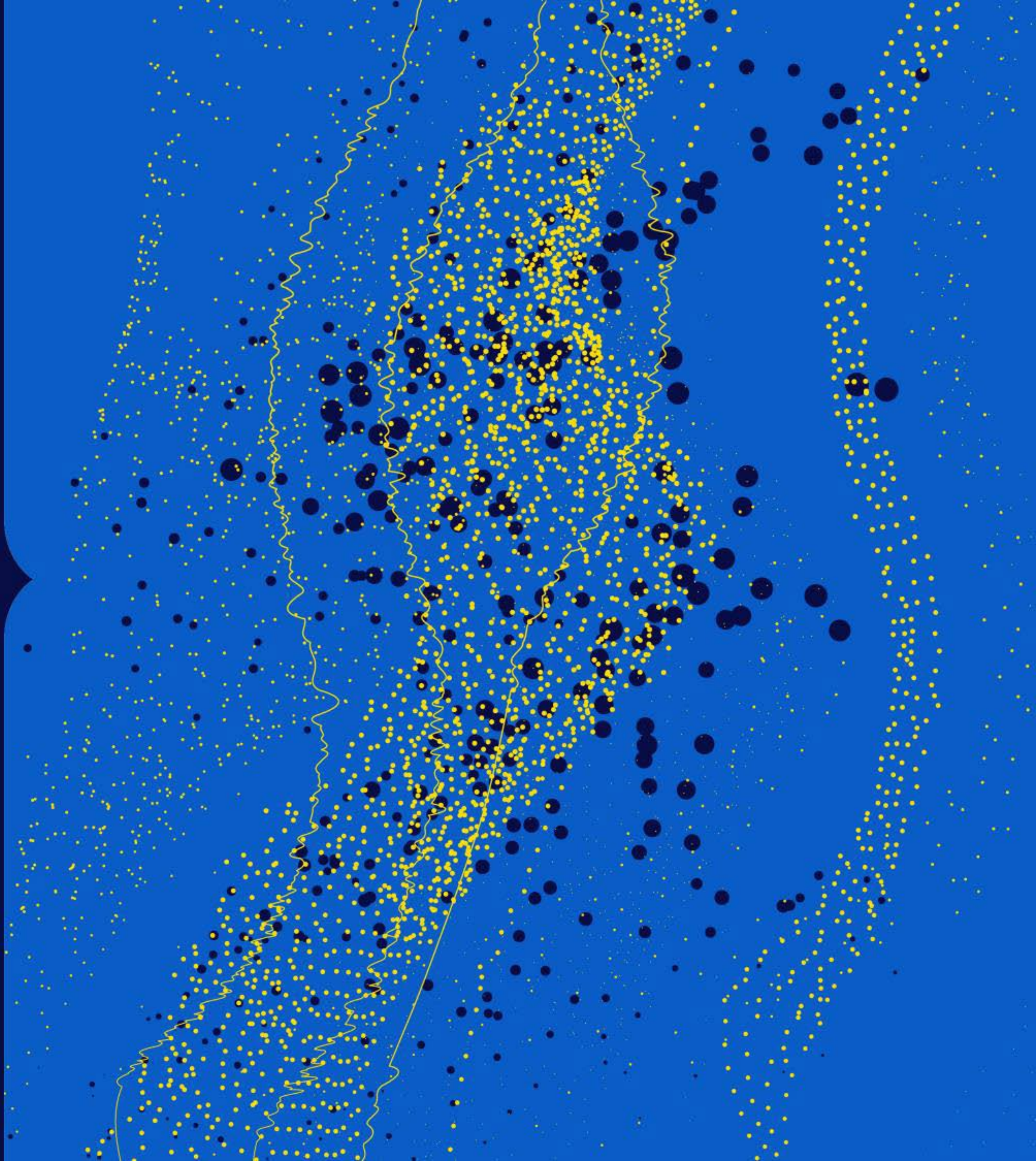
Trusts, tax and trustees – practitioner awareness webinar

Helping your trustee clients with their tax obligations



Presenters

Christopher Ryan

Acting Assistant Commissioner

Private Wealth, ATO

Chris is responsible for leading teams in the delivery of the Abusive Use of Trusts, Top 500, High Wealth Private Groups and Medium & Emerging programs of work under the Tax Avoidance Taskforce.

