MEMORANDUM

of Robert Venables Q.C.

Re the United Kingdom income taxation of trustees of settlements which are / have been partners of partnerships and of their beneficiaries with particular reference to settlements which are or were within the meaning of the RVQC Partnership Deeds a "Residuary Partner" or a "GBM Partner"

Prepared 8 July 2022

For the attention of

Mrs Kiran O'Dea
Mrs Maryann Dufton
Mr James Banks

all of HMRC

Introduction

1. It was obvious from the "voluntary" interview I attended with Mrs Dufton and Mr Banks on 5th July 2022 that there were still fundamental misunderstandings on the part of those conducting the enquiry (and, evidently, those on whom they relied for advice) as to the basic rules of United Kingdom income tax law relating to this matter. It would appear that the advice, both as to trust law and as to taxation law, which HMRC has received in relation to this matter has not been fit for purpose.

2. I am therefore setting out my view of the relevant law, being that on which I have acted in making my own tax returns and in preparing (as to trust income) the tax returns of Gary Bernard Morris ("GBM").

3. It is possible that the principal reason that tax evasion has been suspected is that no one within HMRC has appreciated that the taxable income of GBM and myself from these trusts has been less than our actual income. And no one sought to obtain advice from an external source which would be as authoritative (or almost authoritative) as my own. The discrepancy between actual income and taxable income is the result of peculiar, highly prescriptive, statutory rules which were enacted in the mid 1990's at the behest of Commissioners of Inland Revenue, later merged into HMRC. These rules tax not real income but fictitious income. It should therefore be hardly surprising that they can produce some startling results. Indeed, it was only after the July 2021 interviews that HMRC announced they were reviewing whether these rules should be changed and that, in Finance Act 2022, these rules are to be abolished with effect from the tax year

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2024/25, with certain transitional provisions taking effect in the year 2023/24.

4. I have already explained, in a communication sent to Mrs O'Dea through Kingsley Napley in August 2021, how partners in partnerships are taxed not on their real share of partnership profits for a tax year but on a fictional amount computed in accordance with express, prescriptive, statutory provisions. I shall not repeat that here. I was pleased to see in the interview on July 5th that Mrs Dufton appeared to understand how those rules work.

The Law

5. The trustee(s) of a "settlement"[1] are deemed for income tax purposes to be a single and continuing body of persons.[2] Where the trustees of a settlement are partners of a partnership, their deemed share of partnership profits for income tax purposes for a tax year falls to be ascertained in the same way as if they were an individual.

6. The rules concerning the deemed taxable share of profits of the trustees of a settlement for a tax year can produce some unexpected results, particularly when one then applies the rules as to how the income of the trust of a beneficiary who is entitled to that income as it arises (in trust terminology, an individual who is entitled to an "interest in possession") is taxed for a tax year. All the settlements in question were at all material times interest in possession trusts.

7. Where the trustee(s) of a settlement are a partner in a partnership, while the basic rules (including Income (Trading and other Income) Tax Act 2005 section 852) still apply to them (so that if the trustee(s) begin or cease to be a partner in a tax year there are special rules for calculating their deemed taxable income in opening and closing years) there are no special rules which apply where there is simply a change in the beneficiaries of the settlement beneficially entitled to its income (provided the trustee(s) themselves remain a partner). **The result is that real income of the trust from the partnership in Year X can escape income tax in the hands of the beneficiary who is as a matter of trust law beneficially entitled to it whereas it will taxed in the hands of the trustees in Year X +1 but only at the basic rate. HMRC have clearly failed to appreciate this fundamental point. I suspect that this failure to appreciate how tax law words may at the root of the suspicion that RV (and, possibly GBM) may have under-declared their taxable income.**

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[1] This term is so defined to include most trusts but does not include a bare trust, even where the beneficiary is a minor. A bare trust is one which has only beneficiary. I myself was a partner of the Partnership in my capacity as trustee of bare trusts. This Memorandum has no relevance in the case of such trusts.

