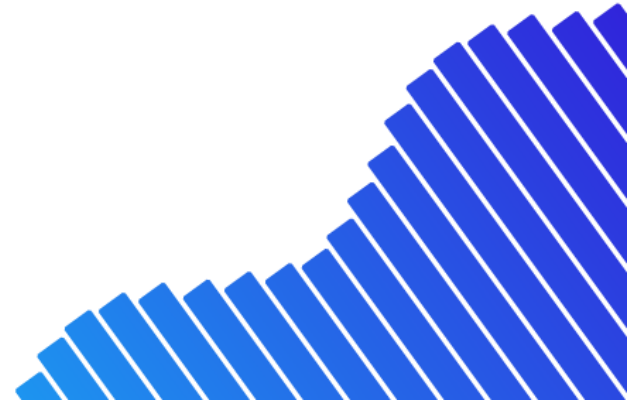


Section 100A and draft ATO guidance

Written by The Tax Institute's Tax Policy and Advocacy Team

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Introduction

Legislative history of section 100A

Section 100A of the *Income Tax Assessment Act 1936* (Cth) (**ITAA 1936**) is an anti-avoidance provision designed to prevent taxpayers from using trust structures to reduce their income tax liability. The provision was originally inserted into the ITAA 1936 in 1942 for an unrelated purpose and was repealed in 1950.¹

The *Income Tax Assessment Amendment Act 1979*² reinserted section 100A into the ITAA 1936 on 13 March 1979 to apply to assessments in respect of the 1977–78 and later income years (i.e. from 1 July 1977). However, section 100A(3) operates to ensure that the provision applies only to arrangements where trust income is paid to or applied on behalf of a beneficiary after 11 June 1978, the day on which the government announced its intention to introduce legislation to overcome certain tax avoidance arrangements designed to enable trading profits and other income derived by trusts to escape taxation.

ATO guidance on section 100A

In July 2014, the Australian Taxation Office (ATO) published [web guidance](#) (**July 2014 web guidance**) setting out the ATO's administrative position for trustees and beneficiaries of a trust where the present entitlement of a beneficiary (who is not under a legal disability) to a share of trust income arises out of a reimbursement agreement.

On 23 February 2022, the Commissioner of Taxation (the **Commissioner**) published draft Taxation Ruling [TR 2022/D1](#) *Income tax: section 100A reimbursement agreements* (**TR 2022/D1**) to provide guidance on how section 100A operates, the meaning of key terms and how the provision applies to some taxpayers' circumstances.

¹ The provision was inserted upon the introduction of a uniform income tax by the Commonwealth in 1942 to ensure that a rebate that applied to the making of gifts to public hospitals, public benevolent institutions and certain other classes of organisations also covered cases where such gifts were made by the trustee of a trust out of trust income. The original version of section 100A was repealed in 1950 when a system of deduction replaced the system of rebates.

² Act No. 12 of 1979.

Accompanying this draft Ruling, the Commissioner also released on the same day:

- Draft Practical Compliance Guideline [PCG 2022/D1](#) *Section 100A reimbursement agreements – ATO compliance approach* that sets out the compliance approach the ATO will take when considering the application of section 100A; and
- Taxpayer Alert [TA 2022/1](#) *Parents benefitting from the trust entitlements of their children over 18 years of age (TA 2022/1)* that specifically targets arrangements whereby families use trust income appointed to adult children to offset expenses paid by the parents for usual parental responsibilities.

On 23 February 2022, the ATO also updated its [web content](#) (updated web content).

It is important to note that the Commissioner’s preliminary views set out in TR 2022/D1 may change when it is finalised.

Further, the outcome of the ongoing appeal of the Federal Court’s decision in [Guardian AIT Pty Ltd ATF Australian Investment Trust v Commissioner of Taxation](#) [2021] FCA 619 (**Guardian**) may change the legal landscape of section 100A and provide further clarity on the areas of uncertainty.