Under the Trusts program of work, Christopher is responsible for supporting the development of administrative approaches and technical views on trust matters.

Sean Neary

Director

Neary Consulting

Sean Neary is the founder of Neary Consulting, a tax practice based in Perth.

Sean has a Bachelor of Economics, Master of Law (Tax Law) and is a CPA.

Sean is known as a thought leader on taxation issues, particularly in Perth and regional WA.

Elinor Kasapidis

Senior Manager Tax Policy

CPA Australia

Elinor is responsible for the development of policy, research and advocacy for CPA Australia on issues related to tax policy, legislation and administration in Australia and internationally.

She leads the CPA Australia Taxation Centre of Excellence and represents CPA Australia and its members on a variety of tax-related forums and groups.

OVERVIEW

1. Distributing to eligible beneficiaries
2. Calculating the income of the trust estate (IOTE) in accordance with the trust deed
3. Making trustee resolutions and conferring present entitlement
4. Family trust elections
5. The anti-avoidance provisions: Section 100A and Division 7A
6. Managing trusts in your practice

Australian Government
Australian Taxation Office

Helping your trustee clients with their tax obligations

Christopher Ryan – Acting Assistant Commissioner, Australian Taxation Office

15 May 2023

Distributing to someone that is not an eligible beneficiary

Not calculating the Income of the Trust Estate (IOTE) in accordance with the trust deed

Making trustee resolutions and conferring present entitlement

Family trust elections

The anti-avoidance provisions: Section 100A and Division 7A

Managing trusts in your practice

Practical steps

Understand key clauses of the trust deed

- Income of the trust estate
- Beneficiaries including default beneficiaries
- Distributions by the trustee
- Vesting date of the trust

Determine the impact of potential trust distributions on trust beneficiaries from a taxation perspective

- Application of proportionate approach
- Limits on trust income for “notional amounts”
- Distributions made outside the family group

Prepare and execute binding written trustee resolutions effecting such distributions

- Estimating annual trust income
- Identifying potential beneficiaries and their tax position
- Executing an effective resolution

Ensure that trustee resolutions are completed before the trust’s stipulated year-end date

- Must be in writing
- If not done correctly, default beneficiaries will become presently entitled and be proportionally assessed in accordance with the trust deed
- In the absence of default beneficiaries, the trustee is assessed at the highest effective marginal tax rate.

See CPA Australia’s Trustee Resolution Guide for more details and checklist

Considerations

- Ensure that trustees are informed of the tax consequences of trust arrangements and administer the trust properly
- Ensure that beneficiaries are aware of their entitlements and tax obligations
- Ensure that resolutions are made in writing by the required date
- Maintain sufficient records to satisfy any ATO enquiries and ensure documentary records that are relevant to issues are retained for period the years that remain open to review

See CPA Australia's Responding to ATO enquiries tip sheet for information on record keeping and representing clients.

Are beneficiaries aware of their trust entitlements?

Do they know how to call for payment of their entitlement?

Are both trustees and beneficiaries aware of the tax consequences which flow from trust entitlements?

Are trustees seeking tax advice on proposed entitlements before the end of the financial year?

