Income Tax Assessment Act 1997

No. 38, 1997

Compilation No. 174

Compilation date:	12 October 2017
Includes amendments up to:	Act No. 108, 2017
Registered:	12 October 2017

This compilation is in 11 volumes

Volume 1:	sections 1-1 to 36-55
Volume 2:	sections 40-1 to 55-10
Volume 3:	sections 58-1 to 122-205
Volume 4:	sections 124-1 to 152-430
Volume 5:	**sections 164-1 to 220-800**
Volume 6:	sections 230-1 to 312-15
Volume 7:	sections 315-1 to 420-70
Volume 8:	sections 615-1 to 727-910
Volume 9:	sections 768-1 to 995-1
Volume 10:	Endnotes 1 to 3
Volume 11:	Endnote 4

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 12 October 2017 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 3—Specialist liability rules 1

Part 3-5—Corporate taxpayers and corporate distributions 1

Division 164—Non-share capital accounts for companies 1

Guide to Division 164 1

164-1 What this Division is about 1

Operative provisions 2

164-5 Object 2
164-10 Non-share capital account 2
164-15 Credits to non-share capital account 3
164-20 Debits to non-share capital account 5

Division 165—Income tax consequences of changing ownership or control of a company 7

Guide to Division 165 7

165-1 What this Division is about 7

Subdivision 165-A—Deducting tax losses of earlier income years 8

Guide to Subdivision 165-A 8

165-5 What this Subdivision is about 8

Operative provisions 9

165-10 To deduct a tax loss 9
165-12 Company must maintain the same owners 9
165-13 Alternatively, the company must satisfy the same business test 11
165-15 The same people must control the voting power, or the company must satisfy the same business test 12
165-20 When company can deduct *part* of a tax loss 13

Subdivision 165-B—Working out the taxable income and tax loss for the income year of the change 14

Guide to Subdivision 165-B 14

165-23 What this Subdivision is about 14
165-25 Summary of this Subdivision 15
165-30 Flow chart showing the application of this Subdivision 17

When a company must work out its taxable income and tax loss under this Subdivision 18

Authorised Version C2017C00336 registered 12/10/2017

165-35 On a change of ownership, unless the company satisfies the same business test 18
165-37 Who has *more than a 50% stake* in the company during a period 18
165-40 On a change of control of the voting power in the company, unless the company satisfies the same business test 20

Working out the company's taxable income 21
165-45 First, divide the income year into periods 21
165-50 Next, calculate the notional loss or notional taxable income for each period 22
165-55 How to attribute deductions to periods 22
165-60 How to attribute assessable income to periods 24
165-65 How to calculate the company's taxable income for the income year 25

Working out the company's tax loss 26
165-70 How to calculate the company's tax loss for the income year 26

Special rules that apply if the company is in partnership 27
165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner 27
165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year 28
165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years 29
165-90 Company's full year deductions include a share of partnership's full year deductions 30

Subdivision 165-CA—Applying net capital losses of earlier income years 31

Guide to Subdivision 165-CA 31
165-93 What this Subdivision is about 31

Operative provisions 31
165-96 When a company cannot apply a net capital loss 31

Subdivision 165-CB—Working out the net capital gain and the net capital loss for the income year of the change 32

Authorised Version C2017C00336 registered 12/10/2017

Guide to Subdivision 165-CB 32
165-99 What this Subdivision is about 32

When a company must work out its net capital gain and net capital loss under this Subdivision 33
165-102 On a change of ownership, or of control of voting power, unless the company satisfies the same business test 33

Working out the company's net capital gain and net capital loss 33
165-105 First, divide the income year into periods 33
165-108 Next, calculate the notional net capital gain or notional net capital loss for each period 33
165-111 How to work out the company's net capital gain 34
165-114 How to work out the company's net capital loss 35

Subdivision 165-CC—Change of ownership or control of company that has an unrealised net loss 36

Guide to Subdivision 165-CC 36
165-115 What this Subdivision is about 36
165-115AA Special rules to save compliance costs 36

Operative provisions 37
165-115A Application of Subdivision 37
165-115B What happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset after a changeover time 40
165-115BA What happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock 42
165-115BB Order of application of assets: residual unrealised net loss 43
165-115C Changeover time—change in ownership of company 45
165-115D Changeover time—change in control of company 46
165-115E What is an unrealised net loss 47
165-115F Notional gains and losses 50

Subdivision 165-CD—Reductions after alterations in ownership or control of loss company 52

Guide to Subdivision 165-CD 52
165-115GA What this Subdivision is about 52
165-115GB When adjustments must be made 52
165-115GC How adjustments are calculated 53

Authorised Version C2017C00336 registered 12/10/2017

165-115H How this Subdivision applies 54

Operative provisions 57

165-115J Object of Subdivision 57
165-115K Application and interpretation 58
165-115L Alteration time—alteration in ownership of company 59
165-115M Alteration time—alteration in control of company 61
165-115N Alteration time—declaration by liquidator or administrator 62
165-115P Notional alteration time—disposal of interests in company within 12 months before alteration time 62
165-115Q Notional alteration time—disposal of interests in company earlier than 12 months before alteration time 63
165-115R When company is a loss company at first or only alteration time in income year 65
165-115S When company is a loss company at second or later alteration time in income year 67
165-115T Reduction of certain amounts included in company's overall loss at alteration time 69
165-115U Adjusted unrealised loss 69
165-115V Notional losses 72
165-115W Calculation of trading stock decrease 73
165-115X Relevant equity interest 74
165-115Y Relevant debt interest 77
165-115Z What constitutes a controlling stake in a company 80
165-115ZA Reductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time 81
165-115ZB Adjustment amounts for the purposes of section 165-115ZA 85
165-115ZC Notices to be given 88
165-115ZD Adjustment (or further adjustment) for interest realised at a loss after global method has been used 92

Subdivision 165-C—Deducting bad debts 96

Guide to Subdivision 165-C 96

165-117 What this Subdivision is about 96

Operative provisions 97

165-119 Application of Subdivision 97
165-120 To deduct a bad debt 97

Authorised Version C2017C00336 registered 12/10/2017

165-123 Company must maintain the same owners 99
165-126 Alternatively, the company must satisfy the same business test 101
165-129 Same people must control the voting power, or the company must satisfy the same business test 102
165-132 When tax losses resulting from bad debts cannot be deducted 103