This article provides a detailed explanation of section 100A and analyses the legislative requirements of section 100A and the Commissioner’s preliminary view outlined in TR 2022/D1. A flow chart has also been provided to assist in navigating the operation of section 100A.

Operation of section 100A

Broadly, section 100A applies where a beneficiary becomes presently entitled to a share of the income of a trust estate (**trust income**), where it is agreed that another party will benefit from the entitlement and any of the parties to that agreement had a purpose of someone paying less tax in a particular income year.

Section 100A will apply to a particular arrangement where **all** the following criteria are satisfied:

Conditions for section 100A to apply

- 1 A beneficiary (who is not under a legal disability) is presently entitled to a share of all or part of the trust income in a particular income year (and is therefore assessed under section 97 of the ITAA 1936 on that share of the trust’s net income).
 - 2 That present entitlement arises in connection with a reimbursement agreement.
 - 3 At least one of the parties to the reimbursement agreement entered into it with a purpose of reducing or deferring someone’s income tax liability.
 - 4 The arrangements were not entered into in the course of ‘ordinary family or commercial dealing’.
-

The discussion below provides further details and analysis of each of these conditions.

Beneficiary is presently entitled to a share of trust income

Subsections 100A(1) and (2) require that there must be a beneficiary who is not under a legal disability and who is presently entitled to a share (all or part) of the trust income during a particular income year. This also includes situations where a beneficiary is deemed to be presently entitled; that is, amounts have been paid to the beneficiary or applied for their benefit.³

For completeness, a beneficiary who is not under a legal disability refers to an individual who is unable to give a trustee an immediate valid discharge in relation to a distribution of trust income.

Individuals who are under a legal disability include:⁴

- children under the age of 18 years
- undischarged bankrupts
- people who are mentally incapacitated,

but do not include an individual who is a foreign resident for tax purposes, where the trustee is assessed on the beneficiary's share of the trust's net income under section 98 of the ITAA 1936.

Interposed trusts

Where a beneficiary becomes presently entitled to a share of the trust income as trustee for an interposed trust, section 100A will not apply to the extent that those amounts are passed on to beneficiaries of the interposed trust.⁵ Similarly, section 100A does not apply where the trustee of the interposed trust is deemed to be presently entitled to a share of the trust income to the extent that beneficiaries of the interposed trust are presently entitled to that income.⁶

Connection requirement

For an arrangement to satisfy the 'connection' requirement, the present entitlement must arise out of a reimbursement agreement, or by reason of any act, transaction or circumstance that occurred in connection with, or as a result of, a reimbursement agreement.

Subsection 100A(7) defines a *reimbursement agreement* as:

... an agreement, whether entered into before or after the commencement of this section, that provides for the payment of money or the transfer of property to, or the provision of services or other benefits for, a person or persons other than the beneficiary or the beneficiary and another person or other persons.

These requirements are explained in the sections below.

³ Section 100A(2) of the ITAA 1936; TR 2022/D1 at [47] and [52].

⁴ See *Taylor v Federal Commissioner of Taxation* (1970) 119 CLR 444; 1 ATR 582.

⁵ Subsection 100A(3A) of the ITAA 1936; TR 2022/D1 at [50].

⁶ Subsection 100A(3B) of the ITAA 1936; TR 2022/D1 at [51].

Agreement

Subsection 100A(13) states that an agreement refers to:

... any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, but does not include an agreement, arrangement or understanding entered into in the course of ordinary family or commercial dealing.⁷

The Commissioner states that the scope and nature of the agreement needs to be identifiable in order for section 100A to apply.⁸ However, the ATO's recent preliminary view qualifies that there can still be an agreement in the following situations:⁹

- The parties to the agreement do not have an exact understanding of the nature and extent of the agreement and benefits to be provided and can, depending on the facts, be a plan comprising a series of steps undertaken individually by those parties over a period of time.
- The presently entitled beneficiary does not need to be a party or even in existence when the agreement is made.
- The relevant trust does not need to exist when the agreement is made.

