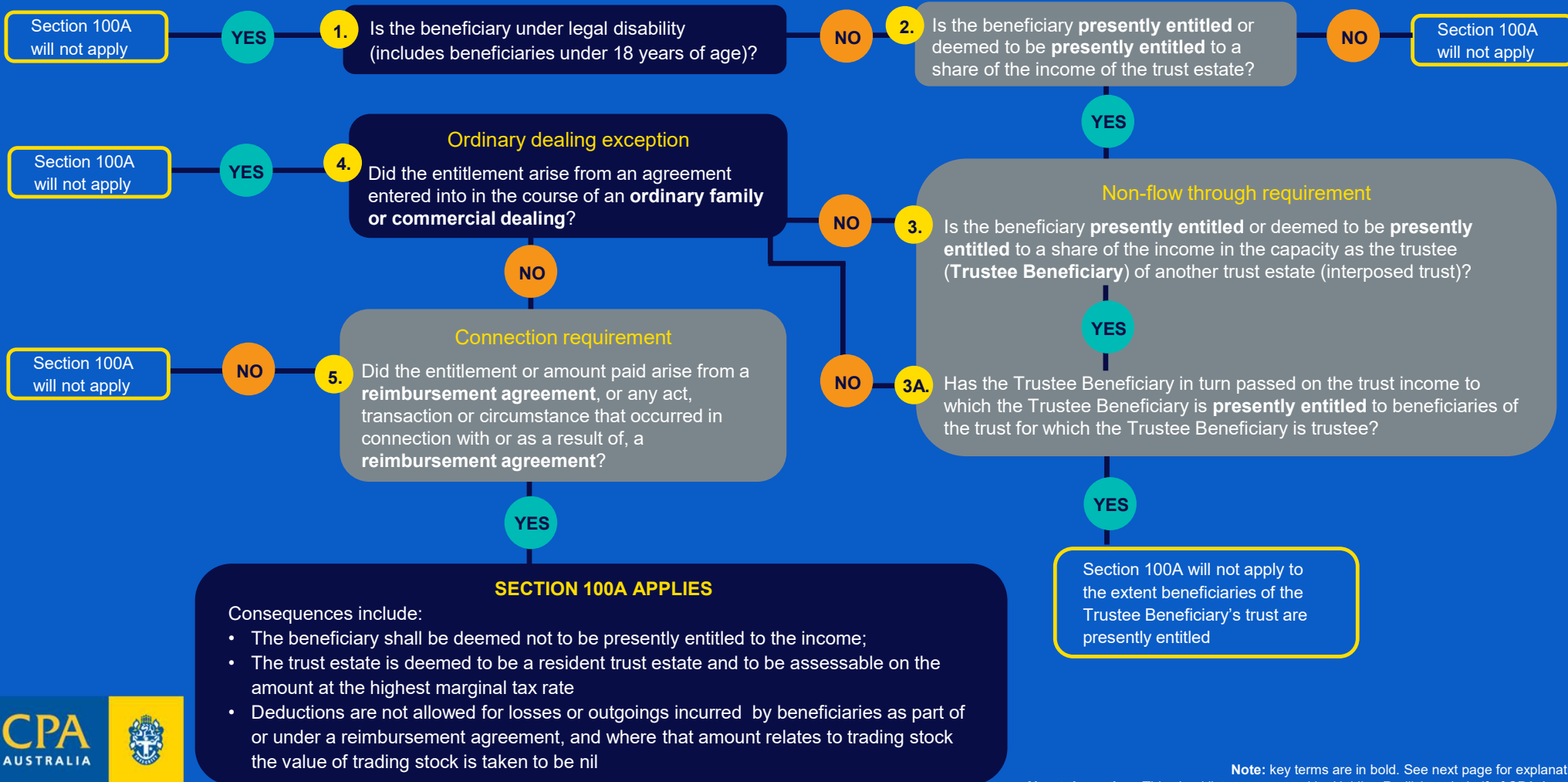


DOES SECTION 100A APPLY TO A TRUST DISTRIBUTION?

FULL DECISION TREE



Note: key terms are in bold. See next page for explanations
About the author: This checklist was prepared by Holding Redlich on behalf of CPA Australia



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Ordinary family or commercial dealing

Not defined. It is an evaluative standard and an objective enquiry. The objective enquiry can accommodate unusual features that apply to a particular family.

A dealing is not an ordinary family or commercial dealing merely because it is commonplace or involves no artificiality.

To be ordinary acts should be explicable by familial and/or commercial objects they aim to achieve.

The existence of features that appear to be tax driven is relevant to the objective enquiry.

Refer to PCG 2022/D1 for examples of how the ATO risk assess various arrangements.

Taxpayers and advisers should document the manner in which the distribution fits within their ordinary lives.

Reimbursement agreement

Includes arrangements and understandings. The agreement can be informal, express or implied - it could be a plan with a series of steps. The agreement need not be enforceable or intended to be.

The agreement must have been in place prior to the present entitlement arising – but the beneficiary need not have been party to the agreement (or even in existence) at the time.

Benefit to another requirement

A reimbursement agreement is an agreement that provides for the payment of money (including payment by way of loan or by release, abandonment or forgiveness or postponement of payment of debt) or transfer of property or the provision of services or other benefits for, a person or persons other than the beneficiary or the beneficiary and another person or persons.

Benefit includes a beneficiary agreeing not to demand payment of a presently entitled amount.

Tracing is not required between the beneficiaries' present entitlement and other persons' benefit.

Tax reduction purpose requirement

To be a reimbursement agreement the agreement must be entered into for the purpose, or for purposes that include the purpose, of securing that a person who would otherwise be liable to pay income tax for an income year would instead not be liable to pay income tax in that income year or would be liable to pay less income tax in that income year.

It is not necessary for the person whose tax liability is reduced or deferred to be party to the agreement. The purpose can be that of an advisor.

Presently entitled

Is the beneficiary **presently entitled** or deemed to be **presently entitled** to a share of the income in the capacity as the trustee (**Trustee Beneficiary**) of another trust estate (interposed trust)?

Has the Trustee Beneficiary in turn passed on the trust income to which the Trustee Beneficiary is **presently entitled** to beneficiaries of the trust for which the Trustee Beneficiary is trustee?

► **Look to: trust deed and minutes**