Subdivision 165-D—Tests for finding out whether the company has maintained the same owners 104

The primary and alternative tests 105
165-150 Who has more than 50% of the voting power in the company 105
165-155 Who has rights to more than 50% of the company's dividends 105
165-160 Who has rights to more than 50% of the company's capital distributions 106
165-165 Rules about tests for a condition or occurrence of a circumstance 107
165-175 Tests can be satisfied by a single person 109

Rules affecting the operation of the tests 109
165-180 Arrangements affecting beneficial ownership of shares 109
165-185 Shares treated as not having carried rights 110
165-190 Shares treated as always having carried rights 110
165-200 Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units 111
165-202 Shares held by government entities and charities etc. 112
165-203 Companies where no shares have been issued 112
165-205 Death of share owner 112
165-207 Trustees of family trusts 113
165-208 Companies in liquidation etc. 114
165-209 Dual listed companies 116

Subdivision 165-E—The same business test 116
165-210 The test 116
165-212D Restructure of MDOs etc. 117
165-212E Entry history rule does not apply for the purposes of section 165-210 117

Subdivision 165-F—Special provisions relating to ownership by non-fixed trusts 118

Authorised Version C2017C00336 registered 12/10/2017

165-215 Special alternative to change of ownership test for Subdivision 165-A 118
165-220 Special alternative to change of ownership test for Subdivision 165-B 120
165-225 Special way of dividing the income year under Subdivision 165-B 121
165-230 Special alternative to change of ownership test for Subdivision 165-C 122
165-235 Information about non-fixed trusts with interests in company 124
165-240 Notices where requirements of section 165-235 are met 126
165-245 When an entity has a fixed entitlement to income or capital of a company 127

Subdivision 165-G—Other special provisions 127
165-250 Control of companies in liquidation etc. 127
165-255 Incomplete periods 128

Division 166—Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company 130

Guide to Division 166 130
166-1 What this Division is about 130

Subdivision 166-AA—The object of this Division 131
166-3 The object of this Division 131

Subdivision 166-A—Deducting tax losses of earlier income years 131
166-5 How Subdivision 165-A applies to a widely held or eligible Division 166 company 132
166-15 Companies can choose that this Subdivision is not to apply to them 133

Subdivision 166-B—Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change 134
166-20 How Subdivisions 165-B and 165-CB apply to a widely held or eligible Division 166 company 134
166-25 How to work out the taxable income, tax loss, net capital gain and net capital loss 136
166-35 Companies can choose that this Subdivision is not to apply to them 136

Subdivision 166-C—Deducting bad debts 137

Authorised Version C2017C00336 registered 12/10/2017

166-40 How Subdivision 165-C applies to a widely held or eligible Division 166 company 137
166-50 Companies can choose that this Subdivision is not to apply to them 139

Subdivision 166-CA—Changeover times and alteration times 139
166-80 How Subdivision 165-CC or 165-CD applies to a widely held or eligible Division 166 company 139
166-90 Companies can choose that this Subdivision is not to apply to them 141

Subdivision 166-D—Tests for finding out whether the widely held or eligible Division 166 company has maintained the same owners 141

Guide to Subdivision 166-D 141
166-135 What this Subdivision is about 141

The ownership tests: substantial continuity of ownership 142
166-145 The ownership tests: substantial continuity of ownership 142
166-165 Relationship with rules in Division 165 144

Corporate change in a company 144
166-175 Corporate change in a company 144

Subdivision 166-E—Concessional tracing rules 145

Guide to Subdivision 166-E 145
166-215 What this Subdivision is about 145

Application of this Subdivision 147
166-220 Application of this Subdivision 147

Stakes of less than 10% in the tested company 147
166-225 Direct stakes of less than 10% in the tested company 147
166-230 Indirect stakes of less than 10% in the tested company 149
166-235 Voting, dividend and capital stakes 151

Stakes held directly and/or indirectly by widely held companies 153
166-240 Stakes held directly and/or indirectly by widely held companies 153
166-245 Stakes held by other entities 155

When identity of foreign stakeholders is not known 158
166-255 Bearer shares in foreign listed companies 158

Authorised Version C2017C00336 registered 12/10/2017

166-260 Depository entities holding stakes in foreign listed companies 160

Other rules relating to voting power and rights 162

166-265 Persons who actually control voting power or have rights are taken not to control power or have rights 162

166-270 Single notional entity stakeholders taken to have minimum voting control, dividend rights and capital rights 163

166-272 Same shares or interests to be held 164

When the rules in this Subdivision do not apply 167

166-275 Rules in this Subdivision intended to be concessional 167

166-280 Controlled test companies 168

Division 167—Companies whose shares carry unequal rights to dividends, capital distributions or voting power 170

Guide to Division 167 170

167-1 What this Division is about 170

Subdivision 167-A—Rights to dividends or capital distributions 170

Guide to Subdivision 167-A 170

167-5 What this Subdivision is about 170

167-7 Simplified outline of this Subdivision 171

Operative provisions 172

167-10 When this Subdivision applies 172

167-15 First way—disregard debt interests 174

167-20 Second way—also disregard secondary share classes 174

167-25 Third way—treat remaining shares as having fixed rights to dividends and capital distributions 175

167-30 Fixing rights if practicable to work out market values 176

167-35 Fixing rights if impracticable to work out market values etc. 176

167-40 The valuing times for conditions listed in subsection 167-10(1) 177

Subdivision 167-B—Voting power 178

Guide to Subdivision 167-B 178

167-75 What this Subdivision is about 178

Operative provisions 178

Authorised Version C2017C00336 registered 12/10/2017

167-80 When this Subdivision applies 178
167-85 Different method for working out voting power 179
167-90 Dual listed companies 180

Division 170—Treatment of certain company groups for income tax purposes 181

Subdivision 170-A—Transfer of tax losses within certain wholly-owned groups of companies 181

Guide to Subdivision 170-A 181
170-1 What this Subdivision is about 181
170-5 Basic principles for transferring tax losses 182

Effect of transferring a tax loss 183
170-10 When a company can transfer a tax loss 183
170-15 Income company is taken to have incurred transferred loss 183
170-20 Who can deduct transferred loss 184
170-25 Tax treatment of consideration for transferred tax loss 184