[2] See Income Tax Act 2007 section 474.

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8. While I shall shortly explain this by a concrete illustration, I first need to set out some of the basic rules relating to the taxation of the trusts and their beneficiaries.[3]

9. Trustees will generally be taxable on taxable income of the trust at a rate at least equal to the basic rate. Taxation at the basic rate is the default position. They may be taxable, however, in a representative capacity (on behalf of a beneficiary beneficially entitled to the income) or in their own right.

10. The effect of the decision of the House of Lords in the classic case of *Williams v Singer* (1920) 7 TC 387 is that, although the trustees are taxable on so much of the income arising to them to which a beneficiary is beneficially entitled as it arises, that is for income tax purposes the income of only the beneficiary and not of the trustees, so that any liability of the trustees would be representative.[4] The trustees would be taxable in their own right only on such part of the income to which no beneficiary was beneficially entitled as it arose.[5] (Typically, that would be in respect of trust expenses which, under

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3 It was quite obvious that Mrs O'Dea and Mr Karaoglan, who conducted my interview on July 24th 2021, were ignorant of these basic rules. While it is perhaps not altogether surprising that these individuals, engaged full-time in criminal enforcement, with no legal or tax qualifications and, it appeared, no experience of working in the HMRC Trusts department, where, one would have hoped, they might have picked up at least some rudimentary knowledge of the subject, were totally at sea, what is amazing is that either they did not seek competent advice from a specialist of appropriate standing or that, if they did, they either did not receive it or did not understand it.

4 In that in that case, United Kingdom resident trustees held income-producing property which had a non-UK source for United Kingdom income tax purposes, on trust for a beneficiary who was not resident or ordinarily resident in the UK. The House of Lords decided that the source of the beneficiary's income was not the trust (which would thus have been a United Kingdom source) but the trust property, just as if the beneficiary had owned that property absolutely. In the circumstances, therefore, the income was not United Kingdom taxable income at all, as it had a foreign source and belonged beneficially to a non-UK resident. Thus the trustees were not liable to tax on it, even in a representative capacity. It is abundantly clear from the later decision of the House of Lords in *Archer-Shee v Baker*(1927) 11 TC 749 that the ratio of *Williams v Singer* is as I have described it.

5 [This footnote is not believed to be relevant to the Instructions but is included for completeness.] At least, beneficially entitled as it arose, i.e. by virtue of an interest in possession. There is a fascinating point, not relevant to these instructions as to whether the same rule applies when trustees have a discretion to distribute income

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the general law or the trust instrument in question, were chargeable to income but there are other possibilities, one of which is in point here. See below.)

11. The way in which it is expressed is that the beneficiary is beneficially entitled to the entire income of the trust but subject to a charge as respects trust expenses chargeable to income.[6] The taxable income of the beneficiary, therefore, would be not the amount of trust income free from the charge but the net amount after the charge had been satisfied. In fact, in the case of the interest in possession trusts in question in this case, the trust expenses were minimal, so this is not of any importance.

12. It is well established that the lack of symmetry between the trust's taxable income and the beneficiary's taxable income operates the other way, too. Suppose trustees to have income of £1,000 and no expenses chargeable to income but to be entitled to capital allowances of £100 so that the trustees have taxable income of £900. It has never been disputed that the taxable income of the beneficiary is (a maximum of) only £900, even though he has an actual income of £1,000.[7] He is taxed on the whole of the trust income but the taxable amount is determined in an artificial way, just as the income of the trustees is so calculated.

13. If, however, the quantum of the trust's income for a tax year for income tax purposes is greater than its real income, then clearly the beneficiary entitled for an interest in possession can be entitled only to a (maximum) of the real trust income. He is taxable only on that portion of the (taxable) trust income to which he is in fact beneficially entitled.

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amongst one or more beneficiaries and do distribute it as income. That turns on the true interpretation of the House of Lords decision in *Drummond v Collins* (1915) 6 TC 525, which is made a little clearer by the decision of the Court of Appeal in that case.

