated Income. ....*

### **The Rules**

19. In the Rules:

#### **8. Fund ....**

**8.2** *The Trustee may pay the following amounts out of the Fund*

*8.2.1 the Long Service Leave Benefits or Payments in Lieu payable by the Trustee in accordance with these Rules and the Act ....*

#### **17. Election by a Working Sub-Contractor to pay Long Service Leave Charge**

**17.1** *A Working Sub-Contractor may elect to pay a Long Service Leave Charge in respect of Construction Work performed by the Working Sub-Contractor by giving notice in writing to the Trustee.*

**17.2** *Part 5 of these Rules applies to a Working Sub-Contractor who has made an election in accordance with Rule 17.1, until the Working Sub-Contractor is deemed to have revoked that election in accordance with Rule 17.3.*

**17.3** *A Working Sub-Contractor will be deemed to have revoked an election made in accordance with Rule 17.1 where the Working Sub-Contractor gives notice in writing to the Trustee of the Working Sub-Contractor's intention to revoke that election. ....*

#### **26. Entitlement of Working Sub-Contractor**

*26.1 Subject to Rule 27, the Trustee must pay a Long Service Leave Benefit to a Working Sub-Contractor if the Working Sub-Contractor has:*

*26.1.1 made an election in accordance with Rule 17.1;*

*26.1.2 paid a Long Service Leave Charge to the Trustee in accordance with these Rules;*

*26.1.3 after having made an election in accordance with Rule 17.1, completed:*

*(a) wholly prior to 30 June 2002, 10 years of Continuous Service; or*

*(b) wholly after 1 July 2002, 7 years of Continuous Service; or*

*(c) partly prior to and including 30 June 2002 and partly on and after 1 July 2002, 7 years of Continuous Service; and*

*26.1.4 provided to the Trustee written notification of:*

*(a) the Working Sub-Contractor's request for payment of a Long Service Leave Benefit;*

*(b) the Working Sub-Contractor's intention to take Long Service Leave;*

*(c) the date on which such leave will commence; and*

*(d) the length of Long Service Leave being taken, which must be not less than one week.*

*26.2 Subject to Rule 27, the amount of the Working Sub-Contractor's Long Service Leave Benefit to be paid by the Trustee to a Working Sub-Contractor in accordance with Rule 26.1 is the total amount of the Long Service Leave Charge paid by the Working Sub-Contractor for the period of Continuous Service, together with interest calculated in accordance with Rule 28. ....*

## **28. Calculation of interest payable to Working Sub-Contractor**

### **28.1 Interest calculated on all monies**

*Where interest is payable by the Trustee to a Working Sub-Contractor in accordance with Rules 26.2, 29.2.2, 38.1.2 or 39.1.2, the interest must be calculated on all monies standing to the credit of the Working Sub-Contractor, including, but not limited to, any interest previously credited to the Working Sub-Contractor.*

### **28.2 Period for calculation**

*The interest must be calculated from:*



28.2.1 the date of receipt of the payment of the Long Service Leave Charges; or

28.2.2 the date of the crediting of interest paid in the past to the credit of the Working Sub-Contractor, as the case may be.

### **28.3 Rate of interest**

28.3.1 The rate of interest to be paid in respect of any Financial Year will be determined by the Trustee by no later than 31 August of the following Financial Year.

28.3.2 The Trustee will determine the rate of interest in respect of any Financial Year by:

(a) calculating the gross earnings of the Fund for that Financial Year as a percentage of the total amount of the Fund; and

(b) adjusting that percentage to take account of the expenses incurred in administering the Fund (where such adjustment does not exceed 25% of the earning rate of the Fund) to arrive at an adjusted rate of interest.

28.3.3 The Trustee may determine an interim rate from time to time, prior to determination of the rate of interest in accordance with Rule 28.3.1. ....

## **29. Entitlement of person as both Worker and Working Sub-Contractor [....]**

29.2 The amount of a person's Long Service Leave Benefit in accordance with Rule 29.1 will be the total of: ...

29.2.2 in respect of the period of Continuous Service for which the person was a Working Sub-Contractor, the total amount of Long Service Leave Charges paid by the Working Sub-Contractor for that Continuous Service, together with interest calculated in accordance with Rule 28. ...

