



BUSINESS RESTRUCTURING ANALYSIS REPORT

Fast Food Business - Discretionary Trust Restructure,

Asset Protection and Income Tax Optimisation

Prepared for:	Instructing Accountant / Client (Mr Wilson)
Date:	March 2026
Reference:	TA-BRV-2026-0319-Fast-Food-Trust-Restructure
Classification:	Confidential

Question

Facts

Mr Wilson is running a fast food takeaway business in Brisbane under a corporate structure (Pty Ltd) with a single director/shareholder. Annual gross turnover is \$1,300,000. Mr Wilson is married and his wife is unemployed. They have 2 children (aged 7 and 21).

Questions

Client Queries

1. As Mr Wilson is paying high income tax, what is the best structure to minimise tax?
 2. What is the best way to protect fittings/equipment if something goes unexpectedly wrong?
- Discuss: (a) Discretionary Trust option for asset protection and income tax benefits; (b) GST, CGT and income tax implications of changing the structure to a Trust; (c) Setting up a Discretionary Trust to transfer the current fittings/equipment into (tax and legal implications).

1. Summary

Trust for Asset Holding + Company for Operations

The recommended approach could be a two-entity structure: (1) the existing company continues to operate the fast food business (operational risk entity); (2) a new discretionary trust with a corporate trustee is established to hold the fittings, equipment, and other valuable assets, which are leased back to the company on arm's length terms.

This achieves both objectives: (a) income tax reduction through distributing the trust's lease income to Mrs Wilson (unemployed - \$18,200 tax-free threshold) and the adult child (21 years old - also eligible for full adult tax rates); and (b) asset protection by separating the valuable fittings/equipment from the operational entity that bears the business risk (product liability, lease disputes, employee claims, food safety regulatory risk).

The fittings/equipment can be transferred from the company to the trust using the Subdivision 328-G Small Business Restructure Rollover (aggregated turnover \$1.3M < \$10M threshold). This rollover defers CGT on any capital gains, transfers depreciating assets at their adjustable (written-down) values without balancing adjustments, and prevents Division 7A from applying to the transfer. GST can be managed through the going concern exemption or GST group registration.

Key Limitations

Important limitation: The 7-year-old child CANNOT receive trust distributions tax-effectively. Division 6AA ITAA 1936 taxes unearned income of minors (under 18) at penalty rates - effectively 66% on amounts above \$416. Only the adult family members (Mr Wilson, Mrs Wilson, and the 21-year-old child) are effective distribution targets for income splitting.

Section 100A ITAA 1936 (reimbursement agreements) is also a risk: if Mrs Wilson or the adult child receive distributions but the money is actually used by Mr Wilson, the ATO may treat the trustee as assessable at the top marginal rate (47%).

2. Facts & Assumptions

Facts Provided

Mr Wilson operates a fast food takeaway business in Brisbane.

The business is conducted through a Pty Ltd company.

Mr Wilson is the sole director and shareholder.

Annual gross turnover is \$1,300,000.

Mr Wilson is married; his wife is unemployed (no other income).

They have two children: aged 7 and aged 21.

Mr Wilson is paying high income tax (indicating significant taxable profits being extracted as salary/dividends).

The business has fittings and equipment that Mr Wilson wants to protect.

Assumptions Made

Assumption [ASSUMED]	Affects
The company's taxable income (after salary to Mr Wilson and other deductions) is approximately \$150,000-\$200,000 p.a. [ASSUMED]	Determines the quantum of income available for splitting and the tax saving from the trust structure.
Mr Wilson currently extracts profits via salary and/or dividends. [ASSUMED]	Salary is deductible to the company; dividends are franked. The extraction method determines the current total tax burden.
The fittings and equipment have a combined market value of approximately \$100,000-\$200,000 and a written-down (adjustable) value that is lower. [ASSUMED]	Determines the CGT and balancing adjustment consequences of transferring assets to the trust, and the quantum of depreciation available in the trust.
The company is a small business entity (aggregated turnover \$1.3M < \$10M). [ASSUMED]	Eligibility for Subdiv 328-G small business restructure rollover.
The business does not own real property - it operates from leased premises. [ASSUMED]	If the company owns real property, the restructure is more complex (stamp duty, landholder duty). Leased premises simplify the analysis.
The 21-year-old child has no other significant income. [ASSUMED]	Determines the tax benefit of distributing trust income to the adult child (\$18,200 tax-free threshold available).
There are no existing Division 7A loans between Mr Wilson and the company. [ASSUMED]	Existing Div 7A issues would complicate the restructure and must be resolved first.
The company's share capital account is nominal. [ASSUMED]	Affects the dividend/capital split if the company were to make distributions or if a future buy-back were considered.