Conditions for transfer 185
170-30 Companies must be in existence and members of the same wholly-owned group etc. 185
170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A 186
170-33 Alternative test of relations between the loss company and other companies 187
170-35 The loss company 189
170-40 The income company 190
170-42 If the income company has become the head company of a consolidated group or MEC group 191
170-45 Maximum amount that can be transferred 192
170-50 Transfer by written agreement 195
170-55 Losses must be transferred in order they are incurred 195
170-60 Income company cannot transfer transferred tax loss 196

Effect of agreement to transfer more than can be transferred 196
170-65 Agreement transfers as much as can be transferred 196
170-70 Amendment of assessments 197

Australian permanent establishments of foreign financial entities 197

Authorised Version C2017C00336 registered 12/10/2017

170-75 Treatment like Australian branches of foreign banks 197

Subdivision 170-B—Transfer of net capital losses within certain wholly-owned groups of companies 198

Guide to Subdivision 170-B 198

170-101 What this Subdivision is about 198

170-105 Basic principles for transferring a net capital loss 199

Effect of transferring a net capital loss 200

170-110 When a company can transfer a net capital loss 200

170-115 Who can apply transferred loss 200

170-120 Gain company is taken to have made transferred loss 201

170-125 Tax treatment of consideration for transferred tax loss 201

Conditions for transfer 202

170-130 Companies must be in existence and members of the same wholly-owned group etc. 202

170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A 203

170-133 Alternative test of relations between the loss company and other companies 204

170-135 The loss company 206

170-140 The gain company 207

170-142 If the gain company has become the head company of a consolidated group or MEC group 208

170-145 Maximum amount that can be transferred 209

170-150 Transfer by written agreement 212

170-155 Losses must be transferred in order they are made 213

170-160 Gain company cannot transfer transferred net capital loss 213

Effect of agreement to transfer more than can be transferred 213

170-165 Agreement transfers as much as can be transferred 213

170-170 Amendment of assessments 214

Australian permanent establishments of foreign financial entities 214

170-174 Treatment like Australian branches of foreign banks 214

Subdivision 170-C—Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies 215

Authorised Version C2017C00336 registered 12/10/2017

Guide to Subdivision 170-C 215
170-201 What this Subdivision is about 215
Operative provisions 216
170-205 Object of Subdivision 216
170-210 Transfer of tax loss: direct and indirect interests in the loss company 216
170-215 Transfer of tax loss: direct and indirect interests in the income company 219
170-220 Transfer of net capital loss: direct and indirect interests in the loss company 222
170-225 Transfer of net capital loss: direct and indirect interests in the gain company 224
Subdivision 170-D—Transactions by a company that is a member of a linked group 227
Guide to Subdivision 170-D 227
170-250 What this Subdivision is about 227
Operative provisions 228
170-255 Application of Subdivision 228
170-260 Linked group 230
170-265 Connected entity 231
170-270 Immediate consequences for originating company 232
170-275 Subsequent consequences for originating company 233
170-280 What happens if certain events happen in respect of the asset 234
Division 175—Use of a company's tax losses or deductions to avoid income tax 237
Guide to Division 175 237
175-1 What this Division is about 237
Subdivision 175-A—Tax benefits from unused tax losses 237
175-5 When Commissioner can disallow deduction for tax loss 238
175-10 First case: income or capital gain injected into company because of available tax loss 238
175-15 Second case: someone else obtains a tax benefit because of tax loss available to company 239
Subdivision 175-B—Tax benefits from unused deductions 240
175-20 Income or capital gain injected into company because of available deductions 240

Authorised Version C2017C00336 registered 12/10/2017

175-25 Deduction injected into company because of available income or capital gain 241
175-30 Someone else obtains a tax benefit because of a deduction, income or capital gain available to company 242
175-35 Tax loss resulting from disallowed deductions 243

Subdivision 175-CA—Tax benefits from unused net capital losses of earlier income years 244
175-40 When Commissioner can disallow net capital loss of earlier income year 244
175-45 First case: capital gain injected into company because of available net capital loss 245
175-50 Second case: someone else obtains a tax benefit because of net capital loss available to company 246

Subdivision 175-CB—Tax benefits from unused capital losses of the current year 246
175-55 When Commissioner can disallow capital loss of current year 247
175-60 Capital gain injected into company because of available capital loss 247
175-65 Capital loss injected into company because of available capital gain 248
175-70 Someone else obtains a tax benefit because of capital loss or gain available to company 248
175-75 Net capital loss resulting from disallowed capital losses 249

Subdivision 175-C—Tax benefits from unused bad debt deductions 250
175-80 When Commissioner can disallow deduction for bad debt 250
175-85 First case: income or capital gain injected into company because of available bad debt 250
175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company 251

Subdivision 175-D—Common rules 252
175-95 When a person has a shareholding interest in the company 252
175-100 Commissioner may disallow excluded losses etc. of insolvent companies 253

Authorised Version C2017C00336 registered 12/10/2017

Division 180—Information about family trusts with interests in companies 254

Guide to Division 180 254

180-1 What this Division is about 254

Subdivision 180-A—Information relevant to Division 165 254

180-5 Information about family trusts with interests in companies 254

180-10 Notice where requirements of section 180-5 are met 256

Subdivision 180-B—Information relevant to Division 175 259

180-15 Information about family trusts with interests in companies 259

180-20 Notice where requirements of section 180-15 are met 260

Division 195—Special types of company 263

Subdivision 195-A—Pooled development funds (PDFs) 263

Guide to Subdivision 195-A 263

195-1 What this Subdivision is about 263

Working out a PDF's taxable income and tax loss 264

195-5 Deductibility of PDF tax losses 264

195-10 PDF cannot transfer tax loss 264

195-15 Tax loss for year in which company becomes a PDF 264

Working out a PDF's net capital gain and net capital loss 265

195-25 Applying a PDF's net capital losses 265

195-30 PDF cannot transfer net capital loss 265

195-35 Net capital loss for year in which company becomes a PDF 265

Subdivision 195-B—Limited partnerships 267

Guide to Subdivision 195-B 267

195-60 What this Subdivision is about 267

Operative provisions 267

195-65 Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP 267

195-70 Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP 268

Authorised Version C2017C00336 registered 12/10/2017

195-75 Determinations to take account of income years of less than 12 months 268

Division 197—Tainted share capital accounts 269

Guide to Division 197 269

197-1 What this Division is about 269

Subdivision 197-A—What transfers into a company's share capital account does this Division apply to? 270