[6] and any prior interests which fall to be satisfied out of income e.g. the payment of annuities. That is not in point in the present context.

[7] See *In Re Pelly's Will Trusts. Ransome v. Pelly* [1957] Ch. 1 In that case, the non-taxability of the beneficiary on an amount of income equal to the amount of the capital allowance had been accepted by the Revenue and the only question was whether the beneficiary had to account to the trust for the amount of tax saved by him on account of the trustees being entitled to the capital allowance. The Court of Appeal held that he was not. As the Master of the Rolls said (the other Judges agreed with him): "In my judgment, ... the question of tax liability for present purposes is in truth distinct from the beneficial right to the receipt of the income under the trust instrument." That is very much in point in this case.

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14. This could result in striking consequences in the past - and can still result, in these days of lower rates of tax, in rather less striking consequences. Suppose the trust income was investment income, taxable in the hands of the beneficiary at 75%. The trust benefits from a capital allowance of £1,000, thus reducing the beneficiary's income tax liability by £750. Suppose the trustees sell the capital asset and suffer a balancing charge of £1,000. They will be liable to a charge to income tax at the basic rate, say, £200. The beneficiary will not be liable to any charge to tax at the higher rates as the £1,000 is purely notional income to which he therefore cannot be beneficially entitled.

Application to the Residuary Partners and their Income Beneficiaries

15. I shall now give an illustration of how these rules work in the case of the Residuary trusts.[8] This illustration is concerned with the St Augustus Trust and the tax year 2017/18, which is the trust and the year on which HMRC chose to concentrate in the interviews held with me on July 24th 2021 and July 5th 2022.

16. The St Augustus Trust became a partner of the Partnership on January 8th 2013 but first had income from the Partnership in the tax year 2015/16. I was beneficially entitled to an interest in possession (i.e. to receive the net income of the Trust) until the end of April 5th 2017. See the original trust deed of 2012 as modified by the 2013 Deed of Appointment. As from April 6th 2017, Merton College was entitled to an interest in possession until April 5th 2018, when the trust came to an end by absolute vesting.

17. I now set out a table showing the contrast between the actual income of the settlement for a year and its taxable income for that year.

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8 The GBM trusts are somewhat less complicated as one need not have regard to the Income Tax (Trading and Other Income) Act 2005 Settlement Provisions, RV being excluded from benefit under all these trusts. (GBM is not the spouse or civil partner of RV.)

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Tax Year	Actual Income Share of Trust [from April 10th to April 5th][9]	Trust's Taxable Income For the Tax Year
2013/14	£0	£0
2014/15	£0	£0
2015/16	£100	£0
2016/17	£543,676.57	£100
2017/18	£50	£543,726.57

18. For the year 2015/16, my real income from the trust was £100 but as the trust's taxable income was zero (the basis period being 2015/16), I had no tax liability on that income.

19. For the year 2016/17, my real income from the trust was £543,676.57. [10] Yet because of the artificiality purposely introduced by Parliament, the measure of the taxable trust income for that year was only £100 (being calculated by reference to the actual income of 2015/16). One must bear in mind the classic statements about taxation on the preceding year basis (which used to apply to a great deal more then income of trades and professions) that while the income of the preceding year[11] is the *measure* or the *quantum* of the charge to income in the current year, what is being charged to tax is the income of the current year and not the income of the preceding year. See, for example, *W M G Singer v A W Williams (Surveyor of Taxes)* (1920) 7 TC 419 (which is a different authority from Williams v Singer (1920) 7 TC 387).

