

BAMFORD'S CASE – THE FINAL DECISION!

The High Court has upheld the Federal Court's decision in its entirety. The ATO's appeal on the definition of "net income" was lost as was Bamford's appeal on how to calculate a "share" when making distributions under a Trust. We again point out the importance of trustees receiving sound financial advice before exercising any discretion on income distribution.

In short, the Court found that income of the Trust estate within Section 97(1) of the *Tax Act* includes "statutory income" such as capital gains, which are brought in as "assessable income". The Commissioner sought to say that capital gains were not included and therefore there was no Trust estate to which Section 97(1) could apply and therefore the ATO could tax the trustee itself under Section 99A.

The High Court found against Bamford on the basis that a beneficiary is to be taxed on that share (or proportion) of the taxable income of the Trust estate and not on the share of the distributable income to which the beneficiary is presently entitled. To read the High Court Judgment, please go to www.taxinstitute.com.au/convention-papers/bamford-v-federal-commissioner-of-taxation-paper