TR 2022/D1 also notes that the parties may accept and adopt an agreement tacitly and that an agreement can be inferred from the surrounding circumstances and conduct of the parties.¹⁰

Based on the above, what qualifies as an 'agreement' for the purpose of section 100A is very broad. Taxpayers and their advisers should thoroughly consider their situation and circumstances before concluding that no agreement exists.

If a reimbursement agreement does not exist, or the present entitlement did not arise out of, or in connection with, a reimbursement agreement, section 100A cannot apply. It may seem difficult for a taxpayer to prove to the Commissioner that an agreement does not exist, but this will be informed by the relevant facts and circumstances.

Provision of benefits to someone other than the beneficiary

Subsection 100A(7) requires that, for the agreement to constitute a reimbursement agreement, it provides for the payment of money or transfer of property to, or the provision of services or other benefits for, someone other than the beneficiary.

A reimbursement agreement is essentially an arrangement whereby the economic benefit of a distribution is received by a person other than the beneficiary who is presently entitled to the distribution on paper.

⁷ The term 'ordinary family or commercial dealing' is considered further on **page 6**.

⁸ TR 2022/D1 at [56].

⁹ TR 2022/D1 at [57].

¹⁰ TR 2022/D1 at [68].

The types of benefits that can be provided pursuant to a reimbursement agreement may include:¹¹

- the payment of money
- making a loan
- the release, abandonment, failure to demand payment of or the postponing of the payment of a debt
- the transfer of property
- the provision of services
- the beneficiary not demanding payment for an amount to which they are entitled¹²
- other benefits.

Importantly, the benefit provided does not necessarily need to be an actual ‘reimbursement’ in the ordinary sense of the word; nor does it need to be referable to the beneficiary’s present entitlement to the share of the trust income.¹³ The Commissioner explains that the benefits may be provided by any party, and that this criteria is satisfied regardless of who receives the benefit (other than the beneficiary).¹⁴

Requisite level of connection

TR 2022/D1 states that the connection between the present entitlement and the reimbursement agreement does not need to be a direct causal link.¹⁵ It is sufficient for the present entitlement to have been created by another act, transaction or occurring as a result of or in connection with the reimbursement agreement.¹⁶ However, an agreement must have existed before the relevant benefits are provided in order for section 100A to apply.¹⁷

Where the beneficiary’s actual or deemed present entitlement is greater than what they would have received if the reimbursement agreement did not exist, the excess is taken to have arisen out of the reimbursement agreement.¹⁸

The Commissioner considers that the taxpayer bears the onus of showing it is reasonable to expect that the beneficiary would still have been presently entitled to the same share of the trust’s income even if the reimbursement agreement did not exist. The taxpayer’s reasonable expectation must be sufficiently reliable in order for them to be reasonable for the present purposes.¹⁹

¹¹ Section 100A(8) of the ITAA 1936; TR 2022/D1 at [13].

¹² TR 2022/D1 at [14].

¹³ TR 2022/D1 at [15].

¹⁴ TR 2022/D1 at [67].

¹⁵ TR 2022/D1 at [60].

¹⁶ TR 2022/D1 at [9] and [61].

¹⁷ TR 2022/D1 at [12] and [62].

¹⁸ Subsections 100A(5) and (6); TR 2022/D1 at [10] and [63].

¹⁹ TR 2022/D1 at [11] and [64].

Tax reduction purpose

Section 100A is concerned only with tax avoidance arrangements. This is apparent by section 100A(8) that effectively excludes from the scope of section 100A any agreement that was not entered into or carried out for a purpose of securing for any person a reduction in that person's income tax liability in respect of an income year.