197-5 Division generally applies to an amount transferred to share capital account from another account 270

197-10 Exclusion for amounts that could be identified as share capital 271

197-15 Exclusion for amounts transferred under debt/equity swaps 271

197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies 271

197-25 Exclusion for transfers from option premium reserves 272

197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies 272

197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies 274

197-37 Exclusion for transfers made in connection with demutualisations of private health insurers 275

197-38 Exclusion for transfers connected with demutualisations of friendly society health or life insurers 276

197-40 Exclusion for post-demutualisation transfers relating to life insurance companies 277

197-42 Exclusion for exploration credits 279

Subdivision 197-B—Consequence of transfer: franking debit arises 279

197-45 A franking debit arises in relation to the transfer 279

Subdivision 197-C—Consequence of transfer: tainting of share capital account 280

197-50 The share capital account becomes tainted (if it is not already tainted) 280

197-55 Choosing to untaint a tainted share capital account 281

197-60 Choosing to untaint—liability to untainting tax 281

Authorised Version C2017C00336 registered 12/10/2017

197-65 Choosing to untaint—further franking debits may arise 284
197-70 Due date for payment of untainting tax 285
197-75 General interest charge for late payment of untainting tax 285
197-80 Notice of liability to pay untainting tax 285
197-85 Evidentiary effect of notice of liability to pay untainting tax 286

Part 3-6—The imputation system 287

Division 200—Guide to Part 3-6 287

Guide to Division 200 287
200-1 What this Division is about 287
200-5 The imputation system 287
200-10 Franking a distribution 288
200-15 The franking account 288
200-20 How a distribution is franked 288
200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid 289
200-30 Benchmark rule 289
200-35 Effect of receiving a franked distribution 289
200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members 290
200-45 Special rules for franking by some entities 290

Division 201—Objects and application of Part 3-6 291
201-1 Objects 291
201-5 Application of this Part 291

Division 202—Franking a distribution 292

Subdivision 202-A—Franking a distribution 292

Guide to Subdivision 202-A 292
202-1 What this Subdivision is about 292

Operative provisions 292
202-5 Franking a distribution 292

Subdivision 202-B—Who can frank a distribution? 293

Guide to Subdivision 202-B 293
202-10 What this Subdivision is about 293

Operative provisions 293

Authorised Version C2017C00336 registered 12/10/2017

202-15 Franking entities 293
202-20 Residency requirement when making a distribution 294

Subdivision 202-C—Which distributions can be franked? 294

Guide to Subdivision 202-C 294
202-25 What this Subdivision is about 294
202-30 Frankable distributions 294

Operative provisions 295
202-35 Object 295
202-40 Frankable distributions 295
202-45 Unfrankable distributions 295
202-47 Distributions of certain ADI profits following restructure 296

Subdivision 202-D—Amount of the franking credit on a distribution 297

Guide to Subdivision 202-D 297
202-50 What this Subdivision is about 297
202-55 What is the maximum franking credit for a frankable distribution? 297

Operative provisions 298
202-60 Amount of the franking credit on a distribution 298
202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution 298

Subdivision 202-E—Distribution statements 299

Guide to Subdivision 202-E 299
202-70 What this Subdivision is about 299

Operative provisions 299
202-75 Obligation to give a distribution statement 299
202-80 Distribution statement 300
202-85 Changing the franking credit on a distribution by amending the distribution statement 301

Division 203—Benchmark rule 304

Guide to Division 203 304
203-1 What this Division is about 304
203-5 Benchmark rule 304
203-10 Benchmark franking percentage 305

Operative provisions 305

Authorised Version C2017C00336 registered 12/10/2017

203-15 Object 305
203-20 Application of the benchmark rule 305
203-25 Benchmark rule 306
203-30 Setting a benchmark franking percentage 307
203-35 Franking percentage 307
203-40 Franking periods—where the entity is not a private company 307
203-45 Franking period—private companies 308
203-50 Consequences of breaching the benchmark rule 308
203-55 Commissioner's powers to permit a departure from the benchmark rule 311

Division 204—Anti-streaming rules 313

Subdivision 204-A—Objects and application 313
204-1 Objects 313
204-5 Application 313

Subdivision 204-B—Linked distributions 314

Guide to Subdivision 204-B 314
204-10 What this Subdivision is about 314

Operative provisions 314
204-15 Linked distributions 314

Subdivision 204-C—Substituting tax-exempt bonus share for franked distributions 316

Guide to Subdivision 204-C 316
204-20 What this Subdivision is about 316

Operative provisions 316
204-25 Substituting tax-exempt bonus shares for franked distributions 316

Subdivision 204-D—Streaming distributions 318

Guide to Subdivision 204-D 318
204-26 What this Subdivision is about 318

Operative provisions 319
204-30 Streaming distributions 319
204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a) 322
204-40 Amount of the franking debit 323
204-41 Amount of the exempting debit 324

Authorised Version C2017C00336 registered 12/10/2017

204-45 Effect of a determination about distributions to favoured members 325
204-50 Assessment and notice of determination 325
204-55 Right to review where a determination made 326

Subdivision 204-E—Disclosure requirements 326

Guide to Subdivision 204-E 326
204-65 What this Subdivision is about 326

Operative provisions 326
204-70 Application of this Subdivision 326
204-75 Notice to the Commissioner 327
204-80 Commissioner may require information where the Commissioner suspects streaming 328

Division 205—Franking accounts, franking deficit tax liabilities and the related tax offset 329

Guide to Division 205 329
205-1 What this Division is about 329
205-5 Franking accounts, franking deficit tax liabilities and the related tax offset 330

Operative provisions 331
205-10 Each entity that is or has been a corporate tax entity has a franking account 331
205-15 Franking credits 331
205-20 Paying a PAYG instalment, income tax or diverted profits tax 335
205-25 Residency requirement for an event giving rise to a franking credit or franking debit 337
205-30 Franking debits 338
205-35 Refund of income tax or diverted profits tax 343
205-40 Franking surplus and deficit 344
205-45 Franking deficit tax 344
205-50 Deferring franking deficit 345
205-70 Tax offset arising from franking deficit tax liabilities 346