Information Needed

Missing Information [NEEDED]	Impact if Different
Detailed list of fittings/equipment with original cost, date acquired, and current written-down value (adjustable value for Div 40 purposes). [NEEDED]	Required to calculate the balancing adjustment consequences if Subdiv 328-G is not available, and to determine the depreciation base in the trust.
Mr Wilson's current salary from the company and any dividends received. [NEEDED]	Required to model the current vs proposed tax position accurately.
Whether the company has any goodwill that should be valued. [NEEDED]	Goodwill is a CGT asset. If the business has significant goodwill (brand, customer base, location value), transferring it to the trust triggers CGT. Subdiv 328-G can defer this.
The terms of the current business premises lease. [NEEDED]	If the lease is in the company's name, it stays with the company. The trust would lease equipment to the company under a separate lease agreement.
Whether Mrs Wilson and the 21-year-old are Australian residents for tax purposes. [NEEDED]	Non-residents do not receive the tax-free threshold and are taxed at non-resident rates.
Whether the 21-year-old is a full-time student. [NEEDED]	May affect Centrelink/HECS interactions if receiving trust distributions.

3. Related Areas & Cross-Over Analysis

Area	Relevance	Key Provision	Impact
Income Tax - Splitting	Trust distributions to low/no income family members.	Div 6 ITAA 1936; s 97	Distribute lease income to Mrs Wilson (\$18,200 tax-free) and adult child (\$18,200 tax-free). Potential saving of ~\$15,000+ p.a.
Division 6AA - Minors	7-year-old child cannot receive distributions at adult rates.	Div 6AA ITAA 1936	Unearned income of minors taxed at penalty rates (66% above \$416). The 7-year-old is NOT an effective distribution target.
Section 100A	Reimbursement agreement risk on trust distributions.	s 100A ITAA 1936; TR 2022/4	If distributions to Mrs Wilson or adult child are redirected to Mr Wilson, the ATO may reassess the trustee at 47%.
CGT - Subdiv 328-G	Rollover for transferring active assets from company to trust.	Subdiv 328-G ITAA 1997	Defers CGT on goodwill, equipment, and other active assets. Requires no change in UEO, genuine restructure, and FTE in the trust.
Depreciation - Div 40	Transfer of depreciating assets (fittings/equipment).	Div 40 ITAA 1997; s 40-340	Under Subdiv 328-G, no balancing adjustment on transfer. Trust continues depreciation at the company's adjustable value.
Division 7A	Transfer of assets from company to trust/shareholder.	Div 7A ITAA 1936	Subdiv 328-G specifically overrides Div 7A for qualifying transfers (s 328-450(1)). Without the rollover, the transfer could be a Div 7A deemed dividend.
GST	Transfer of business assets and ongoing lease arrangements.	s 38-325 GST Act; Div 48	Going concern exemption may apply to asset transfer. GST group can disregard intra-group supplies.
Stamp Duty (QLD)	Transfer of business assets (chattels - fittings/equipment).	Duties Act 2001 (Qld)	QLD abolished stamp duty on transfers of business assets (chattels) from 1 July 2012. No stamp duty on the transfer of fittings/equipment.
Asset Protection	Separating valuable assets from operational risk.	Bankruptcy Act 1966 s 120, s 121	Trust holds assets; company bears operational risk. Must be established BEFORE financial difficulties arise.
FBT	If trust-owned assets are provided to Mr Wilson for private use.	FBTAA 1986	If fittings/equipment are used privately by Mr Wilson, FBT may apply. Business-only use avoids FBT.

4. Analysis

4.1 Current Structure and Tax Problem

Under the current structure, Mr Wilson is the sole shareholder and director of the company. Profits are extracted via salary (deductible to the company, assessable to Mr Wilson at marginal rates) and/or franked dividends (taxed in the company at 25%, then grossed-up and taxed at Mr Wilson's marginal rate with franking credit offset).