## **38. Payment In Lieu on leaving the Construction Industry or unemployment**

### **38.1 Entitlement to payment**

38.1.1 The Trustee must make a Payment In Lieu to a Worker if the Worker has carried out sufficient Continuous Service such that the Worker would have been entitled to receive payment from the Trustee of a Long Service Leave Benefit and:

(a) the Worker leaves the Construction Industry (otherwise than by death) before such Long Service Leave Benefit has been paid; or

*(b) the Worker is currently unemployed; and*

*(c) the Worker has made a written request for a Payment In Lieu.*

*38.1.2 The Trustee must make a Payment in Lieu to a Working Sub-Contractor if the Working Sub-Contractor:*

*(a) elected to pay a Long Service Leave Charge;*

*(b) has paid a Long Service Leave Charge in accordance with Part 5 of these Rules;*

*(c) has left the Construction Industry;*

*(d) is not entitled to any Long Service Leave Benefit or Payment In Lieu in accordance with any other provision of these Rules, in respect of the Service for which the relevant Long Service Leave Charges were paid; and*

*(e) has made a written request for a Payment In Lieu.*

*38.1.3 A Working Sub-Contractor will be deemed to have left the Construction Industry for the purpose of Rule 38.1.2 where the Working Sub-Contractor did not pay Long Service Leave Charges in accordance with these Rules for a continuous period of 2 years prior to 1 December 1997.*

### **38.2 Calculation of payment**

*38.2.1 Where a Payment In Lieu is payable by the Trustee to a Worker in accordance with Rule 38.1.1, the amount payable will be calculated in accordance with Rule 24 or Rule 29.2, as the case may be.*

*38.2.2 Where a Payment in Lieu is payable by the Trustee to a Working Sub-Contractor in accordance with Rule 38.1.2, the amount payable will be calculated as follows:*

*(a) where the Working Sub-Contractor has left the Construction Industry because of illness or incapacity (or because of other circumstances, at the discretion of the Trustee), the amount payable is calculated in accordance with Rule 26.2 as though the payment was being made in accordance with Rule 26.1; ....*

## THE PARTIES' POSITIONS

### The Applicant's Position

20. More detail of Mr Bennetts' argument is considered further below. In summary, his argument is:

(a) Subsections 6-5(1) and 6-5(2) of the *Income Tax Assessment Act 1997* (Cth) ("**ITAA 1997**") provide:

*(1) Your **assessable income** includes income according to ordinary concepts, which is called **ordinary income**.*

*(2) If you are an Australian resident, your assessable income includes the ordinary income you derived directly or indirectly from all sources, whether in or out of Australia, during the income year.*

(b) There is no dispute the interest income is ordinary income for tax purposes. I note that the Applicant's SFIC at [49] provides a submission on whether the payment at issue is, in fact, *interest*. I think in early exchanges the Commissioner may have taken a position on this that Mr Gerardson effectively countered. From the Commissioner's filings before the Tribunal this is not disputed.<sup>19</sup>

(c) Subsection 6-5(4) of the ITAA 1997 provides:

*(4) In working out whether you have **derived** an amount of ordinary income, and (if so) when you **derived** it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct."*

(d) Mr Bennetts derived the interest income when it was *applied* to him, *dealt with on his behalf* or as he *directed*.

(e) Mr Bennetts *derived* the income prior to the year in which it was paid to him, and a number of the periods in which Mr Bennetts derived the interest income are time barred. This is because (in summary):

(i) In terms of a *direction* by Mr Bennetts, this occurred passively, following his acceptance of the Deed and the Rules. Mr Bennetts calls this an "implied direction."<sup>20</sup>

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<sup>19</sup> Commissioner's Outline of Opening Submissions dated 13 May 2025 ("**Commissioner's Submissions**") [54(e)]

<sup>20</sup> Applicant's SFIC [32] to [36].

- (ii) He derived income when *allocated* to him or *dealt with on his behalf* – that is, when it was applied to his account in accordance with the Deed and the Rules. Mr Bennetts calls this “constructive receipt.”<sup>21</sup>

### **The Commissioner’s Position**

21. More detail of the Commissioner’s argument is considered further below. In summary, the Commissioner’s argument is:
- (a) The Rules and the Trust Deed do not allow access, right, title or interest in any amount of income by a Beneficiary to the Fund until the Trustee makes an overt determination of an amount to be applied to a Beneficiary. Mr Bennett is a Beneficiary.
  - (b) This meant Mr Bennetts could not apply nor deal with the interest accruing in the Fund, and it was not *derived* by him prior to the year in which the Trustee made that determination, and it was paid to him.<sup>22</sup>
  - (c) The implied direction argument from Mr Bennetts is not supportable at law.

### **ANALYSIS**

#### **Case law**

22. A large number of cases have considered the meaning of the words “*you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct*” in subsection 6-5(4) of the ITAA 1997 and the same or similar wording in its predecessor provisions.
23. Those cases include the following:
- (a) *Commissioner of Taxes (South Australia) v The Executor Trustee Agency Company of South Australia Ltd*; *Carden’s case* (1938) 63 CLR 108 (“**Carden’s case**”) – the question was whether fees payable to a doctor were assessable in the year they were earned, even if the fees were not paid until a later year. In holding that the doctor returned his income on a cash basis, and this meant he only *derived* the income when it was paid to him, Dixon J held at 155:

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<sup>21</sup> Applicant’s SFIC [37] to [55]

<sup>22</sup> Commissioner’s SFIC [14], [37], [38]