Section 100A will apply so long as any of the parties to the reimbursement agreement has the purpose of reducing (or deferring) a person's income tax liability.²⁰

The ATO makes the following preliminary observations in TR 2022/D1:

- Unlike the general anti-avoidance provisions in Part IVA of the ITAA 1936, the relevant party's/parties' tax reduction purpose does not need to be their sole or dominant purpose for entering into the agreement and it need not be continuous.²¹
- It is not necessary for the entity whose tax liability is reduced to be a party to the reimbursement agreement.²²
- Where a party acts in accordance with advice from an adviser, the purpose of that adviser can be imputed to the party.²³
- The purpose of deferring income tax to a later year qualifies as a tax reduction purpose, as it reduces a person's income tax liability for a particular income year.²⁴

Exception for 'ordinary family or commercial dealings'

Even where a beneficiary has an actual or deemed present entitlement to a share of the trust income in connection with a reimbursement agreement, and a party to the agreement has a tax reduction purpose, section 100A will not apply where the arrangement is part of 'ordinary family or commercial dealing'. This is on the basis that such dealings fall outside of the definition of an 'agreement' pursuant to section 100A(13).

Meaning of 'ordinary'

In *Guardian*, Logan J stated that the word 'ordinary' in section 100A(13) 'refers to a dealing which contains no element of artificiality.'²⁵ It should be noted that that the Commissioner does not agree with the position taken by Logan J in *Guardian*.²⁶

²⁰ Subsections 100A(8) and (9) of the ITAA 1936; TR 2022/D1 at [16] and [17].

²¹ TR 2022/D1 at [71].

²² TR 2022/D1 at [71].

²³ TR 2022/D1 at [74].

²⁴ TR 2022/D1 at [75].

²⁵ [Guardian AIT Pty Ltd ATF Australian Investment Trust v Commissioner of Taxation](#) [2021] FCA 1619, per Logan J at [144].

²⁶ TR 2022/D1 at footnote 47.

The Commissioner's view on the meaning of ordinary is noted below:²⁷

... dealing is ordinary where a person can examine the acts and predicate that they can be explained by the familial and/or commercial objects they are apt to achieve without further explanation] This predication test is an evaluative standard that requires an examination of the facts and circumstances of each case. ... This test cannot be substituted with an approach that classifies transactions by reference to a dictionary meaning or synonym for the word 'ordinary' separate from statutory context. Dealing is not ordinary just because it is commonplace. Similarly, dealing can fail to be ordinary dealing even where it is not artificial.

In addition, the exception will apply only where all of the arrangements and transactions giving effect to the agreement have the character of ordinary family or commercial dealing.²⁸ This determination must be made by considering all of the arrangements and transactions contemplated by the agreement.²⁹

Family dealings

In the context of agreements involving family members, it is insufficient for them to show that they are members of the same family. The agreement must give effect to normal familial or commercial ends.³⁰ Guidance on what constitutes a family dealing is not available. For these purposes, the ATO explains that the word 'family' in section 100A(13) 'refers to a relationship of natural persons based on birth, affinity or co-residence. Family is not limited to any particular type of family relationship that is more common at a point in time than others.'³¹

The ATO notes that where the transactions and arrangements contemplated by the agreement are carried out by a family member's entities, the types of entities used, and the degree of control and ownership over those entities is relevant to determining whether the exception applies.

Although the ATO concedes that each family group may have extraordinary or unique circumstances, an arrangement will not be considered to be ordinary family dealings simply because they are commonplace, unless they are shown to achieve a regular familial object.³²

It is important to recognise that, while the draft Ruling is silent on this point, what is common for one family may not be so for another family. This will vary widely depending on cultural, social and behavioural norms.

²⁷ TR 2022/D1 at [79].

²⁸ TR 2022/D1 at [81].

²⁹ TR 2022/D1 at [82].

³⁰ TR 2022/D1 at [87].

³¹ TR 2022/D1 at [86].

³² TR 2022/D1 at [89].

Commercial dealings

In relation to commercial dealings, the Commissioner explains that:³³

For a dealing to be capable of explanation as achieving ordinary commercial objects, the parties would be expected to advance their respective interests. It is ordinary commercial dealing where it would be normal or regular if seen in trade or commerce as a means to advance commercial objects. A complex commercial dealing may nonetheless be 'ordinary' if that complexity is needed to achieve the identified commercial objects.

