

Determination and distribution of income (Corporate Discretionary Trust Deed, income streaming, modifying trust income to include capital gains, if any) <delete this heading when using this minute>

**ABC FAMILY CO PTY LTD  
A.C.N. 123 456 789  
AS TRUSTEE FOR THE ABC FAMILY TRUST  
RESOLUTIONS OF DIRECTORS**

**Determination of Income:** **RESOLVED THAT**, in exercise of the power under clause 5 of the Trust Deed and every other power enabling it in that behalf, the Trustee determines that the income of the Trust for the year ending 30 June comprises:

- (a) all those amounts being income for the purposes of the accounting records of the Trust ("Accounting Records"), less the expenses and outgoings of the Trust for the year ending 30 June < > attributed to those amounts for the purpose of the Accounting Records, in each case whether recorded in the Accounting Records by or after 30 June < >, other than amounts included under paragraph (b) below; and
- (b) the amount remaining of each capital gain (as defined under subsection 995-1(1) of the Income Tax Assessment Act 1997) made in the year ended 30 June < > remaining after the recoupment for the purposes of the Accounting Records of any unrecouped current-year or prior-year capital losses.

**Character of Income:** It is noted that, for the purposes of and in accordance with clause 5 of the Trust Deed, the company as Trustee had kept appropriate records and accounts to be able to identify different classes and types of income and capital.

**Distribution of Income:** **RESOLVED THAT**, in exercise of the power under clause 5 of the Trust Deed and every other power enabling it in that behalf, the following classes or categories of income of the Trust for the year ending 30 June < > are hereby set aside for the benefit of the following beneficiaries, and in the following amounts and/or proportions, as set out in the table below:

Income	Entitlement
The total amount of capital gains remaining after the recoupment of any unrecouped current-year or prior-year capital losses	100% to Doris Alphabet
The total amount of franked dividends remaining after subtracting any expenses directly relevant to those franked dividends	The first \$2,000 to Edward Alphabet The next \$2,000 to Doris Alphabet The balance to Gary Alphabet
All other income not described above	The first \$416 to Alice Alphabet The next \$15,000 to Doris Alphabet The balance (if any) to Gary Alphabet

Also **RESOLVED THAT**, for the avoidance of doubt, regardless of any adjustment to the income of the Trust, the income of the Trust shall be distributed as specified above.

**TAX WARNING** – Proportionate approach <delete this box when using this minute>

Beneficiaries that are made specifically entitled to capital gains and/or net franked dividends can be taxed on those amounts. The remainder of the trust's net (taxable) income, including any capital gains and/or net franked dividends to which no beneficiary is specifically entitled, will generally need to be included in the taxable income of the other beneficiaries, proportionately to their entitlements to the income of the trust (note that, if a beneficiary is made entitled to anything less than the net financial benefit attributable to a capital gain, they will only be assessed on a proportionate amount of that capital gain).

The application of the proportionate approach also means that the distributions of other income specified above will not always result in:

- the beneficiaries including the same dollar amount of net (taxable) income in their assessable income; and/or
- the trustee being assessed on behalf of a beneficiary on the same dollar amount of net (taxable) income.

**Prior payments:**

**RESOLVED THAT**, for the avoidance of doubt, in respect of any amounts of income that have actually been paid by the Trustee to or for the benefit of any Beneficiaries specified above or any other Beneficiary of the Trust during the year ending 30 June < >, the making of the payment did not constitute the making of a Distribution by the Trustee unless the payment was expressly recorded by a resolution of the Trustee as constituting a Distribution, and does not vary the terms of any Distributions made under these resolutions.

**Declaration:**

I/we, the undersigned, hereby declare that I/we am/are in favour of the resolutions set out above.

.....  
(Edward Alphabet)<sup>1</sup>

..... / ..... / .....  
Date signed

.....  
(Doris Alphabet)<sup>1</sup>

..... / ..... / .....  
Date signed

<sup>1</sup> Note: This circulating resolution has been prepared in accordance with the requirements of Section 248A of the Corporations Act 2001, which requires **all** of the directors of the company to sign the resolution. The resolution is effective from the date the last director signs.

*In the case of a single director company, the director is to sign and date the resolution as authorised by section 248B of the Corporations Act 2001.*

*The resolution must be made and signed by 30 June < >.*

TAX WARNING – Streaming other types of income <delete this box when using this minute>

*Tax Laws Amendment (2011 Measures No. 5) Act 2011* allows for the streaming of capital gains and net franked dividends to be effective for tax purposes. It does not in any way endorse the streaming of other types of income. The ATO has now withdrawn their ruling on streaming – TR 92/13 – effective 22 June 2011. Further, the Government has acknowledged that, on “one view”, streaming can no longer be maintained with respect to other income classes not dealt with in *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

It appears the ATO takes the view that the streaming of such other classes of income is not permitted. This view is currently being tested in the Federal Court – refer *FCT v Greenhatch*.

The above example resolution does not contemplate the streaming of amounts other than capital gains and franked dividends.

Should the resolution be modified to stream other types of income, it should be expected that the ATO will challenge the effectiveness of the streaming, and further that the streaming may or may not withstand judicial review. Other classes of income should not be streamed unless due consideration is given to the potential consequences in relation to legal costs in defending the position, and amended assessments, penalties and interest if the defence is unsuccessful.

TAX WARNING – Capital gains <delete this box when using this minute>

This resolution does not:

- apply capital losses in the most tax effective way, e.g., against non-discount capital gains;
- isolate non-discount capital gains to company beneficiaries;
- cater for capital gains arising as a result of the operation of the market value substitution rule ('MVSR'). In such cases, Example resolution 1 should be used. Where the trust has derived both capital gains as a result of the MVSR and otherwise, specialist advice should be sought.