*Speaking generally, in the assessment of income, the object is to discover what gains have during the period of account come home to the taxpayer **in a realised or immediately realisable form** [emphasis added].*

- (b) *Permanent Trustee Company of New South Wales (executors of the estate of Frederick Henry Prior, deceased) v Federal Commissioner of Taxation* (1940) 6 ATD 5 (“**Estate of Prior**”) – the issue related to interest that was capitalised on a loan owed to the deceased by his partner in a partnership. When the partnership dissolved as a consequence of the death of the deceased, a deed was entered into under which the debtor partner agreed he was personally liable for capitalised interest (totalling £2,535) and agreed to provide security for that liability. Due to his financial circumstances however, the debtor partner ended up making no payments of interest. The amount at issue was £2,097 (due to the deceased having returned £438 as income in prior years). The High Court held that the £2,097 was not *derived* by the deceased. In referring to a forebear of subsection 6-5(4) the Court held (at 12-13):

*Section 19 of the Income Tax Assessment Act, 1922–1933 provides that:—*  
*“Income shall be deemed to have been derived by a person within the meaning of this Act although it is not actually paid over to him but is reinvested, accumulated, capitalised, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on his behalf or as he directs.”*  
*In the present case the interest was by the deed carried to the capital account and in this sense capitalised. But, s.19 does not say that wherever this happens income shall be deemed to be derived but **it says that it shall be deemed to be derived income on the assumption that it is income and in other respects is derived notwithstanding that there is no actual payment over but a capitalisation or other dealing on behalf of the taxpayer or under his direction.** The object is to prevent a taxpayer escaping tax though his resources have actually been increased by the accrual of the income and its transformation into some form of capital wealth or its utilisation for some purpose. .... **To see whether income has been derived one must look to realities.** Usually, payment of interest by cheque involves a receipt of income but payment by a valueless cheque does not. “For income tax purposes receivability without receipt is nothing... **The facts in this case show that there was not “an actually realised or realisable profit”**”: *Cross v London & Provincial Trust Ltd* [1938] 1 K.B. 792 at 798. All that happened in this case was*

*to change a forlorn hope of interest into a still more forlorn hope of capital. In my opinion income was not derived even if the sums for interest included in the Commissioner's £2,097 were really due and not as the taxpayers claim only in part due owing to error [emphasis added].*

- (c) *Arthur Murray (NSW) Pty Ltd v Federal Commissioner of Taxation* (1965) 114 CLR 314 (“**Arthur Murray**”) – the issue related to prepaid fees for dancing lessons which were held in a suspense account. The issue was whether those fees were *derived* by the taxpayer when they were paid or when the dancing lessons were completed, and the prepaid fees were allocated to the taxpayer's ordinary revenue account. In holding that the income was *derived* when the dancing lessons had been completed and not before, the High Court said at 319:

*[I]n determining whether actual earning has to be added to receipt in order to find income, the answer must be given in the light of **the necessity for earning which is inherent in the circumstances of the receipt**. It is true that in a case like the present the circumstances of the receipt do not prevent the amount received from becoming immediately the beneficial property of the company; for the fact that it has been paid in advance is not enough to affect it with any trust or charge, or to place any legal impediment in the way of the recipient's dealing with it as he will. But those circumstances nevertheless make it surely necessary, as a matter of business good sense, that **the recipient should treat each amount of fees received but not yet earned as subject to the contingency that the whole or some part of it may have in effect to be paid back**, even if only as damages, should the agreed quid pro quo not be rendered in due course. The possibility of having to make such a payment back (we speak, of course, in practical terms) is an inherent characteristic of the receipt itself. **In our opinion it would be out of accord with the realities of the situation to hold, while the possibility remains, that the amount received has the quality of income derived by the company** [emphasis added].*

- (d) There are other cases which follow *Arthur Murray* and determine whether there is a contingency impacting the derivation of income. Those cases include *Sent v Federal Commissioner of Taxation (No.2)* [2012] FCAFC 187 (“**Sent No.2**”). In that case there were amendments made to bonus entitlements of a senior executive taxpayer. The bonus entitlements had been subject to eligibility conditions, or were accruing, or were said to potentially arise in future. In return for waiving those bonus entitlements, the

employer paid an amount of approximately \$11.6m to a trust in which the taxpayer held units, and those funds were used by the trust to acquire shares in the employer, with a deferral period of one year before the taxpayer could acquire the benefit of the shares. The issue before the Full Federal Court was whether the \$11.6m was derived by the taxpayer. The Court upheld the decision of the Federal Court that there was no contingency impacting the taxpayer's derivation of the \$11.6m and he *derived* that amount for tax purposes. He simply directed it to the trust. The deferral period for the shares that the \$11.6m was used to ultimately acquire, did not impact the taxpayer's derivation of the \$11.6m.