20. Thus, in 2016/17, the whole income of the year (in fact £543,676.57) was charged to tax but was deemed to be only £100; whereas in 2017/18 the whole income of the year (in fact £50) was charged to tax and was deemed to be £543,726.57 (being calculated by reference to the actual income of 2016/17 plus, because the trust ceased to be a partner in 2017/18, the actual income of 2017/18). Further, what was being taxed in 2017/18 was only the (deemed) income for 2017/18 and not any part of the (real) income of 2016/17. See *W M G Singer v A W Williams.*

21. The result was that, although my actual income from the trust for the years 2015/16 and

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9 It is expressly provided that the profit share of the trust is not to come out of any part of the profits of an accounting period of the Partnership (ending on April 9th) between April 5th and 9th. Hence, the actual income is for the period in the tax year April 10th to April 5th next.

10 I am ignoring any trust expenses, which might be payable. In the case of these trusts, they would have been absolutely negligible,

11 or years. Sometimes, the quantum of the income for income tax purposes was based on an average of two or more preceding years.

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2016/17 was in total £543,776.57, because of the artificial rules of tax law, my total taxable income was only £100. If you find this result preposterous, blame (a) the Commissioners of Inland Revenue who persuaded Parliament to enact such legislation and (b) HMRC who, until 2021, did not question whether such legislation was appropriate.

22. That is not quite the full picture. As a matter of trust accounting, I was not entitled to require the trustees to hand over £543,676.57 at the end of the 2016/17. Because the actual income of the trust for 2016/17 was £543,676.57, the Trustees knew that they would face an income tax liability in the following year equal to 20% of that amount (in addition to 20% of the amount of their actual income share for that next year). (For why this is the appropriate rate, see below.) Hence, they were entitled to withhold from me £108,731.31 towards their tax liability for 2017/18 and thus needed to hand over only £434,926.06.[12] The *practical* result was the same as if I had suffered tax at 20% on the £543,676.57.[13] However, for income tax purposes, it was not I but the trustees who were taxable on the £543,676.57 and at the rate applicable to them and for 2017/18, not 2016/17. **That is why this amount did not fall to be entered in my self assessment return as forming part of my taxable income.**

23. In 2017/18, Merton College was entitled to the actual income of £50 (minus trust expenses chargeable to income). The trustees were taxable on £543,726.57. However, the beneficiary was taxable (if at all, given it is a United Kingdom charity) only on the income to which it is beneficially entitled, a maximum of £50. And the trustees would be taxable on such amount of income as was needed to discharge trust expenses chargeable to income. In both cases, they would be chargeable at the basic rate only (of 20%).

24. As to the remaining £543,676.57,the trustees are of course taxable at the basic rate. They are not taxable at any higher rate. It has always been accepted that trustees are chargeable only at the basic rate (previously called "the standard rate") absent some express provision to the contrary. That was, and remains, the default position.

25. There is one general and various specific sections which impose a charge at a higher rate. They are contained in Income Tax Act 2007 Part 9 Chapter 3, being sections 479 onwards. None of the specific ones were (or are) in point.

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[12] They were entitled to do so specifically as a matter of equitable accounting as between beneficiaries. They were also entitled to do so more generally by virtue of their trustees' lien for costs, expenses and charges properly incurred by them in the performance of the trusts.

[13] In the same way, in 2015/16, the trustees had been entitled to retain £20 of the £100 of real income, in order to pay the tax which would be due from them in 2016/17.

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26. The general provision is section 479, to be read in conjunction with section 480, which provide:

> "479 Trustees' accumulated or discretionary income to be charged at special rates
>
> (1) This section applies if-
>
> (a) accumulated or discretionary income arises to the trustees of a settlement, and
>
> (b) the income does not arise under a charitable trust.
>
> (2) Income tax is charged on the income at the rates referred to in this section instead of at the rates which would otherwise apply (for which see Chapter 2 of Part 2 (rates at which income tax is charged)).
>
> (3) Income tax is charged on the income at the dividend trust rate so far as the income is dividend income.
>
> (4) Otherwise, income tax is charged on the income at the trust rate.
>
> (5) Section 488 disapplies this section in cases relating to Schedule 2 share incentive plans.
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> 480 Meaning of "accumulated or discretionary income"
>
> (1) Income is accumulated or discretionary income so far as-
>
> (a) it must be accumulated, or
>
> (b) it is payable at the discretion of the trustees or any other person,
>
> and it is not excluded by subsection (3).
>
> (2) The cases covered by subsection (1)(b) include cases where the trustees have, or any other person has, any discretion over one or more of the following matters-
>
> (a) whether, or the extent to which, the income is to be accumulated,
>
> (b) the persons to whom the income is to be paid, and
>
> (c) how much of the income is to be paid to any person.