Division 207—Effect of receiving a franked distribution 350

Guide to Division 207 350
207-5 Overview 350

Subdivision 207-A—Effect of receiving a franked distribution generally 351

Authorised Version C2017C00336 registered 12/10/2017

Guide to Subdivision 207-A 351
207-10 What this Subdivision is about 351
Operative provisions 352
207-15 Applying the general rule 352
207-20 General rule—gross-up and tax offset 353
Subdivision 207-B—Franked distribution received through certain partnerships and trustees 353
Guide to Subdivision 207-B 353
207-25 What this Subdivision is about 353
Gross-up and tax offset 354
207-30 Applying this Subdivision 354
207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee 355
207-37 Attributable franked distribution—trusts 357
207-45 Tax offset—distribution flows indirectly to an entity 358
Key concepts 359
207-50 When a franked distribution flows indirectly to or through an entity 359
207-55 Share of a franked distribution 362
207-57 Share of the franking credit on a franked distribution 366
207-58 *Specifically entitled* to an amount of a franked distribution 366
207-59 Franked distributions within class treated as single franked distribution 367
Subdivision 207-C—Residency requirements for the general rule 368
Guide to Subdivision 207-C 368
207-60 What this Subdivision is about 368
207-65 Satisfying the residency requirement 368
Operative provisions 369
207-70 Gross-up and tax offset under section 207-20 369
207-75 Residency requirement 369
Subdivision 207-D—No gross-up or tax offset where distribution would not be taxed 370
Guide to Subdivision 207-D 370
207-80 What this Subdivision is about 370

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions 371
207-85 Applying this Subdivision 371
207-90 Distribution that is made to an entity 371
207-95 Distribution that flows indirectly to an entity 372
Subdivision 207-E—Exceptions to the rules in Subdivision 207-D 375
Guide to Subdivision 207-E 375
207-105 What this Subdivision is about 375
Operative provisions 376
207-110 Effect of non-assessable income on gross up and tax offset 376
Exempt institutions 377
207-115 Which exempt institutions are eligible for a refund? 377
207-117 Residency requirement 378
207-119 Entity not treated as exempt institution eligible for refund in certain circumstances 378
207-120 Entity may be ineligible because of a distribution event 379
207-122 Entity may be ineligible if distribution is in the form of property other than money 381
207-124 Entity may be ineligible if other money or property also acquired 381
207-126 Entity may be ineligible if distributions do not match trust share amounts 382
207-128 Reinvestment choice 383
207-130 Controller's liability 385
207-132 Treatment of benefits provided by an entity to a controller 388
207-134 Entity's present entitlement disregarded in certain circumstances 389
207-136 Review of certain decisions 390
Subdivision 207-F—No gross-up or tax offset where the imputation system has been manipulated 390
Guide to Subdivision 207-F 390
207-140 What this Subdivision is about 390
Operative provisions 391
207-145 Distribution that is made to an entity 391
207-150 Distribution that flows indirectly to an entity 393

Authorised Version C2017C00336 registered 12/10/2017

207-155 When is a distribution made as part of a dividend stripping operation? 396
207-157 Distribution washing 397
207-160 Distribution that is treated as an interest payment 398

Division 208—Exempting entities and former exempting entities 400

Guide to Division 208 400
208-5 What is an exempting entity? 400
208-10 Former exempting entities 401
208-15 Distributions by exempting entities and former exempting entities 401

Subdivision 208-A—What are exempting entities and former exempting entities? 401
208-20 Exempting entities 402
208-25 Effective ownership of entity by prescribed persons 402
208-30 Accountable membership interests 403
208-35 Accountable partial interests 406
208-40 Prescribed persons 407
208-45 Persons who are taken to be prescribed persons 408
208-50 Former exempting companies 411

Subdivision 208-B—Franking with an exempting credit 411

Guide to Subdivision 208-B 411
208-55 What this Subdivision is about 411

Operative provisions 411
208-60 Franking with an exempting credit 411

Subdivision 208-C—Amount of the exempting credit on a distribution 412

Guide to Subdivision 208-C 412
208-65 What this Subdivision is about 412

Operative provisions 412
208-70 Amount of the exempting credit on a distribution 412

Subdivision 208-D—Distribution statements 413

Guide to Subdivision 208-D 413
208-75 Guide to Subdivision 208-D 413

Operative provisions 413
208-80 Additional information to be included by a former exempting entity or exempting entity 413

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 208-E—Distributions to be franked with exempting credits to the same extent 414

Guide to Subdivision 208-E 414

208-85 What this Subdivision is about 414

Operative provisions 414

208-90 All frankable distributions made within a franking period must be franked to the same extent with an exempting credit 414

208-95 Exempting percentage 415

208-100 Consequences of breaching the rule in section 208-90 415

Subdivision 208-F—Exempting accounts and franking accounts of exempting entities and former exempting entities 415

Guide to Subdivision 208-F 415

208-105 What this Subdivision is about 415

Operative provisions 417

208-110 Exempting account 417

208-115 Exempting credits 417

208-120 Exempting debits 422

208-125 Exempting surplus and deficit 424

208-130 Franking credits arising because of status as exempting entity or former exempting entity 425

208-135 Relationships that will give rise to a franking credit under item 5 of the table in section 208-130 431

208-140 Membership of the same effectively wholly-owned group 432

208-145 Franking debits arising because of status as exempting entity or former exempting entity 434

208-150 Residency requirement 435

208-155 Eligible continuing substantial member 436

208-160 Distributions that are affected by a manipulation of the imputation system 438

208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit 438

208-170 Where a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* affects part of the distribution 439

Authorised Version C2017C00336 registered 12/10/2017

208-175 When does a distribution franked with an exempting credit flow indirectly to an entity? 440
208-180 What is an entity's share of the exempting credit on a distribution? 440
208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth 440

Subdivision 208-G—Tax effects of distributions by exempting entities 442

Guide to Subdivision 208-G 442
208-190 What this Subdivision is about 442

Operative provisions 442
208-195 Division 207 does not generally apply 442
208-200 Distributions to exempting entities 443
208-205 Distributions to employees acquiring shares under eligible employee share schemes 443
208-215 Eligible employee share schemes 443

Subdivision 208-H—Tax effect of a distribution franked with an exempting credit 445

Guide to Subdivision 208-H 445
208-220 What this Subdivision is about 445

Operative provisions 445
208-225 Division 207 does not generally apply 445
208-230 Distributions to exempting entities and former exempting entities 445
208-235 Distributions to employees acquiring shares under eligible employee share schemes 446
208-240 Distributions to certain individuals 446