- (e) *Brent v Federal Commissioner of Taxation* (1971) 125 CLR 418 ("**Brent**") - the issue related to the sale of the story of the taxpayer's life on the run with her husband Ronald Biggs. The story was to be provided by the taxpayer in return for \$65,250 payable by the newspaper which was due in the same income year. The agreement was that \$10,000 was paid on signing the agreement with the newspaper, \$15,250 30 days later and \$40,000 on her signing a manuscript. The Commissioner assessed the taxpayer for the entire \$65,250 in the 1970 income year, but the taxpayer was paid only \$10,000 in that year. The newspaper paid the tax assessed by the Commissioner and directed the remaining funds to the taxpayer in 1971. In holding that the Commissioner's position was incorrect and only \$10,000 was derived in 1970, the High Court cited *Carden's case* and said at [12]:

*The Act does not define the word "derived" and does not establish a method to be adopted as a general rule to determine the amount of income derived by a taxpayer, although particular situations not relevant to the present case are dealt with. The word "derived" is not necessarily equivalent in meaning to "earned". "Derive" in its ordinary sense, according to the Oxford English Dictionary, means "to draw, fetch, get, gain, obtain (a thing from a source)".... However the [Carden's case] decision itself shows that **his Honour did not intend to hold that moneys realizable, but not received, in an accounting period should always be treated as income derived during that period.** Indeed, Dixon J. went on to advert to the distinction between trade and other sources of income drawn by Sir Houldsworth Shaw and Mr. Baker in their *Law of Income Tax* in the following passage which he cited (1938) 63 CLR, at p 155:*

*"There is an important distinction between debts due to a trading company and unpaid in a particular year or period and other income which is not a*

*trade receipt. Trading debts due but not yet paid must be included in arriving at the balance of profits or gains. With regard, however, to other income there must be something 'coming in'; that is, for income tax purposes, receivability without receipt is nothing" [emphasis added].*

- (f) *Federal Commissioner of Taxation v Clarke* (1992) 24 ATR 230 ("**Clarke**") – the issue related to an annuity invested in by the taxpayer, a retired teacher. The policy had a five-year term, and relevantly provided that allocations of surplus were made to the taxpayer's Investment Account as interest. The Commissioner assessed the taxpayer on both the annuity payments received by him, and the interest payments credited to his Investment Account. After reviewing the contractual arrangements comprising the investment, the Full Federal Court held that the interest payment was not *derived* by the taxpayer because (at 236):

*In no sense can it be said that Mr Clarke derived the sum of \$4443 during the year of income. He had a contractual right which required Capita to adhere to its obligations of crediting the investment account at the end of each year with the appropriate amount of interest and of crediting the Investment Account and the Capital Growth Account with various monies in accordance with the conditions of the policy. Capita was entitled to debit the Investment Account with various administrative charges, but **until the termination of the policy Mr Clarke had no rights to receive or to have held on his behalf any monies except the annuity payments.***

*By condition 6 of the policy Mr Clarke, or a successor annuitant, could attempt to obtain a benefit from attached bonuses by notifying Capita of the wish to receive a revised annuity payment of an increased amount. **Only if Capita agreed to such a request would a revised annuity payment become payable and entitlement to the payment of any part of a credited sum crystallize.** Upon the receipt of such a revised annuity payment the amount of the undeducted purchase price of the annuity would need to be determined (see s. 27H). The amount of assessable income received would then be calculated. **Until such an event occurred, or the policy was terminated, Mr Clarke held no more than the expectation of a benefit.** The account maintained by Capita recognized that expectation but did not in itself "bring home" to Mr Clarke the amount of the bonuses credited or attached to his policy. [emphasis added].*



- (g) In *Federal Commissioner of Taxation v McNeil* [2007] HCA 5 (“**McNeil**”) the taxpayer held shares that were subject to a buy back arrangement that gave her rights to sell the shares back to the company. Those sell back rights were held on trust and could be sold for the benefit of the taxpayer despite her passively doing nothing once the rights were issued to her. Much of the case revolved around the nature of the sell back rights, whether capital or revenue in nature. On determining the taxpayer acquired the rights as income, there was also an issue as to whether the taxpayer *derived* that income. The High Court held at [51] that upon review of the various contractual arrangements and deeds, it was clear that the sell back rights were held on trust for the *absolute benefit* of the taxpayer on issue of those rights. This meant that she *derived* the market value of those rights at that time.
- (h) Other cases also support the view that a review of the relevant contractual arrangements and deeds are important to determining whether a payment is *derived* for tax purposes. A further example is *Hedges v Federal Commissioner of Taxation* [2023] FCAFC 105 (“**Hedges**”). In that case, on interpretation of a partnership deed, the Full Federal Court confirmed that on retirement from a partnership, the taxpayer’s entitlement to various payments had crystallised *prior to* a set-off contemplated in other provisions of the partnership deed. That meant the taxpayer *derived* those amounts for tax purposes.
- (i) In *Federal Commissioner of Taxation v White* [2010] FCA 730 (“**White**”), the issue concerned an employee share plan. The issue was whether amounts credited to the employee share plan in the taxpayer’s name by the employer entity (Kalix) comprised ordinary income which was assessable to him. In holding that each of those amounts were *derived* by the taxpayer when they were credited, the Federal Court held at [28] to [29]:

*[28] ...The factual findings by the AAT establish that, as an employee of Kalix, Mr White derived income as a reward for services and, by agreement with Kalix, directed the manner in which that reward (income) was to be dealt with on his behalf. If Kalix had paid the whole of the amount to Mr White directly (rather than through the [Employee Share Plan]), it would be income according to ordinary concepts and usages. It was and remains a reward for his services. ... As noted earlier (see [25] above), it is not necessary that a taxpayer must personally gain some benefit from a payment for it to be income.*

*[29] That analysis is also a complete answer to Mr White's second submission that he did not "derive" the sum of \$399,000 in the 2000 year. **Mr White's submission was that because \$399,000 was contributed to the [Employee Share Plan] and was subject to a vesting period (cl 5.1 of the Trust Deed), that amount was not available to him in the 2000 year and therefore was not "derived" by him in that year.** As explained in paragraph [28] above, the factual findings by the AAT establish that the sum of \$399,000 was "derived" as income when it was paid by Kalix into the [Employee Share Plan] **at the direction of and on behalf of Mr White. What the [Employee Share Plan] then decides, or is bound, to do with that sum is not relevant to the issue of whether Mr White derived that amount as income** [emphasis added].*

#### **Summary of principles from the case law**

24. Principles that can be drawn from those cases when considering the question of *derivation* include:
  - (a) Considering the contractual arrangements is a critical part of the assessment of whether an amount is derived: *McNeil, Hedges, White, Arthur Murray*.
  - (b) Whether the taxpayer returns income on an accruals or cash basis is a relevant factor: *Carden's case, Arthur Murray, Brent*.
  - (c) What the amount is *for* is relevant – for instance, if it is for services and those services have been supplied, that is a relevant factor: *White, Sent No.2, Arthur Murray, Hedges*.
  - (d) When determining whether amounts credited to an account are derived, consideration needs to be given as to whether those amounts are subject to any contingency (where they might be required to be repaid (for example)), or there are additional steps before the taxpayer can be said to have more than an *expectation* of income: *Arthur Murray, Clarke, Estate of Prior*.
  - (e) If instead, the additional steps before the taxpayer can call for the income are due to the taxpayer saying "please do not pay me the income due to me, put it into this investment" where that contingency arises, that will not mean the amount is not *derived*: *White, Sent No.2, Hedges*. In that event, the additional matters before the taxpayer can call for the income arise *after* derivation has already occurred.

- (f) If a taxpayer has an *absolute entitlement* to a credited amount or can access a credited payment in *realisable form*, the taxpayer will have *derived* the income even where it is not paid to them: *McNeil, White, Hedges, Estate of Prior*.
- (g) When determining if an amount has been derived, a relevant factor is to consider if something has “come home” to the taxpayer in the form of income: *Carden’s case, Brent, Clarke, Sent No.2*.

### **The Trust Deed and the Rules**

- 25. Subsection 6(3) of the Act provides that entitlements and the method of calculation are determined in accordance with the Trust Deed. When determining Mr Bennetts’ entitlement to interest, the first matter to consider is the clauses in the Trust Deed and the Rules. The Rules are in Schedule 2 of the Trust Deed.
- 26. The Rules govern the entitlement to interest. Interest is payable to Working Sub-Contractors on contributions made to the Fund if they elect to participate in the Fund. Mr Bennetts was a Working Sub-Contractor for a period of his service, as well as being a Worker for another period of his service. There is no dispute the contributions were made during the period Mr Bennetts was a Working Sub-Contractor. Rule 30.1 provides for circumstances where a person is both a Working Sub-Contractor and a Worker, and it provides for calculations of a Long Service Leave Benefit taking into account that person’s service in each of those roles.
- 27. Rule 26.2 of the Rules sets out the Working Sub-Contractor’s entitlement that is “*to be paid*” (i.e., in future) in accordance with rule 26.1, and this includes interest calculated in accordance with rule 28. This is all subject to rule 27:
  - (a) Under rule 26.1, the Trustee *must* pay a Working Sub-Contractor their entitlements *if* certain requirements are met, including meeting the relevant time period of Continuous Service, and there being a written request for payment containing the required details in rule 26.1.4.
  - (b) Rule 27 provides detail of the amount of long service leave to be paid to a Working Sub-Contractor, depending on the amount of leave that is to be taken and that is notified to the Trustee. Rule 27.3 confirms that the Trustee must pay the Long Service Leave Benefit to the Working Sub-Contractor once it has received all of the information in accordance with rule 26.1.4.