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(3) Income is excluded for the purposes of subsection (1) so far as-

(a) before being distributed, it is the income of any person other than the trustees,

(b) it is income from property within subsection (4), or

(c) it is income from service charges which are paid in respect of dwellings in the United Kingdom and are held on trust.

[(4) and (5) apply for (3)(b) and (c) which are clearly not in point. In fact, (3) is not relied on at all.]"

27. In the specific circumstances, it would appear to be the case that section 479(1)(b) would not be satisfied, given that the only beneficiaries of the trust in the tax year in question are charities and thus the trust could be fairly called a "charitable trust".[14] So for that reason, section 479 did not apply at all.

28. However, there is a more general reason why the section does not apply in that section 480(1) was not satisfied. That is because, although the section applies in principle to income for tax purposes, that subsection can apply only to that which is in reality income for trust purposes, whereas this "income" for 2017/18 is (apart from the £50, to which section 480 clearly does not apply) purely (fictitious) income for the purposes of the income tax legislation and is not trust income at all for trust purposes (or otherwise in reality). First, as regards section 480(1)(a), the concept of "accumulation" is a term of trust law and involves converting that which is income for trust purposes into that which is capital for trust purposes. Second, as regards section 480(1)(b), there are two reasons. (A) "income" in the opening words of (1) must mean the same in relation to both (a) and (b), i.e. income for trust purposes. (B), given that the income is fictitious income, it cannot be paid at all.

29. It is believed that HMRC have always accepted the above. Indeed, when I argued *Howell v Trippier*, (2004) 76 TC 415, before the Court of Appeal, Henderson Q.C. for HMRC (he later became Lord Justice Henderson) accepted as much. That case concerned receipts which were capital of the trust for trust purposes. The actual decision did not depend on this point but on the provision treating stock dividends etc as distributions (Income and Corporation Taxes Act 1988 section 246).

30. RI 163 (December 1996) (Tax relief for trustees on mineral leases and timber cropping) shows that the Revenue accepted that where a profit was taxable income for income tax

[14] I cannot find any relevant definition of the term.

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purposes but capital for trust purposes, then it was not caught by what is now Income Tax Act 2007 sections 479 and 480. This is also reflected in HMRC's Trusts and Estate Manual at TSEM3196 " Because it is already capital ... it cannot be 'accumulated' in the sense of S479 ITA 2007, and so is not subject to the trust rate." What is vital, of course, is not so much that what is deemed for income tax purposes to be taxable income of the trustees is capital for trust purposes but that it is not income for trust purposes. Hence, if deemed income for income tax purposes does not exist at all for trust purposes, the same result follows.

31. Perhaps the best evidence that this is the accepted treatment by HMRC and of Parliament's understanding of the position is the large number of specific additional cases where the higher-rate charge is expressly imposed. See sections 481 and 482, These are needed because in each case the profit realised by the trust is in fact capital for trust purposes and merely deemed to be income for income tax purposes or in a specific case where there is in fact no profit at all but purely fictitious income. While this is not obvious from Income Tax Act 2007, which is a consolidating act, these additional provisions were added piecemeal over the years.

32. Thus, this is a case where Parliament has specifically provided very detailed rules as to when trustees are liable to tax at a rate higher than the basic rate. All that either the trustees or I have done is to accept "an offer of freedom from taxation" at the higher rate "which Parliament has offered" by ensuring that the trusts do not fall within any of them. That cannot even be characterised as "tax avoidance", let alone "tax evasion". See Commissioners of Inland Revenue v. Willoughby (1997) 70 TC 57 per Lord Nolan in his speech with which all the other law lords agreed when dismissing the Revenue's appeal from the decision of the Court of Appeal without even needing to hear Counsel for the taxpayer.