Division 210—Venture capital franking 448

Guide to Division 210 448
210-1 Purpose of venture capital franking 448
210-5 How is this achieved? 448
210-10 What is a venture capital credit? 449
210-15 What does the PDF have to do to distribute the credits? 449
210-20 Limits on venture capital franking 449

Subdivision 210-A—Franking a distribution with a venture capital credit 450

Authorised Version C2017C00336 registered 12/10/2017

Guide to Subdivision 210-A 450
210-25 What this Subdivision is about 450
Operative provisions 450
210-30 Franking a distribution with a venture capital credit 450
Subdivision 210-B—Participating PDFs 451
Guide to Subdivision 210-B 451
210-35 What this Subdivision is about 451
Operative provisions 451
210-40 What is a participating PDF 451
Subdivision 210-C—Distributions that are frankable with a venture capital credit 451
Guide to Subdivision 210-C 451
210-45 What this Subdivision is about 451
Operative provisions 452
210-50 Which distributions can be franked with a venture capital credit? 452
Subdivision 210-D—Amount of the venture capital credit on a distribution 452
Guide to Subdivision 210-D 452
210-55 What this Subdivision is about 452
Operative provisions 453
210-60 Amount of the venture capital credit on a distribution 453
Subdivision 210-E—Distribution statements 453
Guide to Subdivision 210-E 453
210-65 What this Subdivision is about 453
Operative provisions 454
210-70 Additional information to be included when a distribution is franked with a venture capital credit 454
Subdivision 210-F—Rules affecting the allocation of venture capital credits 455
Guide to Subdivision 210-F 455
210-75 What this Subdivision is about 455
Operative provisions 455

Authorised Version C2017C00336 registered 12/10/2017

210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made 455
210-81 Distributions to be franked with venture capital credits to the same extent 456
210-82 Consequences of breaching the rule in section 210-81 456

Subdivision 210-G—Venture capital sub-account 457

Guide to Subdivision 210-G 457
210-85 What this Subdivision is about 457
210-90 The venture capital sub-account 458
210-95 Venture capital deficit tax 458

Operative provisions 459
210-100 Venture capital sub-account 459
210-105 Venture capital credits 459
210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax 460
210-115 Participating PDF may elect to have venture capital credits arise on its assessment day 460
210-120 Venture capital debits 461
210-125 Venture capital debit where CGT limit is exceeded 462
210-130 Venture capital surplus and deficit 464
210-135 Venture capital deficit tax 464
210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax 465
210-145 Effect of a liability to pay venture capital deficit tax on the franking account 465
210-150 Deferring venture capital deficit 465

Subdivision 210-H—Effect of receiving a distribution franked with a venture capital credit 466

Guide to Subdivision 210-H 466
210-155 What this Subdivision is about 466
210-160 The significance of a venture capital credit 467
210-165 Recipients for whom the venture capital credit is not significant 467

Operative provisions 468
210-170 Tax offset for certain recipients of distributions franked with venture capital credits 468

Authorised Version C2017C00336 registered 12/10/2017

210-175 Amount of the tax offset 469
210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170 470

Division 214—Administering the imputation system 471

Guide to Division 214 471
214-1 Purpose of the system 471
214-5 Key features 471

Subdivision 214-A—Franking returns 472

Guide to Subdivision 214-A 472
214-10 What this Subdivision is about 472

Operative provisions 473
214-15 Notice to give a franking return—general notice 473
214-20 Notice to a specific corporate tax entity 473
214-25 Content and form of a franking return 474
214-30 Franking account balance 474
214-35 Venture capital sub-account balance 474
214-40 Meaning of *franking tax* 475
214-45 Effect of a refund on franking returns 475

Subdivision 214-B—Franking assessments 476

Guide to Subdivision 214-B 476
214-55 What this Subdivision is about 476

Operative provisions 477
214-60 Commissioner may make a franking assessment 477
214-65 Commissioner taken to have made a franking assessment on first return 478
214-70 Part-year assessment 479
214-75 Validity of assessment 479
214-80 Objections 479

Subdivision 214-C—Amending franking assessments 479

Guide to Subdivision 214-C 479
214-90 What this Subdivision is about 479

Operative provisions 480
214-95 Amendments within 3 years of the original assessment 480
214-100 Amended assessments are treated as franking assessments 480

Authorised Version C2017C00336 registered 12/10/2017

214-105 Further return as a result of a refund affecting a franking deficit tax liability 480
214-110 Later amendments—on request 481
214-115 Later amendments—failure to make proper disclosure 481
214-120 Later amendments—fraud or evasion 482
214-125 Further amendment of an amended particular 482
214-135 Amendment on review etc. 483
214-140 Notice of amendments 483

Subdivision 214-D—Collection and recovery 483

Guide to Subdivision 214-D 483
214-145 What this Subdivision is about 483

Operative provisions 484
214-150 Due date for payment of franking tax 484
214-155 General interest charge 485
214-160 Refunds of amounts overpaid 486

Subdivision 214-E—Records 486

Guide to Subdivision 214-E 486
214-170 What this Subdivision is about 486

Operative provisions 486
214-175 Record keeping 486

Division 215—Consequences of the debt/equity rules 488

Subdivision 215-A—Application of the imputation system to non-share equity interests 488
215-1 Application of the imputation system to non-share equity interests 488

Subdivision 215-B—Non-share dividends that are unfrankable to some extent 488

Guide to Subdivision 215-B 488
215-5 What this Subdivision is about 488
215-10 Certain non-share dividends by ADIs unfrankable 489
215-15 Non-share dividends are unfrankable if profits are unavailable 490
215-20 Working out the available frankable profits 491
215-25 Anticipating available frankable profits 492

Authorised Version C2017C00336 registered 12/10/2017

Division 216—Cum dividend sales and securities lending arrangements 495

Subdivision 216-A—Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else 495

216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else 495

216-5 First situation (cum dividend sales) 495

216-10 Second situation (securities lending arrangements) 496

216-15 Distribution closing time 497

Subdivision 216-B—Statements to be made where there is a cum dividend sale or securities lending arrangement 497

216-20 Cum dividend sale—statement by securities dealer 497

216-25 Cum dividend sale—statement by party 498

216-30 Securities lending arrangements—statement by borrower 498

Division 218—Application of imputation rules to co-operative companies 499

218-5 Application of imputation rules to co-operative companies 499

Division 219—Imputation for life insurance companies 500

Guide to Division 219 500

219-1 What this Division is about 500

Subdivision 219-A—Application of imputation rules to life insurance companies 500

