

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 2013

14 February 2013

QUESTION: AET 65

Topic: Discretionary Family Trusts

Hansard Page: 104

Senator CAMERON asked:

Senator CAMERON:... Are there rules in place either under the tax act or in accordance with ATO determinations in relation to discretionary family trusts extending loans to individuals or other parties who may or may not be beneficiaries of the trust? If so, what are they?

Mr Quigley: I think what you are referring to may be a provision in the 1936 act—section 108—which effectively says, where a loan is funded essentially out of the unpaid present entitlement of other beneficiaries as reimbursement agreements, the recipient of that is deemed not to be presently entitled and the trustee is assessed at the top rate on those amounts. Effectively, the amount that is presently entitled to one beneficiary is streamed to someone else.

Senator CAMERON: And that has not changed since 1936?

Mr Quigley: I am sorry; that is in the 1936 assessment act. Exactly when the provision was inserted I cannot tell you off the top of my head.

Senator CAMERON: So it could be even earlier?

Mr Quigley: It certainly was not earlier.

Senator CAMERON: Okay.

Mr Quigley: No, it certainly was not earlier. That is a provision that is an anti-avoidance provision so it certainly was not in in 1936, but I believe it was meant to cover that situation.

Senator CAMERON: On notice, could you advise me when that part of the legislation was inserted into the tax act.

Answer:

Note - This Question on Notice quotes s108 of the *Income Tax Assessment Act 1936*. The ATO have submitted a correction to the proof Hansard to replace s108 with s100A. The ATO's answer has been prepared on the basis of the correction having been made.

The *Income Tax Assessment Amendment Act 1979* inserted section 100A into the *Income Tax Assessment Act 1936* on 13 March 1979.