

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Additional Estimates 16 February 2006)

Topic: ATO ID 2002/122

AT86 Hansard Page: E67

Senator Watson asked:

Where is the mischief that denies a life tenant an imputation credit? I refer you to an invalid person who has subsequently committed suicide, who was in receipt of moneys from a trust which was set up by his late mother, where the total income of that trust was less than \$25,000 and just provided ongoing support. There was nothing complicated in it. We have the problem of ATO interpretation decision 2002/122, which indicates that 'life tenants are not entitled to imputation credits from shares or units acquired by the estate after 31 December 1997 if their imputation credit from all sources exceeds \$5,000'. I ask where is the justice in that interpretation for that particular person?

Mr D'Ascenzo—I might have to take that on notice in the sense of what the background to the ATO ID 2002/122 is all about. My proposition is ultimately, without pre-empting what the answer might be—

Senator WATSON—That was interpretive decision 2002.

Mr D'Ascenzo—I understood that. The answer might be that that might well be the effect of the law, I do not know. I just do not know that interpretive decision.

Answer:

To be entitled to a franking credit a taxpayer must, amongst other things, satisfy a holding period rule specified by law. A life tenant does not have a vested and indefeasible interest in the corpus of a trust and as such does not hold the shares at risk. Accordingly, a life tenant cannot meet this requirement of the holding rule.

However, the Government announced on 20 March 2006 that it will amend the income tax law to allow beneficiaries of testamentary trusts (such as life tenants) greater access to franking credits on dividends received by the trust.