219-10 Application of imputation rules to life insurance companies 500

Subdivision 219-B—Franking accounts of life insurance companies 501

219-15 Franking credits 501

219-30 Franking debits 507

219-40 Residency requirement 509

219-45 Assessment day 509

219-50 Amount attributable to shareholders' share of income tax liability 509

219-55 Adjustment resulting from an amended assessment 511

219-70 Tax offset under section 205-70 512

Authorised Version C2017C00336 registered 12/10/2017

219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied 512

Division 220—Imputation for NZ resident companies and related companies 516

Guide to Division 220 516

220-1 What this Division is about 516

Subdivision 220-A—Objects of this Division 516

220-15 Objects 517

220-20 What is an *NZ resident*? 517

Subdivision 220-B—NZ company treated as Australian resident for imputation system if company chooses 518

220-25 Application of provisions of Part 3-6 outside this Division 518

220-30 What is an *NZ franking company*? 519

220-35 Making an NZ franking choice 519

220-40 When is an NZ franking choice in force? 519

220-45 Revoking an NZ franking choice 519

220-50 Cancelling an NZ franking choice 519

Subdivision 220-C—Modifications of other Divisions of this Part 520

Franking NZ franking companies' distributions 522

220-100 Residency requirement for franking 522

220-105 Unfrankable distributions by NZ franking companies 522

220-110 Maximum franking credit under section 202-60 522

NZ franking companies' franking accounts etc. 523

220-205 Franking credit for payment of NZ franking company's withholding tax liability 523

220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company 523

220-215 Effect on franking account if NZ franking choice ceases to be in force 524

Franking accounts of NZ franking company and some of its 100% subsidiaries 525

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries 525

Authorised Version C2017C00336 registered 12/10/2017

Effect of NZ franking company making distribution that is non-assessable and non-exempt 528
220-350 Providing for a franking credit to arise 528
Effects of supplementary dividend from NZ franking company 529
220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend 529
220-405 Franked distribution and supplementary dividend flowing indirectly 531
220-410 Franking credit reduced if tax offset reduced 533
Rules about exempting entities 534
220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities 534
220-505 Post-choice NZ franking company is not automatically prescribed person 534
220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group 535
NZ franking companies' exempting accounts 536
220-605 Effect on exempting account if NZ franking choice ceases to be in force 536
Tax effect of distribution franked by NZ franking company with an exempting credit 537
220-700 Tax effect of distribution franked by NZ franking company with an exempting credit 537
Joint and several liability for NZ resident company's unmet franking liabilities 537
220-800 Joint and several liability for NZ resident company's franking tax etc. 537

Authorised Version C2017C00336 registered 12/10/2017

Chapter 3—Specialist liability rules

Part 3-5—Corporate taxpayers and corporate distributions

Division 164—Non-share capital accounts for companies

Guide to Division 164

164-1 What this Division is about

A company that issues non-share equity interests will have a notional account called a ***non-share capital account***. This account records contributions to the company in relation to those non-share equity interests and returns made by the company of those contributions.

A non-share distribution that represents a return of contributions is not taxed as a dividend (subject to the anti-avoidance provisions dealing with dividend substitution). In certain circumstances a company may use its share capital account as the source for such distributions.

Table of sections

Operative provisions

164-5 Object
164-10 Non-share capital account
164-15 Credits to non-share capital account
164-20 Debits to non-share capital account

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

164-5 Object

(1) This Division provides for the *non-share capital account through which a company records contributions made to it in respect of *non-share equity interests and returns by it of those contributions.

(2) This allows a *non-share distribution to be characterised as either:
  (a) a *non-share dividend; or
  (b) a *non-share capital return.

164-10 Non-share capital account

(1) A company has a ***non-share capital account*** if:
  (a) the company issues a *non-share equity interest in the company on or after 1 July 2001; or
  (b) the company has issued a non-share equity interest in the company before 1 July 2001 that is still in existence on 1 July 2001; or
  (c) a *debt interest in the company changes at a particular time (the ***change time***) to an *equity interest in the company because of subsection 974-110(1) or (2); or
  (d) the following conditions are satisfied in relation to an interest in the company:
    (i) immediately before subsection 974-75(4) ceases to have effect, the interest is taken to be a debt interest in the company because of that subsection;
    (ii) the interest is an equity interest in the company at the time (the ***change time***) that is immediately after that cessation;
    (iii) subsection 974-75(6) does not apply to the interest in relation to the income year that includes the change time; or
  (e) the following conditions are satisfied in relation to an interest in the company:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) subsection 974-75(6) applies to the interest in relation to a particular income year;

(ii) that subsection does not apply to the interest in relation to the next income year;

(iii) the interest is an equity interest in the company at the time (the ***change time***) that is the start of that next income year.

(2) The account continues in existence even if the company ceases to have any *non-share equity interests on issue.

(3) The balance of the account cannot fall below nil.

(4) The only credits and debits that may be made to the account are those provided for in sections 164-15 and 164-20.

164-15 Credits to non-share capital account

(1) If the company issues a *non-share equity interest in the company on or after 1 July 2001, there is a credit to the *non-share capital account equal to:

Amount received – Share capital account credit

where:

amount received is the *market value, when it is provided, of the consideration the company receives for the issue of the interest.

share capital account credit is the amount of any credit made to the company's *share capital account in respect of the issue of the interest.

Note: The issue of a non-share equity interest can give rise to a credit to the company's share capital account if the interest consists, for example, of a stapled security that includes a share in the company's capital.

(2) If paragraph 164-10(1)(c), (d) or (e) applies in relation to a particular interest in the company, there is a credit to the *non-share capital account at the change time referred to in that paragraph of an amount equal to:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

$$\text{Amount received} - \underset{\text{account credit}}{\text{Share capital}} - \text{Amount returned}$$

where:

amount received is the *market value, when it was provided, of the consideration the company received for the issue of the interest.

amount returned is so much of the amount received as has been returned to a holder of the interest before the change time.

share capital account credit is the amount of any credit made to the company's *share capital account in respect of the issue of the interest.