Because all income flows to Mr Wilson alone, he bears the full tax burden at his marginal rate. With \$1.3M turnover and a profitable fast food business, Mr Wilson is likely in the 37% or 45% marginal tax bracket (plus 2% Medicare levy). His wife and adult child contribute nothing to the tax base despite being part of the family unit.

Current Problem: No Income Splitting

The core problem: no income splitting. All business profits flow to one taxpayer (Mr Wilson) at the highest marginal rate. The family has \$36,400 of unused tax-free thresholds (\$18,200 each for Mrs Wilson and the 21-year-old) that are completely wasted under the current structure.

4.2 Proposed Structure - Company + Discretionary Trust

Structure Diagram

THE WILSON FAMILY TRUST (Discretionary Trust)

Trustee: Wilson Trustee Pty Ltd (\$2 company)

Director: Mr Wilson

Appointor: Mr Wilson

Guardian: Trusted family member

Beneficiaries: Mr Wilson, Mrs Wilson, children, related entities

Holds: Fittings, equipment, goodwill (if transferred)

Income: Lease payments from Operating Company

Distributes: Lease income to beneficiaries by 30 June each year

WILSON OPERATIONS PTY LTD (Existing Company)

Director/Shareholder: Mr Wilson

Conducts: Fast food business operations

Employs: Staff, holds leases, bears operational risk

Pays: Arm's length lease to Trust for use of fittings/equipment

Pays: Salary to Mr Wilson for his labour

How It Works

(1) The Trust owns the fittings, equipment, and (optionally) the business goodwill. It leases these assets to the company under an arm's length equipment lease agreement.

(2) The company pays market-rate lease rentals to the Trust. These lease payments are deductible to the company under s 8-1 ITAA 1997 and assessable to the Trust as rental/lease income.

(3) The Trust distributes the net lease income to beneficiaries before 30 June each year. The trustee resolves to distribute to: Mrs Wilson (up to \$18,200 tax-free), the 21-year-old child (up to

\$18,200 tax-free), and Mr Wilson (any excess). A bucket company can receive excess distributions at 25% if needed.

(4) The company continues to operate the business, employ staff, hold the food business licence, and bear the operational risk. The company's assets are limited to working capital, stock, and minimal plant - reducing the pool of assets exposed to business risk.

4.3 Income Tax Benefits - Income Splitting via Trust Distributions

Division 6 - Trust Taxation

Under Division 6 ITAA 1936 (s 97), where a beneficiary of a trust is presently entitled to a share of the trust's income, the beneficiary (not the trustee) is assessed on their proportionate share of the trust's net income at their own marginal tax rates.

The trustee must resolve to make beneficiaries presently entitled before 30 June of each income year. For a discretionary trust, the trustee has complete discretion over which beneficiaries receive income and in what amounts - this is the income splitting mechanism.

Eligible Distribution Targets

Beneficiary	Tax-Free Threshold	Marginal Rate on First \$18,200	Effective for Splitting?	Notes
Mrs Wilson (wife)	\$18,200	0%	YES	Unemployed - full threshold available. Must genuinely receive and control the distribution (s 100A risk).
Adult child (21 yrs)	\$18,200	0%	YES	Adult rates apply. If has other income, adjust distribution accordingly. HECS/Centrelink interactions to consider.
Minor child (7 yrs)	\$416 (unearned income)	66% above \$416	NO	Division 6AA penalty rates. Unearned income above \$416 taxed at 66%. Not an effective distribution target.
Bucket Company	N/A	25% (if BRE)	YES - for excess	Receives distributions exceeding family members' thresholds. Taxed at 25%. Div 7A applies to extractions from the bucket company.

Section 100A - Reimbursement Agreements

Section 100A ITAA 1936 is a critical anti-avoidance provision. It applies where a beneficiary is made presently entitled to trust income under a "reimbursement agreement" - an arrangement where someone other than the beneficiary actually benefits from the distribution.

Section 100A Warning

If Mrs Wilson receives a \$18,200 trust distribution but the money is actually used by Mr Wilson (e.g., paid into a joint account controlled by Mr Wilson, or used for household expenses that Mr Wilson would otherwise fund), the ATO may apply s 100A.

Consequence: The trustee is assessed on the distribution at the top marginal rate (47%) instead of Mrs Wilson at 0%. This negates the entire income splitting benefit.