28. Rule 28 sets out the calculation of interest. Rule 28.1 applies “where interest is payable” under rule 26.2 (set out above), rule 29.2.2, rule 38.1.2 or rule 39.1.2.
- (a) Rule 29.2.2 provides that for the period of Continuous Service that Mr Bennetts was a Working Sub-Contractor he is entitled to interest.
  - (b) Rule 38 is about Payments in Lieu when a Worker or Working Sub-Contractor leaves the Construction Industry or where there is unemployment. Rule 38.1.2 provides for a Payment in Lieu payable to a Working Sub-Contractor. A Payment in Lieu is defined in rule 1 as a payment in lieu of a Long Service Leave Benefit and is payable in accordance with rule 38 or rule 39. Rule 38.2 links the Payment In Lieu calculation back to rule 29.2 and the payment is interest described above. I note that the Commissioner’s Submissions include submissions about whether there is a Payment in Lieu.<sup>23</sup> Mr Gerardson’s submissions do not suggest that is being raised, and I have not considered it further.
  - (c) Rule 39 is about a Payment in Lieu upon death or terminal illness. Rule 39.1.2 provides for such a payment payable to a Working Sub-Contractor, and rule 39.2 links the Payment in Lieu calculation back to rule 29.2 and the payment of interest described above.
29. Rule 28.1 provides that interest “*must be calculated on all monies standing to the credit of the Working Sub-Contractor, including, but not limited to, any interest previously credited to the Working Sub-Contractor*”. I return to this rule further below.
30. The Trust Deed considers different types of income defined in that Deed.
- (a) Relevantly for this case, clause 3.1 sets out the concepts of Applicable Income (any class of Income applied to Beneficiaries), Accumulated Income (any income transferred to a distribution reserve) and Appropriation (which is income appropriated under clause 3.8).
  - (b) Clause 3.1 provides that the Trustee *may* in each Financial Year determine the appropriate amount or percentage of income that falls in those categories. Clause 3.5 provides this may occur at any time.
  - (c) If no determination is made under clause 3.1, then clause 3.9 provides that Accumulated Income arises.

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<sup>23</sup> Commissioner’s Submissions [46].

- (d) Clause 3.3 provides that the Trustee *must* pay Applicable Income to Beneficiaries *determined in accordance with the Rules*.
  - (e) There are general and broad powers given to the Trustee in Schedule 1 to the Deed. This includes powers to act on counsel's advice<sup>24</sup> or do any other act or thing necessary for the efficient management of the Fund.<sup>25</sup> These powers would include recovery of funds improperly paid.
31. The last clause in the Trust Deed to particularly highlight is clause 2.3 of the Deed. It specifically provides that a Beneficiary such as Mr Bennetts does not have '*any right, title or interest of any nature to or in the Fund or ... any Income ... until the Trustee declares that the Beneficiary is presently entitled to it under clause 3.3 (Application)*.'" Clause 5.3 makes it clear that the Rules form part of the Trust Deed, but the Trust Deed prevails to the extent of inconsistency.

**Summary of principles from the Rules and Deed taking into account the principles from the case law**

32. What can be drawn from the Trust Deed's clauses and Rules taking into account the case law is:
- (a) The contractual arrangements (the Deed and the Rules) provide that interest accumulates on contributions to the Fund by or on behalf of Working Sub-Contractors. It is a payment arising within the Fund itself. It applies on a compounding basis under rule 28.1.
  - (b) The accruals vs cash basis for returning income is not a particularly relevant factor for Mr Bennetts.
  - (c) The amount is not *for* services supplied by Mr Bennetts but is a payment arising for the period he was a Working Sub-Contractor on contributions made to the Fund. It is an amount calculated within the Fund.
  - (d) Mr Bennetts does not have an absolute entitlement to the interest payment or to call for the interest payment. Clause 2.3 of the Trust Deed says that, and the Rules provide that certain requirements must be met (including a written application providing the information required by the Rules). If Mr Bennetts failed to meet those requirements,

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<sup>24</sup> Schedule 1 clause 1(o) of the Trust Deed.

<sup>25</sup> Schedule 1 clause 1(j) of the Trust Deed.

he would not be entitled to receive an interest payment. He has an *expectation* of income but that is not sufficient to *derive* it for tax purposes.

- (e) Nothing can “come home” to Mr Bennetts unless and until he makes a request meeting the requirements of the Rules (per rule 26.1) and the Trustee makes a determination under clause 3.1 of the Deed. Prior to that, the Trustee has no obligation under clause 3.3 to pay Mr Bennetts anything.

### **Responding to Mr Bennetts’ submissions**

- 33. Mr Bennetts has raised arguments and provided evidence that I specifically set out and respond to below.

- 34. “Clause 3.1 of the Trust Deed sets out an entitlement annually.”<sup>26</sup> “The Trustee is required to make a determination each year.”<sup>27</sup> Neither of these arguments are correct.

