

Appendix 1: Division 5 of Part 3.18 of the *Social Security Act*

1207V Controlled private trusts

- (1) For the purposes of this Part, a trust is a ***controlled private trust*** in relation to an individual if the trust is a designated private trust and:
- (a) the individual passes the ***control test*** set out in subsection (2); or
 - (b) the individual passes the ***source test*** set out in subsection (3).

Control test

- (2) For the purposes of this section, the individual ***passes the control test*** in relation to a trust if:
- (a) the individual, or an associate of the individual (other than an associate covered by paragraph 1207C(1)(j)), is the trustee, or any of the trustees, of the trust; or
 - (b) a group in relation to the individual was able to remove or appoint the trustee, or any of the trustees, of the trust; or
 - (c) a group in relation to the individual was able to vary the trust deed or to veto the decisions of the trustee; or
 - (ca) it could reasonably be expected that the trustee of the trust would make an application of the corpus or income of the trust to the individual if the individual could not meet his or her reasonable costs of living (within the meaning of subsection 19C(5)); or
 - (d) the aggregate of:
 - (i) the beneficial interests in the corpus or income of the trust held by the individual (whether directly or indirectly); and
 - (ii) the beneficial interests in the corpus or income of the trust held by associates of the individual (whether directly or indirectly);is 50% or more; or
 - (da) either or both of the following apply:
 - (i) the individual is eligible to receive an application of the corpus or income of the trust;
 - (ii) one or more of the individual's associates are eligible to receive an application of the corpus or income of the trust;and the aggregate number of entities covered by subparagraphs (i) and (ii) is 50% or more of the total number of entities eligible to receive an application of the corpus or income of the trust; or
 - (e) a group in relation to the individual had the power (by means of the exercise by the group of any power of appointment or revocation or otherwise) to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or
 - (f) a group in relation to the individual was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or
 - (g) a group in relation to the individual was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (e) or (f); or
 - (h) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the individual.

- (2A) For the purposes of paragraph (2)(da), an entity is eligible to receive an application of the corpus or income of the trust if the trustee of the trust has a discretion to make an application of the corpus or income of the trust to the entity.
- (2B) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(i) is taken to apply at that particular time to the individual if the individual was eligible to receive an application of the corpus or income of the trust at any time during:
- (a) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or
 - (b) the preceding financial year.
- (2C) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(ii) is taken to apply at that particular time to an entity that is an associate of the individual at that particular time if:
- (a) the entity was eligible to receive an application of the corpus or income of the trust at any time during:
 - (i) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or
 - (ii) the preceding financial year; and
 - (b) the entity was an associate of the individual at the time the entity was so eligible.
- (2D) For the purposes of applying paragraph (2)(da) at a particular time, in working out the total number of entities eligible to receive an application of the corpus or income of the trust, take into account an entity that was eligible to receive an application of the corpus or income of the trust at any time during:
- (a) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or
 - (b) the preceding financial year.
- (2E) No paragraph of subsection (2) limits any other paragraph of that subsection.

Source test

- (3) For the purposes of this section, an individual ***passes the source test*** in relation to a trust if:
- (a) the individual has transferred property or services to the trust after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and
 - (b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

Group

- (4) A reference in this section to a ***group*** in relation to an individual is a reference to:
- (a) the individual acting alone; or
 - (b) an associate of the individual acting alone; or
 - (c) the individual and one or more associates of the individual acting together; or
 - (d) 2 or more associates of the individual acting together.

Income

- (5) In this section:

income means income within the ordinary meaning of that expression.

1207W Interest in a trust

- (1) For the purposes of this Division, if an entity:
 - (a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust; or
 - (b) has a right, otherwise than by reason of holding an interest in a trust, to have such an interest transferred to the entity or to the entity's order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
 - (c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
 - (d) is otherwise entitled to acquire such an interest;
the entity is taken to hold that interest in the trust.
- (2) An entity is taken to hold an interest in the corpus or income of a trust even if the entity holds the interest jointly with another entity.
- (3) An interest in the corpus or income of a trust is not to be disregarded only because of:
 - (a) its remoteness; or
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.
- (4) In this section:

income means income within the ordinary meaning of that expression.