33. I would repeat that the fact that the *amount* of the actual income of 2016/17 (to which I was beneficially entitled) is used in the *measure* of the taxable income of 2017/18 does not somehow make the income of 2016/17 taxable in 2018/19 and thus there can be no question of it being taxable as mine in 2017/18, a year in which he I was not even a beneficiary of the trust. By 2017/18, I had no interest in the income (or otherwise under the settlement), so I could not begin to be taxed in 2017/18 at the higher rates in respect of it. See the report of *W M G Singer v A W Williams (Surveyor of Taxes)* (1920) 7 TC 419, in particular what was said by the Master of the Rolls and Scrutton LJ in the penultimate paragraph of each of their judgments in the Court of Appeal (with which the House of Lords agreed) and by Lord Atkinson in the penultimate paragraph of his speech in the House of Lords.

34. Mention was made in the 5th July 2022 interview of Income (Trading and other Income) Tax Act 2005 section 625, although there was scant appreciation of its relevance. It *appears* that someone has formed the view that as the St Augustus Trust was "settlor-

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interested", that meant that the taxable income of the trustees for 2017/18 was deemed for income tax purposes to be that of myself as settlor.[15]

35. Whatever superficial attraction such an argument might have, it founders on the rocks of the facts. Section 625 is in fact a definition section. it to be found in Income (Trading and other Income) Tax Act 2005 Part 5 (Miscellaneous Income) Chapter 5 (now headed "Settlements: Amounts Treated As Income of Settlor or family". The provision which whoever had this idea had in mind was no doubt section 619 (Charge to tax under Chapter 5), which provides:

> "(1) Income tax is charged on-
>
> > (a) income which is treated as income of a settlor as a result of section 624 (income where settlor retains an interest),
> >
> > ...
>
> ..."

36. Section 624 (Income where settlor retains an interest) provides:

> "(1) Income which arises under a settlement is treated for income tax purposes as the income of the settlor and of the settlor alone if it arises-
>
> > (a) during the life of the settlor, and
> >
> > (b) from property in which the settlor has an interest
>
> ..."

37. Section 625 (Settlor's retained interest) provides:

> "(1) A settlor is treated for the purposes of section 624 as having an interest in property if there are any circumstances in which the property or any related property-
>
> > (a) is payable to the settlor or the settlor's spouse or civil partner,
> >
> > (b) is applicable for the benefit of the settlor or the settlor's spouse or

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[15] I say "appears" because the position taken by HMRC in my July 2021 interview was that it was taxable in the hands of the trustees but at the (higher) trust rate, not the basic rate.

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civil partner, or

(c) will, or may, become so payable or applicable.

..."

38. I note that not all trusts are "settlements" within the meaning of the chapter but assume for the moment (without conceding) that the trusts of which the Residuary Partners were trustees were "settlements" within such meaning. Even so, it does not take Albert Einstein to appreciate that the test whether or not income arising under a settlement is caught by the chapter must be determined as and when that income arises. Until the end of April 5th 2017, the St Augustus Trust was settlor interested. After that, however, it was not. There were from that point only two beneficiaries who between them were entitled the entire beneficial interest in the settled property (and the income therefrom). And neither of them was myself (nor, for that matter my spouse or my civil partner as I have never had a spouse of civil partner). Thus, none of the (deemed) income of the trustees for income tax purposes for the tax year 2017/18 was caught by the Chapter.

Application to the Residuary Partners and their Income Beneficiaries

39. In the interview held on July 5th 2022, reference was made to the St Matthias Trust, under which GBM was entitled for an interest in possession until the end of April 5th 2017. Very similar considerations apply, *mutatis mutandis*, to the quantification of his taxable trust income for 2015/16 and 2016/17 as in the case of the St Augustus Trust.