The ATO also adds that parties who are not dealing at an arm's length or using market value can still be found to be engaging in ordinary commercial dealings.³⁴

Tax-driven features

The Commissioner cautions that the presence of tax-driven features in an arrangement requires close examination, as it suggests that tax considerations may be driving the arrangement rather than familial or commercial objects.³⁵ Further, the Commissioner states that a familial or commercial objective of reducing the group's tax liabilities in order to maximise their after-tax wealth does not satisfy the exception for ordinary family and commercial dealings on its own.³⁶

Paragraph 95 of TR 2022/D1 contains a list of factors that may suggest that a particular dealing has been entered into with the purpose of avoiding tax rather than achieving ordinary family or commercial objectives.

Consequences where section 100A applies

Where section 100A applies to a particular arrangement, the beneficiary is taken never to have been presently entitled to the share of the trust income arising from the reimbursement agreement. Instead, the trustee is liable to pay tax at the top marginal tax rate (plus the Medicare levy) on the *increased amount* (calculated pursuant to section 100A(6)) under section 99A of the ITAA 1936.³⁷

³³ TR 2022/D1 at [90].

³⁴ TR 2022/D1 at [91].

³⁵ TR 2022/D1 at [93].

³⁶ TR 2022/D1 at [94].

³⁷ Subsection 100A(4) of the ITAA 1936; TR 2022/D1 at [97].

Unlimited amendment period

Effect on the trustee

Under the law, strictly, most trustees do not have a limited amendment period in any case, unless they have retained an amount of trust income and been assessed under section 99A.

However, the Commissioner's Practice Statement [PS LA 2015/2](#) explains that, while in most cases, the Commissioner has an unlimited period within which to review and assess the trustee's tax position, the ATO adopts a practice of limiting the period within which original trustee assessments will be raised where the trust tax return shows no trustee tax liability for that proposed assessment. This means that returns lodged by trustees are broadly exposed to similar time limits for review as other taxpayers.

Notwithstanding this, section 100A has an unlimited amendment period. This means the Commissioner can issue an assessment to the trustee under section 99A on the basis that no one is presently entitled to a share of the trust income because of the operation of section 100A, without regard to the usual two- or four-year amendment period. This is broader than the effect of Part IVA which prevents the Commissioner from amending an assessment outside a four-year amendment period, and is equivalent in this respect to assessments issued on the basis of fraud or evasion which also have an unlimited amendment period.

Effect on the beneficiary

Where section 100A applies to treat a beneficiary who is presently entitled to a share of trust income as not being presently entitled, this results in the trustee being assessed on the *increased amount* (see [page 8](#)).

It is understandable that practitioners and taxpayers may have concerns that the beneficiary's assessment may be out of time to be amended to remove the amount that was assessed to them pursuant to section 97. This of course would result in double taxation on the same amount of income.

Practically, this outcome will not arise. Section 170(10) of the ITAA 1936 provides that an assessment can be amended at any time for the purpose of giving effect to any of the provisions set out in the table in section 170(10). The inclusion of **item 17** in the table – Section 100A: Present entitlement arising from reimbursement agreement – means that not only can the Commissioner amend a trustee's assessment at any time to include an amount of assessable income, but the beneficiary's assessment can also be amended at any time to give effect to section 100A by removing that amount of assessable income.

How far back will the Commissioner go?

The Commissioner has explained the ATO's compliance approach in draft [PCG 2022/D1](#). Broadly, the ATO's position can be summarised as set out in the tables below.