Mitigation: Mrs Wilson must genuinely receive the distribution into her own bank account and exercise independent control over the funds. The distribution should not be subject to any prior arrangement for Mr Wilson to benefit from it. TR 2022/4 (ATO Taxation Ruling on s 100A) provides guidance on the ATO's approach.

4.4 Asset Protection - Separating Fittings/Equipment from Operating Risk

A fast food business carries significant operational risk: food safety claims (contamination, allergen incidents), workers compensation claims, slip-and-fall public liability, lease disputes, supplier disputes, and regulatory enforcement (local council, food safety authorities). These risks are inherent to the operating entity.

Under the proposed structure, the valuable fittings and equipment are held by the Trust - a separate legal entity that does not conduct the business operations. If the operating company faces a claim or becomes insolvent, the Trust's assets are not available to the company's creditors (subject to the timing rules below).

Timing - Must Be Established Before Problems Arise

Critical Timing Rule

Section 121 Bankruptcy Act 1966: Transfers to defeat creditors can be set aside with NO time limit if the main purpose was to defeat creditors and the transferee gave no or less than market consideration.

Section 120 Bankruptcy Act 1966: Undervalue transfers to related parties can be set aside within 4 years of bankruptcy.

The trust and asset transfer MUST be established while the business is financially healthy. If the transfer occurs after a claim has been made or financial difficulties are foreseeable, the transfer is likely to be set aside.

4.5 Transferring Fittings/Equipment - Subdivision 328-G Rollover

Eligibility

The Subdivision 328-G Small Business Restructure Rollover (SBRR) is available if:

- (a) Aggregated turnover of the company is less than \$10M - YES (\$1.3M);
- (b) The transfer is part of a genuine restructure of an ongoing business;
- (c) The transferred assets are active assets (fittings/equipment used in the business are active assets);
- (d) There is no change in ultimate economic ownership (UEO) - for discretionary trusts, the modified UEO test under s 328-440 applies: the trust must have a Family Trust Election (FTE) in force, and every individual with UEO before and after the transfer must be a member of the trust's family group;
- (e) Both the company (transferor) and the trust (transferee) choose to apply the rollover.

UEO and Family Trust Election

For the modified UEO test to be satisfied:

- The Wilson Family Trust must make a Family Trust Election (FTE) under Subdiv 272-A, Sch 2F ITAA 1936, specifying Mr Wilson as the primary individual;
- Mr Wilson's "family group" includes Mrs Wilson (spouse), and the children (under s 272-95);
- Before the transfer, Mr Wilson has 100% UEO of the assets (as sole shareholder of the company). After the transfer, the assets are in the trust with an FTE - all individuals with UEO (Mr Wilson) are members of the family group;
- The modified UEO test is satisfied.

Consequences of the Rollover

Asset Type	Rollover Consequence	Reference
CGT assets (goodwill, if any)	Capital gain or loss disregarded. Trust inherits the company's cost base.	s 328-455 ITAA 1997
Depreciating assets (fittings/equipment)	No balancing adjustment for the company. Trust continues depreciation at the company's adjustable value, using the same method and effective life.	s 40-340 ITAA 1997 (item 8)
Trading stock (food supplies)	Transferred at cost (or opening value). No profit/loss recognition on transfer.	s 328-455(2)(b) ITAA 1997
Revenue assets	Transferred at an amount that produces no profit or loss.	s 328-455(2)(c) ITAA 1997
Division 7A	The transfer of assets from the company to the trust is NOT treated as a payment or dividend under Div 7A (s 328-450(1) overrides Div 7A).	s 328-450(1) ITAA 1997

Rollover Result: No Immediate Tax

Under Subdiv 328-G, the transfer of fittings/equipment from the company to the trust has NO immediate income tax consequences: no CGT, no balancing adjustment, no Div 7A deemed dividend.

The trust continues to depreciate the assets from where the company left off - same adjustable value, same method, same effective life.

This is the cleanest pathway for the asset transfer.

4.6 GST Implications

Transfer of Assets

The transfer of fittings/equipment from the company to the trust is a supply for GST purposes. However, two mechanisms can manage the GST consequence:

Option 1 - Going concern (s 38-325 GST Act): If the transfer includes all the assets needed for the equipment leasing activity to continue as a going concern, and both parties agree in writing, the supply is GST-free. This requires the trust to continue the same enterprise (leasing equipment to the company).

Option 2 - GST group (Div 48 GST Act): If the company and trust form a GST group, intra-group supplies are disregarded. The transfer within the group triggers no GST.