Tax Year	Actual Income Share of Trust [from April 10th to April 5th][16]	Trust's Taxable Income For the Tax Year
2013/14	£0	£0
2014/15	£0	£0
2015/16	£100	£0
2016/17	£83,400	£100
2017/18	£50	£83,450

40. For the year 2015/16, GBM's real income from the trust was £100 but as the trust's taxable income was zero (the basis period being April 10th 2015 to April 9th 2016), he had no tax liability on that income.

[16] It is expressly provided that the profit share of the trust is not to come out of any part of the profits of an accounting period of the Partnership (ending on April 9th) between April 5th and 9th. Hence, the actual income is for the period in the tax year April 10th to April 5th next.

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41. For the year 2016/17, his real income from the trust was £83,400.00[17] Yet because of the artificiality purposely introduced by Parliament, the measure of the taxable trust income for that year was only £100 (being calculated by reference to the actual income of the basis period 2015/16). One must again bear in mind the classic statements about taxation on the preceding year basis (which used to apply to a great deal more then income of trades and professions) that while the income of the preceding year is the *measure* or the *quantum* of the charge to income in the current year, what is being charged to tax is the income of the current year and not the income of the preceding year. See, for example, *W M G Singer v A W Williams (Surveyor of Taxes)* (1920) 7 TC 419 (which is a different authority from Williams v Singer (1920) 7 TC 387).

42. Thus, in 2016/17, GBM's whole income of the year (in fact £83,400) was charged to tax but was deemed to be only £100; whereas in 2017/18 the whole income of the trust in that year (in fact £50) was charged to tax and was deemed to be £83,450 (being calculated by reference to the actual income of 2016/17 plus, because the trust ceased to be a partner in 2017/18, the actual income of 2017/18). Further, what was being taxed in 2017/18 was only the (deemed) income for 2017/18 and not any part of the (real) income of 2016/17. See *W M G Singer v A W Williams.*

43. The result was that, although GBM's actual income from the trust for the years 2015/16 and 2016/17 was in total £83,500, because of the artificial rules of tax law, his total taxable income was only £100.

44. That is not quite the full picture. As a matter of trust accounting, GBM was not entitled to require the trustees to hand over £83,400 at the end of the 2016/17. Because the actual income of the trust for 2016/17 was £83,400, the Trustees knew that they would face an income tax liability in the following year equal to 20% of that amount (in addition to 20% of the amount of their actual income share for that next year). (For why this is the appropriate rate, see above.) Hence, they were entitled to withhold from him £16,680 towards their tax liability for 2017/18 and thus needed to hand over only £66,720.[18] The *practical* result was the same as if he had suffered tax at 20% on the £83,400.[19] However, for income tax purposes, it was not GBM but the trustees who were taxable by reference

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[17] I am ignoring any trust expenses, which might be payable. In the case of these trusts, they would have been absolutely negligible,

[18] They were entitled to do so specifically as a matter of equitable accounting as between beneficiaries. They were also entitled to do so more generally by virtue of their trustees' lien for costs, expenses and charges properly incurred by them in the performance of the trusts.

[19] In the same way, in 2015/16, the trustees had been entitled to retain £20 of the £100 of real income, in order to pay the tax which would be due from them in 2016/17.

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to the £83,400 and at the rate applicable to them. **That is why this amount did not fall to be entered into his self assessment return as forming part of his taxable income.**

45. In 2017/18, Merton College was entitled to the actual income of £50 (minus trust expenses chargeable to income). The trustees were taxable on £83,450. However, the beneficiary was taxable (if at all, given it is a United Kingdom charity) only on the income to which it was beneficially entitled, a maximum of £50. And the trustees would be taxable on such amount of income as was needed to discharge trust expenses chargeable to income. In both cases, they would be chargeable at the basic rate only (of 20%).

46. As to the remaining £83,450, the trustees were taxable at the basic rate and not at any higher rate. See above.

Robert Venables Q.C. 8 July 2022

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