- (a) For a start, the Trustee is *not required* to make an annual determination. Instead, it *may* do so. It is not a must. It is entirely left to the Trustee’s discretion. Clause 3.9 provides what happens if an annual determination is not made about all or any part of the Fund’s Income. The existence of clause 3.9 alone counters Mr Bennetts’ argument. I agree with the Commissioner’s Submissions at [43(d)] and [43(e)] on this aspect. In addition, clause 3.5 of the Deed provides the Trustee can exercise its power under clause 3.1 at *any time*. It could be many times a year, or it could not occur.
- (b) While rule 28 of the Rules *requires* interest to be *credited annually*, there is nothing *requiring* the Trustee to make an annual determination of Applicable Income or any other kind of income. The calculation of and crediting of interest is not the same as the determination of Applicable Income. It does not, per clause 2.3 of the Deed, give Mr Bennetts any rights to that interest income.
- (c) Clause 3.1 has nothing at all to say about Mr Bennetts’ *entitlement*. It is a determination provision, mechanical in nature. It says nothing about Mr Bennetts’ ability to call for any Applicable Income or any other income nor about his entitlement to it. The definition of *Beneficiary* of itself refers to a person entitled to a payment from the Fund and that this is determined *under the Rules*. Prior to determination under the Rules as to entitlement, a person is a “*Potential Beneficiary*” as defined in the Deed.

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<sup>26</sup> Applicant’s January 2025 Letter [8].

<sup>27</sup> Applicant’s SFIC [42].

- (d) If there is Applicable Income determined by a Trustee, the Trustee *must* pay it (in accordance with clause 3.3), but critically, this is only *after* the Trustee has determined which Beneficiaries to pay it to and in what proportions, and otherwise *in accordance with the Rules*.
  - (e) The Rules set out detailed requirements *prior to* any entitlement to anything – for instance the requirements of rule 26.1.4 and the other matters set out above.
  - (f) Clause 2.3 gives Mr Bennetts no entitlement to anything until clause 3.3 is satisfied. Clause 3.3 cannot be satisfied until clause 3.1 and the Rules are satisfied.
  - (g) Under clause 3.1, the Trustee may determine other kinds of income than Applicable Income in any event. Assuming the Trustee does make a determination under clause 3.1, there is no requirement for a Trustee to determine Applicable Income. For instance, the Trustee can determine Accumulated Income or Appropriation. That does not give rise to an entitlement for Mr Bennetts to receive that income.
  - (h) Because of the nature of interest calculated under rule 28, that is, it is calculated on interest previously calculated, interest could well comprise Accumulated Income treated as an addition to the Fund under clause 3.6, and part of the *Fund* as that term is defined in the Deed. That does not mean the interest is Applicable Income available to be paid to Mr Bennetts or realisable by him.
35. “Clause 2.3 operates to shield the gross assets of the Fund from any claim on any one of those assets from a single Member.”<sup>28</sup> This is not correct. Clause 2.3 on its terms (as set out above at paragraph 18) clearly applies specifically to *Income* as well as assets. It also applies to the whole group of Beneficiaries, as well as each individual Beneficiary or “*single Member*.” Clause 2.3 specifically states that Mr Bennetts has no rights to *any Income* (no matter what class of income) until clause 3.3 of the Deed applies.
36. “Clause 3.7 of the Trust Deed requires Beneficiaries to bear a tax liability on an annual basis.”<sup>29</sup> This is not correct.
- (a) Clause 3.7 is a *condition of entitlement*. It is a further contingency on the Beneficiary being entitled to Applicable Income. If the Beneficiary does not include the Applicable Income apportioned to them in their assessable income, strictly, the Trustee may be

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<sup>28</sup> Applicant’s SFIC [39]. Applicant’s January 2025 Letter [2] and [3].

<sup>29</sup> Applicant’s January 2025 Letter [9]. Applicant’s SFIC [43].

entitled to use its general powers in Schedule 1 to the Deed to recover that Applicable Income because that Beneficiary is not entitled to it. I agree with the Commissioner's Submissions at [43(f)] on this aspect.