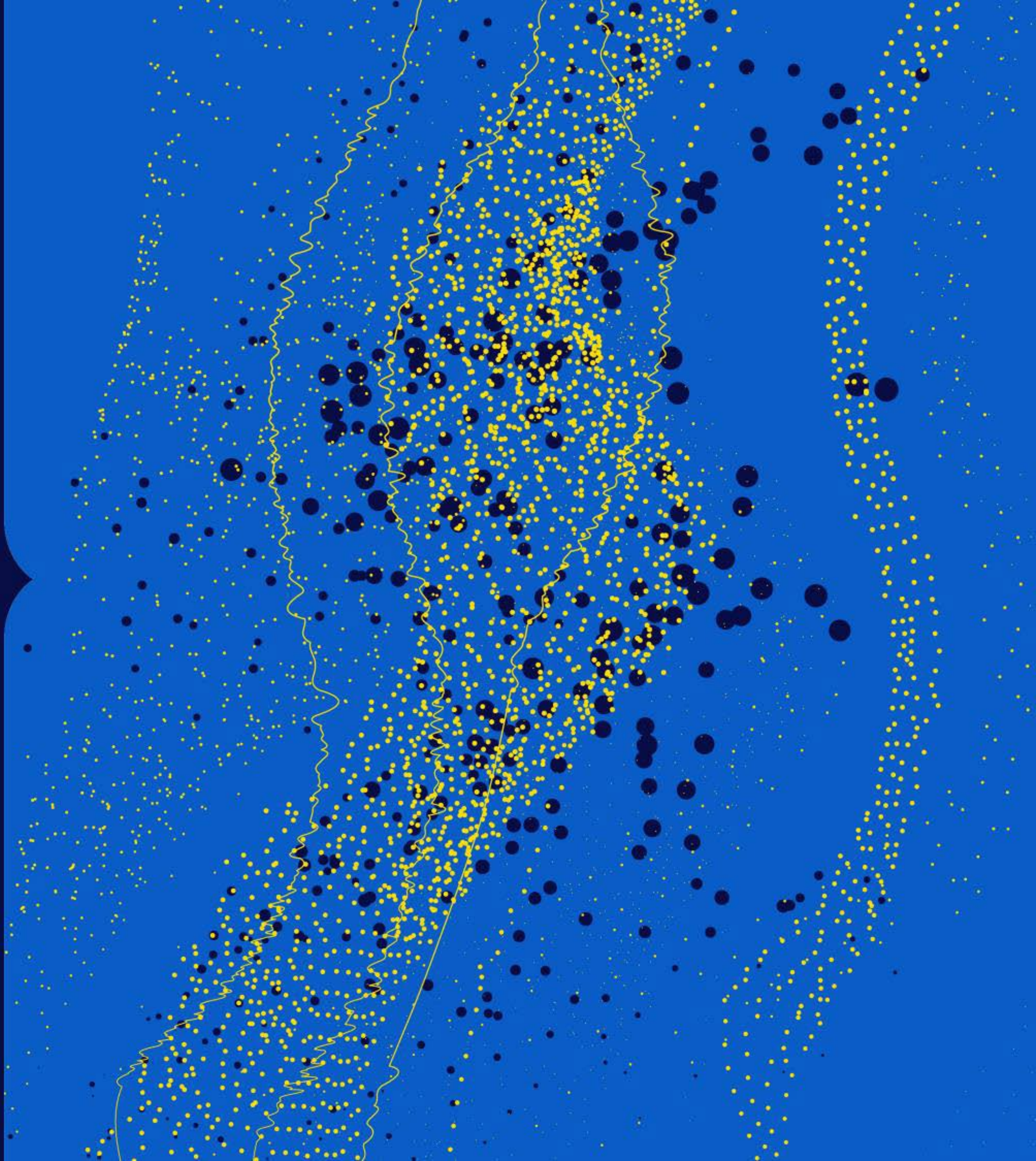
Are beneficiaries aware of the consequences of disclaiming an entitlement from a trust?

Dealing with section 100A risks

1. Notify clients of existence of ATO guidance products
2. Undertake conflict checks and set up confidentiality protocols to ensure that there is no conflict in acting for a trust and its beneficiaries and that there is no sharing of confidential information
3. Have discussions with clients about future trust distributions, objectives sought to be achieved, documentation requirements and how they are likely to be risk profiled by the ATO
4. In documenting arrangements, consider including either in trust distribution minutes or separate records an explanation of the trustee's rationale for distributing income as it is distributed
5. Advise clients that the ATO could ask what they intend to use funds for and that it will be a potential problem if the funds are to be loaned or gifted to related parties and applied against an existing loan
6. Seek authorisations for distributions from all parties involved. Best practice to protect an advisor's position would be to attain authorities from each of the advisor's client/s, the trustee and the beneficiaries as to how funds are to be distributed
7. For arrangements regarded by the tax advisor as having risk, inform the client and consider recommending:
    - seeking a second opinion
    - consultation with the ATO (such as by way of private ruling), or
    - implementation but lodging tax returns in accordance with the ATO guidance products then self-objecting to the assessment to the extent the taxpayer wants to challenge the position.

See CPA Australia's resources on Section 100A including decision trees and checklists.

Thank you



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