



HIGH COURT OF AUSTRALIA

6 April 2022

COMMISSIONER OF TAXATION v NATALIE CARTER & ORS
[2022] HCA 10

Today the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia concerning the operation of s 97(1) of the *Income Tax Assessment Act 1936* (Cth). Section 97(1) relevantly provides that "where a beneficiary of a trust estate who is not under any legal disability is presently entitled to a share of the income of the trust estate ... the assessable income of the beneficiary shall include ... so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident". The principal question for determination was whether a beneficiary's present entitlement under s 97(1) is to be determined immediately prior to the end of an income year or whether events after the end of the income year may be considered.

The respondents were beneficiaries of a trust estate. The trust deed provided that if the trustee did not pay, apply, set aside or accumulate any part of the trust income in a given accounting period, the trustee would hold that income in trust for specified beneficiaries, including the respondents. An accounting period was relevantly defined as a 12-month period ending on 30 June. In this way, the trust deed ensured that in each accounting period, the whole of the trust income was distributed, if not otherwise dealt with.

In the 2014 income year, the trustee failed to pay, apply, set aside or accumulate the income of the trust. As a result, one-fifth of the trust income was held on trust for each of the respondents. On 27 October 2015, the appellant, the Commissioner of Taxation ("the Commissioner"), issued an amended assessment to each respondent for the 2014 income year ("the 2014 Assessments") which included as assessable income one-fifth of the trust income on the basis that the respondents were "presently entitled" to that income within the meaning of s 97(1). On 30 September 2016, the respondents disclaimed their interest in the trust income. They subsequently objected to the 2014 Assessments in reliance on the disclaimers.

On appeal on a question of law from a decision of the Administrative Appeals Tribunal, the Full Court of the Federal Court relevantly held that the respondents' disclaimers operated retrospectively so as to disapply s 97(1) in respect of the 2014 income year.

The High Court held that s 97(1) is directed to the position existing immediately before the end of the income year for the purpose of identifying the beneficiaries who are to be assessed with the income of the trust. The section looks to the right to receive an amount of distributable income, not the receipt of income. Events occurring after the end of the income year cannot disentitle a beneficiary who was "presently entitled" immediately before the end of the income year. The respondents' disclaimers were therefore not effective to retrospectively expunge the rights of the Commissioner against the respondents which were in existence at midnight on 30 June 2014 and which gave rise to the 2014 Assessments.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.