- (b) Clause 3.7 also applies *only when* Applicable Income is determined by the Trustee under clause 3.1 in the first place. As is noted above, that determination is *not required annually* and a determination under clause 3.1 may determine no Applicable Income arises in any event.
37. *"The Rules of the Fund do not contain any specific provision requiring the Beneficiary to accept those rules to be a member."*<sup>30</sup> The Rules are a part of the Trust Deed. They appear in Schedule 2 to the Deed. Clause 5.3 of the Deed makes it clear that the Rules form part of the Trust Deed. This submission also seems contrary to Mr Bennetts' "implied direction" submission *"in applying to the Fund to be a Beneficiary, [Mr Bennetts] accepts the Deed and Rules of the Fund, and this is implied 'direction'."*<sup>31</sup>
38. *"The ability to obtain withdrawal entitlements is not connected to the crediting of earnings on a Beneficiary's account."*<sup>32</sup> Rule 28 of the Rules provides for a *calculation* of interest but what Mr Bennetts' submissions fail to recognise is that this is insufficient for the Tribunal to be able to conclude that Mr Bennetts *derived* interest income. As is demonstrated by cases such as *Arthur Murray, Clarke*, and the *Estate of Prior* even if income is credited to an 'account' (which rule 28 does *not* say happens in any event), that of itself is insufficient to demonstrate income is *derived* if there are contingencies or additional steps required before Mr Bennetts can access the interest in realisable form. That is the case here.
39. The calculation of interest income is not the same as income that is *"applied or dealt with in any way on your behalf or as you direct"* as required by subsection 6-5(4) of the ITAA 1997. This is because Mr Bennetts had no entitlement so nothing could be "applied" on his behalf or as he directed, as was noted in *Clarke*.<sup>33</sup>
40. The 'implied direction' argument also cannot be accepted. It is not the passive joining of the Fund by Mr Bennetts that directs the Trustee, the obligations of the Trustee under the Deed, the Act and the Rules direct the Trustee. The obligations do not give rise to realisable interest income that Mr Bennetts can then direct be applied in some way. The derivation

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<sup>30</sup> Applicant's January 2025 Letter [15].

<sup>31</sup> Applicant's SFIC [30].

<sup>32</sup> Applicant's SFIC [51].

<sup>33</sup> *Clarke* at 236 as cited above at paragraph 23(f).



event had yet to occur for Mr Bennetts. This case is distinguishable from *Sent No.2, Hedges* and *White* in this regard. It is also distinguishable from *McNeil* where the taxpayer derived income because the contractual provisions made it clear that the taxpayer's passive holding of sell back rights gave her *an absolute entitlement* to their value. A passive holding was not considered to be an 'implied direction' what was important in *McNeil* was the entitlement of the taxpayer. For Mr Bennetts it is the reverse position to *McNeil*. The contractual provisions do not give him any rights to any Income or Assets of the Fund until particular requirements are met. There is no absolute entitlement.

41. By email dated 6 June 2024,<sup>34</sup> Mr Gerardson attached Mr Bennetts' 'ledger' card from the Fund. That document indicates that interest was calculated by the Trustee as required by rule 28, but it says nothing about Mr Bennetts' *entitlement to that interest*. The same point can be made about the annexures to Mr Bennetts' objection.<sup>35</sup> Mr Bennetts has a mere expectation of income once he met the requirements of the Deed and the Rules. The recording of the calculation of interest is not the same as an entitlement, an application or a dealing on Mr Bennetts' behalf. Derivation cannot occur because the interest is subject to contingencies and additional steps before Mr Bennetts has any entitlement to it.
42. Mr Gerardson drew an analogy with the managed investment fund regime in suggesting that Mr Bennetts had a sub-account within the Fund.<sup>36</sup> In my view, this was a mere analogy for emphasis, and it does not make a difference to my holdings on the *derivation* point. Even if Mr Gerardson was right and there is a "sub account"<sup>37</sup> the operation of the Deed, Rules and Act do not provide that Mr Bennetts derives interest income any earlier than the Relevant Year as the mere calculation of interest does not give him any entitlement.
43. Finally, and for completeness, I note the reference made in the Applicant's SFIC at [25] to Australian Taxation Office Taxation Ruling TR 98/1 *Income tax: Determination of income; receipts versus earnings* ("TR 98/1"). That ruling is not law, but in any event, there is nothing in that ruling (which deals with accruals vs cash method of accounting for taxation) that is inconsistent with this decision. Other rulings from the Commissioner – for example the edited private ruling 1012079167245 – provide that interest that is credited to an account is derived, but this is in a context where "*you allowed the entity to reinvest the money on your*

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<sup>34</sup> T10.

<sup>35</sup> T1-14 to T1-21.

<sup>36</sup> Applicant's SFIC [50].

<sup>37</sup> This is not accepted to be the case in any event. There is no indication of sub accounts in the documentation.

*behalf.*” That is similar to *White, Sent No.2, Hedges* in that the derivation event had occurred. That is not the case here. Mr Bennetts does not have any entitlement to the interest income until the requirements of the Deed and the Rules are satisfied and this means the derivation event had yet to occur.

## **CONCLUSION**

44. For the above reasons, I am not satisfied on the balance of probabilities that Mr Bennetts derived the interest payments at issue any earlier than when they were paid in the Relevant Year. The Commissioner’s decision is affirmed.

.....[SGD].....  
General Member J Dunne

Dated: 22 July 2025

Date of hearing:	<b>14 May 2025</b>
Representative for the Applicant:	<b>Mr F Gerardson, Colville Williams &amp; Co Pty Ltd</b>
Counsel for the Respondent:	<b>Ms B Paull</b>
Solicitors for the Respondent:	<b>Australian Taxation Office, Litigation and Legal Services</b>