TABLE 1: ATO's compliance approach to section 100A

ATO's compliance approach to section 100A – timing	
Arrangements entered into before 1 July 2014	<p>The ATO will not commence any new compliance activities to consider the application of section 100A for income years ended before 1 July 2014, unless it is outside the green zone (explained at paragraphs 17 to 21 of the draft PCG) and:</p> <ul style="list-style-type: none"> ● the ATO is otherwise considering your income tax affairs for those years; ● you have entered into an arrangement that continues before and after that date; or ● the trust and beneficiary tax returns that were required to be lodged for those years were not lodged before 1 July 2017.
Arrangements entered into from 1 July 2014 to 30 June 2022	<p>For entitlements conferred before 1 July 2022, the Commissioner will stand by any administrative position reflected in the July 2014 web guidance, to the extent that it is more favourable to the taxpayer's circumstances than the PCG.</p>
Arrangements entered into from 1 July 2022	<p>When finalised, the PCG is proposed to apply to present entitlements to income of a trust estate conferred before or after its date of issue (but subject to the qualifications outlined above).</p>

TABLE 2: Risk zones set out in the draft PCG

ATO's compliance approach to section 100A – risk zones	
White zone – LOW RISK	<p>The ATO will not commence any new compliance activities to consider applying section 100A for income years ended before 1 July 2014, except as described at paragraph 13 of the draft PCG.</p>
Green zone – LOW RISK	<p>The ATO will not commence any new compliance activities to consider the application of section 100A to arrangements in the green zone, described at paragraphs 17 to 21 of the draft PCG.</p>
Blue zone – MEDIUM RISK	<p>Blue zone arrangements are described at paragraphs 25 and 26 of the draft PCG and fall outside all of the other zones. The ATO may still review the arrangement, but they are less likely to attract the ATO's attention.</p>
Red zone – HIGH RISK	<p>Red zone arrangements are described at paragraphs 30 to 45 of the draft PCG. The ATO will conduct further analysis of the arrangement as a matter of priority and may proceed to audit.</p>

What's next?

What has the Government said?

The Assistant Treasurer, the Hon Michael Sukkar MP, by [media release](#) on 7 April 2022:

- welcomed the ATO clarifying that the ATO's draft guidance materials on section 100A ([TR 2022/D1](#) and [PCG 2022/D1](#)) will not apply on a retrospective basis;
- confirmed the ATO's clarification that ordinary advice services provided in exchange for an advisory fee are not subject to the promoter penalty provisions;
- advised the Government will continue to monitor the consultation process closely and will consider any appropriate changes to the law should any adverse retrospective impacts arise.

Submissions to the ATO

On 2 May 2022, The Tax Institute published two submissions (**the submissions**) in response to the ATO's draft guidance materials on section 100A;

- [The Tax Institute Submission – Draft Taxation Ruling TR 2022/D1 Income tax: section 100A reimbursement agreements](#); and
- [The Tax Institute Submission – Practical Compliance Guideline PCG 2022/D1: Section 100A reimbursement agreements – ATO compliance approach and TA 2022/1: Parents benefitting from the trust entitlements of their children over 18 years of age.](#)

Key concerns raised in submissions

The Tax Institute submissions seek to obtain clarity from the ATO in respect of a number of areas of concern for practitioners. The key concerns of particular relevance for practitioners are summarised below.

- **Identification of risk zone**

The key purpose of [PCG 2022/D1](#) is to provide guidance to taxpayers on how the ATO will assess the risk of potential arrangements that may be subject to section 100A. The [PCG 2022/D1](#) does not provide agents with sufficient clarity to enable them to confidently allocate their clients to an appropriate risk zone.

The submissions question how the ATO will efficiently and effectively assess an arrangement's risk without an audit or review, when even the agent, with their in-depth knowledge, will struggle to do this.

- **‘Presence of tax driven features’**

The submissions recognise the possibility that any distribution may result in a reduction in total tax payable. Even if a distribution results in a considerable tax reduction, it may not necessarily be ‘tax driven’.