If neither option applies, the company must charge GST on the market value of the assets transferred, and the trust claims an input tax credit (assuming the trust is GST-registered and uses the assets for a creditable purpose). The net cash flow effect is nil, but the paperwork and timing mismatch can create a cash flow issue.

Ongoing Lease Arrangements

The equipment lease from the Trust to the company is a taxable supply. The Trust must be registered for GST (if turnover from the lease exceeds \$75,000) and charge GST on the lease payments. The company claims input tax credits on the lease payments.

4.7 Stamp Duty (QLD)

Queensland abolished stamp duty on transfers of business assets (chattels) from 1 July 2012. The transfer of fittings and equipment from the company to the trust in Queensland does not attract stamp duty.

If the transfer included real property (it does not in this case - assumed leased premises), full transfer duty would apply. If the transfer included motor vehicles, motor vehicle registration duty would apply.

Stamp Duty: Nil

No QLD stamp duty on the transfer of fittings/equipment (chattels). This is a significant advantage of the QLD jurisdiction for this type of restructure.

5. Worked Example Tables

5.1 Income Tax Comparison - Current vs Proposed Structure

Assumes: Company taxable profit \$200,000 after paying Mr Wilson \$100,000 salary. Equipment lease income to trust = \$60,000 p.a. (arm's length). Company profit reduces by \$60,000 (lease deduction).

Item	Current Structure (Company Only)	Proposed Structure (Company + Trust)
Company taxable income	\$200,000	\$140,000 (\$200K - \$60K lease to trust)
Company tax (25%)	\$50,000	\$35,000
Trust net income	N/A	\$55,000 (\$60K lease income - \$5K trust expenses)
Trust distribution: Mrs Wilson	N/A	\$18,200 (tax: \$0)
Trust distribution: Adult child (21)	N/A	\$18,200 (tax: \$0)
Trust distribution: Mr Wilson (balance)	N/A	\$18,600 (tax: ~\$0 within low brackets if structured with other deductions)
Total family tax (company + individuals)	\$50,000 (company) + individual tax on dividends/salary extraction	\$35,000 (company) + ~\$0 (trust distributions within thresholds)
Estimated annual tax saving	N/A	~\$15,000 - \$20,000 p.a.

Tax Saving Analysis

The estimated tax saving of \$15,000-\$20,000 per year comes from: (a) utilising Mrs Wilson's \$18,200 tax-free threshold; (b) utilising the adult child's \$18,200 tax-free threshold; and (c) reducing the company's taxable income by the deductible lease payment.

This saving recurs annually for as long as the structure is maintained and the beneficiaries remain in low tax brackets. Over 10 years, this represents \$150,000-\$200,000 in cumulative tax savings.

The exact saving depends on the actual profit levels, the arm's length lease rate, and the beneficiaries' other income.

5.2 Asset Transfer - Subdiv 328-G Rollover Consequences

Asset	Original Cost	Adjustable Value (WDV)	Market Value	Rollover Cost to Trust	Tax on Transfer
Commercial kitchen equipment	\$80,000	\$35,000	\$50,000	\$35,000 (adjustable value)	\$0
Fitout (counters, shelving)	\$40,000	\$15,000	\$20,000	\$15,000 (adjustable value)	\$0

Asset	Original Cost	Adjustable Value (WDV)	Market Value	Rollover Cost to Trust	Tax on Transfer
POS system and technology	\$15,000	\$5,000	\$8,000	\$5,000 (adjustable value)	\$0
Signage and branding	\$10,000	\$3,000	\$5,000	\$3,000 (adjustable value)	\$0
Total	\$145,000	\$58,000	\$83,000	\$58,000	\$0

Deferred Gain Note

Under Subdiv 328-G, the trust takes on the company's adjustable values (\$58,000 total) and continues depreciation from that point. The \$25,000 difference between market value (\$83,000) and adjustable value (\$58,000) is a deferred gain that crystallises only if the trust later sells the assets above their adjustable value.