Paragraph 95 of [TR 2022/D1](#) provides features of potential ‘tax driven’ transactions. The features listed are somewhat ambiguous, being subject to biases or assumptions by practitioners and the ATO. The submissions have requested clarification on why the factors specifically listed by the ATO are of particular and consider amendment of these features to reduce ambiguity.

- **The use of confusing terms**

The ATO’s draft guidance on section 100A uses undefined terminology to explain key ideas. Of particular importance, are the terms ‘financially advanced’, ‘ordinary familial or commercial objects’ and ‘separate trust’. These terms do not have a tax law definition and are not commonly used in practice.

The ATO attempts to provide some guidance on ‘familial or commercial objects’, however the guidance requires the considerable use of value judgments. Specifically, the decision on what is ‘ordinary familial or commercial’ requires consideration of a taxpayer’s culture, race, socio-economic and other personal circumstances. It should not be up to the ATO to determine how a family ordinarily deals with each other.

The Tax Institute has raised concerns that a significant risk arises from the use of these value judgments that may result in inconsistent treatment and outcomes by both practitioners and the ATO.

- **Evidentiary implications**

[TR 2022/D1](#) frequently mentions the requirement to retain evidence of arrangements. Historically, there have been limited requirements for trustees to prepare and retain extensive documentation on their rationale for distributions and costs paid by family members on behalf of another member, especially in the context of family arrangements.

The submission recognises this is a new concept for practitioners and has requested guidance from the ATO on what constitutes sufficient evidence for demonstrating a trustee’s rationale for distribution, what documentation is sufficient to evidence costs on behalf of another and whether the retention of this documentation indicates a contrived arrangement. Of particular importance is obtaining clarity on the timeframe that evidence should be retained, especially in the context of the unlimited amendment period of section 100A.

- **Role of advisers in section 100A arrangements**

Particularly concerning for practitioners is what the ATO considers the role of an adviser in an arrangement. Paragraph 19 of [TR 2022/D1](#) mentions that the purpose of an adviser can be imputed. Especially in the context of the promoter penalties referred to in [TA 2022/1](#) and potential negligence claims, the submissions have requested the ATO describe circumstances where the purpose of the adviser can be imputed and refer to the case law from which these principles are drawn.

- **Interaction with other integrity measures**

There have been significant changes to the tax law since section 100A was introduced into the tax law in 1979. The submissions have recommended that [TR 2022/D1](#), when finalised, should explain how section 100A interacts with other trust anti-avoidance and integrity provisions and how it operates independently of these provisions.

- **Other key areas**

[PCG 2022/D1](#) raises some areas requiring additional explanation by the ATO. Specifically, further clarification on:

- The meaning of ‘continuing before and after’ in defining what are white zone arrangements;
- Whether certain arrangements with trustee beneficiaries can be considered green zone arrangements rather than being automatically classified as blue zone arrangements;
- An explanation for why the ATO is concerned with dividend set-offs, especially as this strategy is frequently used in practice;
- Arrangements involving life tenancies in testamentary trusts and estates which are likely to be classified as high risk despite not being ‘tax driven’; and
- Distributions to family members who are not adult children.

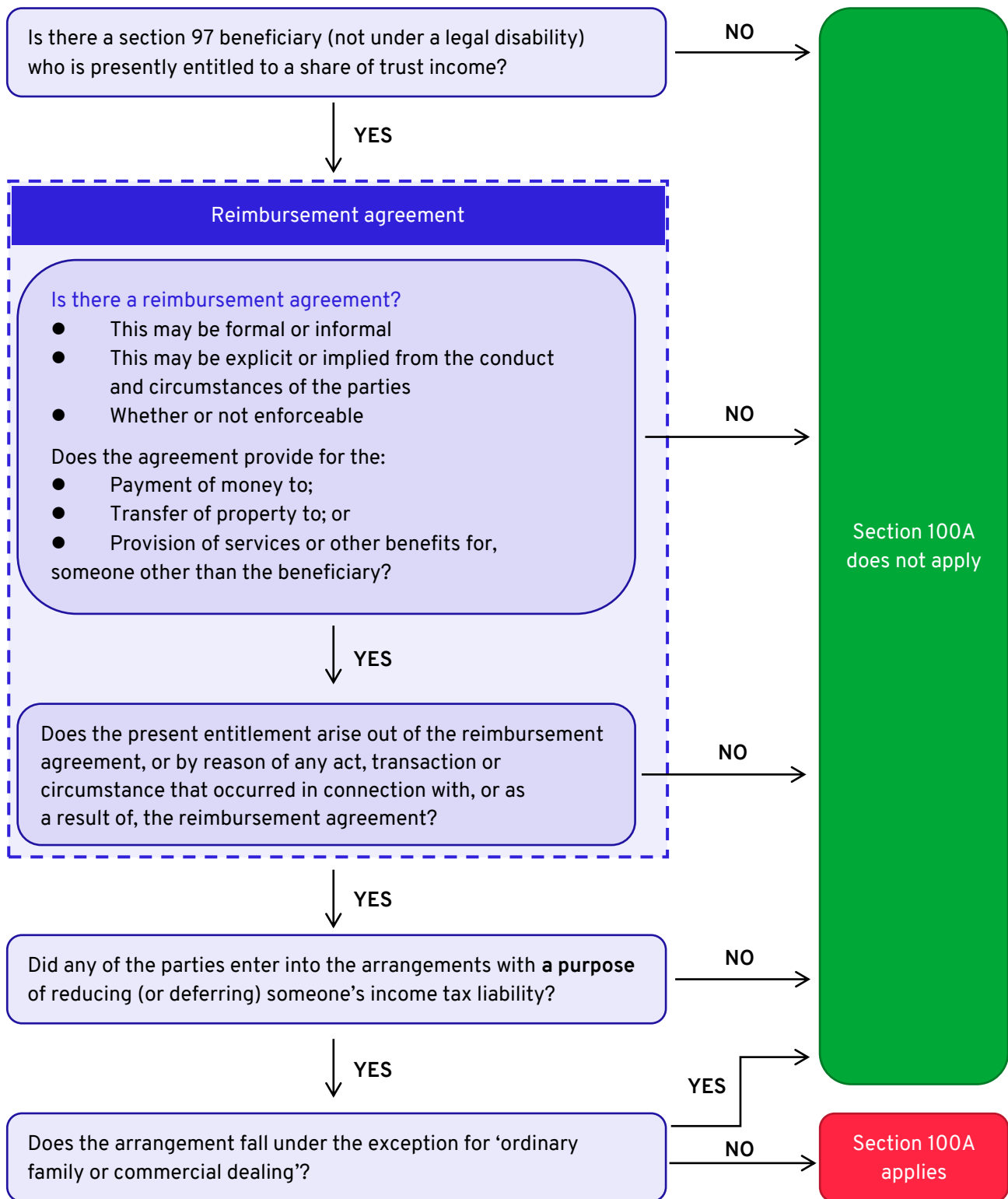
Next steps

The ATO will consider the feedback submitted by the tax community and the outcome from the *Guardian* appeal. The Tax Institute will continue to monitor developments in the *Guardian* case.

In response to the submissions, the ATO may provide a Public advice and guidance compendium (**compendium**). Such compendiums usefully contain a summary of the issues raised during the submission process and the ATO’s response to those issues. Prior to the finalisation of the guidance materials, the ATO may considered another consultation period.

The Assistant Treasurer noted in his [Media Release](#) of 7 April 2022 that the Government will monitor the consultation on section 100A. As we monitor the progress of the *Guardian* appeal, we will continue to engage with the Treasury and the relevant ministers on the scope of possible law reform, including the need for a limited amendment period for section 100A on equitable grounds.

Appendix: Section 100A summary flowchart



Further guidance and information

Further guidance and information is available from the [ATO website](#).

If you have any specific concerns that have not been outlined above, please email taxpolicy@taxinstitute.com.au.

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