6. Case Law Support

Primary Authority

Case / Reference	Source	Principle	Application
<i>FCT v Bamford (2010)</i> 240 CLR 481	HCA	Trust income for Div 6 is determined by the trust deed and general law. The proportionate approach applies to determine each beneficiary's share of net income.	Foundation for the income splitting mechanism. The trustee's resolution determines who is presently entitled and assessed.
<i>FCT v Guardian AIT Pty Ltd [2023] FCAFC 3</i>	FCAFC	Section 100A: the Full Federal Court's analysis of "reimbursement agreements" and the scope of the exclusion for ordinary family or commercial dealings.	Directly relevant to the s 100A risk on distributions to Mrs Wilson and the adult child. The distributions must not be part of a reimbursement agreement.
LCR 2016/3	ATO (Binding - Law Companion Ruling)	Subdiv 328-G: genuine restructure requirements, safe harbour rules, and modified UEO test for discretionary trusts.	Confirms the FTE requirement for the modified UEO test and the meaning of "genuine restructure".

Supporting Authority

Case / Reference	Source	Principle	Relevance
TR 2022/4	ATO (Binding - Taxation Ruling)	Section 100A: ATO's comprehensive guidance on reimbursement agreements. Identifies trust distribution arrangements that are and are not within the s 100A exclusion.	Critical guidance for structuring distributions to Mrs Wilson and the adult child. Must ensure distributions fall within the "ordinary family or commercial dealing" exclusion.
LCR 2016/2	ATO (Binding - Law Companion Ruling)	Subdiv 328-G: income tax consequences and adjustments when the SBRR is applied. Covers CGT assets, depreciating assets, trading stock, and Div 7A override.	Confirms the specific tax consequences of transferring equipment from the company to the trust under the rollover.
<i>Thomas v FCT (1972) 3 ATR 165</i>	HCA	Meaning of "present entitlement" under Division 6.	Confirms requirements for beneficiaries to be presently entitled - the trustee must resolve distributions before 30 June.

7. Conclusion

The recommended structure could be a discretionary trust (The Wilson Family Trust) with a corporate trustee, holding the business fittings and equipment and leasing them back to the operating company on arm's length terms.

This structure achieves both stated objectives:

(1) Income tax minimisation: Trust lease income is distributed to Mrs Wilson (\$18,200 tax-free) and the 21-year-old child (\$18,200 tax-free), utilising \$36,400 of otherwise wasted tax-free thresholds. Estimated annual tax saving of \$15,000-\$20,000. The 7-year-old child cannot be used for income splitting due to Division 6AA penalty rates on unearned income.

(2) Asset protection: The fittings and equipment are held by the trust - a separate legal entity that does not conduct the business operations. If the operating company faces a food safety claim, workers compensation claim, lease dispute, or insolvency, the trust's assets are not available to the company's creditors.

The transfer of fittings/equipment from the company to the trust can be effected using the Subdivision 328-G Small Business Restructure Rollover with no immediate income tax, CGT, or Division 7A consequences. The trust makes a Family Trust Election with Mr Wilson as the primary individual to satisfy the modified UEO test. GST is managed through the going concern exemption or GST group. QLD stamp duty on chattels is nil.

Setup cost of approximately \$8,000-\$13,000 is recovered within the first year from tax savings. Ongoing compliance cost of \$2,500-\$4,000 p.a. is comfortably exceeded by recurring annual savings of \$15,000-\$20,000.

Next Steps

Key action items: (1) Engage a solicitor to prepare the trust deed with appropriate streaming powers and wide beneficiary class; (2) Incorporate the corporate trustee; (3) Obtain an independent valuation of the fittings/equipment to support the arm's length lease rate; (4) Execute the Subdiv 328-G transfer with both parties' written election; (5) Lodge the Family Trust Election with the trust's first tax return; (6) Ensure trust distributions to Mrs Wilson and the adult child are genuine (s 100A mitigation).

8. Risks & Caveats

Section 100A - reimbursement agreements: [High - if not managed] This is the single biggest risk. If trust distributions to Mrs Wilson or the adult child are part of an arrangement where Mr Wilson actually benefits, s 100A applies and the trustee is assessed at 47%. Mitigation: distributions must be genuine - paid into the beneficiary's own bank account, with independent control. No pre-arrangement for the funds to return to Mr Wilson. TR 2022/4 and the Guardian AIT decision must be carefully considered.

Division 6AA - minor child: [Information] The 7-year-old CANNOT receive distributions at adult rates. Unearned income above \$416 is taxed at penalty rates (66%). Do not distribute trust income to the minor child. This limitation continues until the child turns 18 (or if the income is from a testamentary trust - but this is a family trust, not testamentary).

Part IVA risk: [Low-Medium] The restructure has genuine commercial substance (asset protection for a food business, which is a high-risk sector). However, if the ATO considers the dominant purpose to be income splitting rather than asset protection, Part IVA could apply. Contemporaneous documentation of the commercial rationale (asset protection, succession planning, risk segregation) is essential.

Arm's length lease rate: [Verify] The equipment lease from the trust to the company must be at market rates. If the lease rate is inflated to shift more income to the trust, s 26-50 ITAA 1997 limits the company's deduction, and Part IVA may also apply. Obtain an independent valuation to support the lease rate.

Subdiv 328-G - genuine restructure: [Verify] The restructure must be genuine and not undertaken solely for tax benefits. The safe harbour rule in s 328-430(1)(b) provides an alternative test: the restructure would have been undertaken regardless of the tax consequences. Document the asset protection and operational reasons for the restructure.

Family Trust Election consequences: [Information] The FTE triggers family trust distribution tax (FTDT) at 47% on any distribution to a person outside the family group. Ensure all intended beneficiaries (including any future family entities) are within Mr Wilson's family group under s 272-95 Sch 2F ITAA 1936.

Timing - asset protection: [Critical] The trust and asset transfer must be established while the business is financially healthy. If there is an existing claim, known liability, or foreseeable financial difficulty, the transfer may be set aside under s 120/s 121 Bankruptcy Act 1966. Act now while the business is profitable and growing.

Ongoing - trust distribution deadline: [Annual] The trustee MUST resolve to distribute all trust income before 30 June each year. Failure to resolve by 30 June means the trustee is assessed at the top marginal rate (47%) under s 99A ITAA 1936. Set a calendar reminder for June each year.

9. Rulings & References

Legislation

Provision	Relevance
ITAA 1936, Division 6 (ss 95-102)	Trust taxation - assessment of presently entitled beneficiaries
ITAA 1936, Division 6AA	Penalty tax rates on unearned income of minors (under 18)
ITAA 1936, s 97(1)	Beneficiary assessed on proportionate share of trust net income
ITAA 1936, s 99A	Trustee assessed at top marginal rate if no beneficiary presently entitled
ITAA 1936, s 100A	Reimbursement agreements - anti-avoidance for trust distributions
ITAA 1936, s 177D (Part IVA)	Anti-avoidance - dominant purpose test
ITAA 1936, Division 7A	Deemed dividends - company to shareholder/associate payments
ITAA 1936, Sch 2F, Subdiv 272-A	Family Trust Election (FTE) - required for Subdiv 328-G modified UEO test
ITAA 1997, Subdiv 328-G (ss 328-430 to 328-475)	Small Business Restructure Rollover
ITAA 1997, s 328-440	Modified UEO test for discretionary trusts
ITAA 1997, s 328-450	Override of Div 7A for qualifying transfers
ITAA 1997, Div 40 (s 40-340)	Depreciating assets - rollover for restructure transfers
ITAA 1997, s 8-1	General deduction - lease payments deductible to company
ITAA 1997, s 26-50	Limit on deductions for non-arm's length payments to related entities
GST Act, s 38-325	Going concern exemption - GST-free supply
GST Act, Div 48	GST groups - intra-group supplies disregarded
Bankruptcy Act 1966, s 120, s 121	Clawback of undervalue and defeating creditor transfers

ATO Rulings & Guidance

Reference	Topic	Binding Status
TR 2022/4	Section 100A reimbursement agreements - comprehensive guidance	Binding (Taxation Ruling)
LCR 2016/2	Subdiv 328-G: income tax consequences of the SBRR	Binding (Law Companion Ruling)
LCR 2016/3	Subdiv 328-G: genuine restructure and UEO requirements	Binding (Law Companion Ruling)

Case Law

Case	Court	Principle
<i>FCT v Bamford</i> (2010) 240 CLR 481	HCA	Trust income determination; proportionate approach under Div 6
<i>FCT v Guardian AIT Pty Ltd</i> [2023] FCAFC 3	FCAFC	Section 100A - reimbursement agreements and ordinary family dealings exclusion
<i>Thomas v FCT</i> (1972) 3 ATR 165	HCA	Present entitlement under Division 6
<i>FCT v Spotless Services</i> (1996) 186 CLR 404	HCA	Part IVA dominant purpose test

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