(3) If the company has a *non-share capital account at the beginning of 1 July 2001 because of a *non-share equity interest the company issued before 1 July 2001, there is a credit to the non-share capital account on that day for each non-share equity interest in the company that:

(a) was issued before 1 July 2001; and

(b) is still in existence on 1 July 2001.

(4) The amount of the credit under subsection (3) is:

$$\text{Amount received} - \underset{\text{amount received}}{\text{Return of}} - \underset{\text{account credit}}{\text{Share capital}}$$

where:

amount received is the *market value, when it is provided, of the consideration the company receives for the issue of the interest.

return of amount received is the sum of the amounts paid before 1 July 2001 by way of return, in whole or in part, of the amount received.

share capital account credit is the sum of any amounts credited before 1 July 2001 to the company's *share capital account in respect of the issue of the interest.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(5) To avoid doubt, if:

(a) it appears that a credit to the company's *non-share capital account has arisen under this section because an interest in the company appears to be, or have become, an *equity interest at a time in a particular income year; and

(b) because subsection 974-75(6) or 974-110(1A) is subsequently found to apply in relation to the interest and that income year, the interest was not in fact, or did not in fact become, an equity interest at that time;

the credit referred to in paragraph (a) is taken never to have arisen.

164-20 Debits to non-share capital account

(1) The company may debit the whole or a part of a *non-share distribution against the company's *non-share capital account:

(a) to the extent to which the distribution is made as consideration for the surrender, cancellation or redemption of a *non-share equity interest in the company; or

(b) to the extent to which:

(i) the distribution is made in connection with a reduction in the *market value of a non-share equity interest in the company; and

(ii) the amount of the distribution is equal to the amount of the reduction in market value.

(2) The total of the amounts debited to the account in respect of a particular *non-share equity interest must not exceed the total of the amounts credited to the account in respect of the interest.

(3) If:

(a) an *equity interest in the company changes at a particular time (the ***change time***) to a *debt interest in the company because of subsection 974-110(1) or (2); or

(b) an equity interest in the company changes to a debt interest in the company, with effect from a time (the ***change time***) that is the start of a particular income year, because of subsection 974-110(1A); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the following conditions are satisfied in relation to an interest in the company:

(i) subsection 974-75(6) does not apply to the interest in relation to a particular income year;

(ii) the interest is an equity interest in the company at the end of that income year;

(iii) subsection 974-75(6) applies to the interest from the time (the ***change time***) that is the start of the next income year;

there is, or is taken to have been, a debit to the *non-share capital account at the change time equal to:

Credits in relation to the interest _ Debits in relation to the interest

where:

credits in relation to the interest is the sum of all the credits that have been made to the *non-share capital account in relation to the interest before the change time.

debits in relation to the interest is the sum of all the debits that have been made to the *non-share capital account in relation to the interest before the change time.

(4) To avoid doubt, if:

(a) it appears that a debit to the company's *non-share capital account has arisen because an interest in the company appears to be, or have become, a *debt interest at a time in a particular income year; and

(b) because subsection 974-75(6) or 974-110(1A) is subsequently found not to apply in relation to the interest and that income year, the interest was not in fact, or did not in fact become, a debt interest at that time;

the debit referred to in paragraph (a) is taken never to have arisen.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 165—Income tax consequences of changing ownership or control of a company

Table of Subdivisions

Guide to Division 165
165-A Deducting tax losses of earlier income years
165-B Working out the taxable income and tax loss for the income year of the change
165-CA Applying net capital losses of earlier income years
165-CB Working out the net capital gain and the net capital loss for the income year of the change
165-CC Change of ownership or control of company that has an unrealised net loss
165-CD Reductions after alterations in ownership or control of loss company
165-C Deducting bad debts
165-D Tests for finding out whether the company has maintained the same owners
165-E The same business test
165-F Special provisions relating to ownership by non-fixed trusts

Guide to Division 165

165-1 What this Division is about

A change in the ownership or control of a company can affect:

- whether it can deduct its tax losses of earlier income years; and
- how it calculates its taxable income and tax loss for the income year of the change; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

- whether it can deduct debts owed to it that are written off as bad.

Subdivision 165-A—Deducting tax losses of earlier income years

Guide to Subdivision 165-A

165-5 What this Subdivision is about

A company cannot deduct a tax loss unless:

(a) it has the same owners and the same control throughout the period from the start of the loss year to the end of the income year; or

(b) it satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business.

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-35.

Table of sections

Operative provisions

165-10 To deduct a tax loss
165-12 Company must maintain the same owners
165-13 Alternatively, the company must satisfy the same business test
165-15 The same people must control the voting power, or the company must satisfy the same business test
165-20 When company can deduct *part* of a tax loss

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

165-10 To deduct a tax loss

A company cannot deduct a *tax loss unless either:

(a) it meets the conditions in section 165-12 (which is about the company maintaining the same owners); or

Note: See section 165-215 for a special alternative to these conditions.

(b) it meets the condition in section 165-13 (which is about the company satisfying the same business test).

Note: In the case of a widely held or eligible Division 166 company, Subdivision 166-A modifies how this Subdivision applies, unless the company chooses otherwise.

165-12 Company must maintain the same owners

Ownership test period

(1) In determining whether section 165-10 prevents a company from deducting a *tax loss, the ***ownership test period*** is the period from the start of the *loss year to the end of the income year.

Note: See section 165-255 for the rule about incomplete test periods.

Voting power

(2) There must be persons who had *more than 50% of the voting power in the company at all times during the *ownership test period.

Note 1: See section 165-150 to work out who had more than 50% of the voting power.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Rights to dividends

(3) There must be persons who had rights to *more than 50% of the company's dividends at all times during the *ownership test period.

Note 1: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 2: Subdivision 167-A has special rules for working out rights to dividends in a company whose shares do not all carry the same rights to dividends.

Rights to capital distributions

(4) There must be persons who had rights to *more than 50% of the company's capital distributions at all times during the *ownership test period.

Note 1: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

Note 2: Subdivision 167-A has special rules for working out rights to capital distributions in a company whose shares do not all carry the same rights to capital distributions.

When to apply the primary test

(5) To work out whether a condition in this section was satisfied at all times during the *ownership test period, apply the primary test for that condition unless subsection (6) requires the alternative test to be applied.

Note: For the primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

When to apply the alternative test

(6) Apply the alternative test for that condition if one or more other companies beneficially owned *shares or interests in shares in the company at any time during the *ownership test period.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Conditions in subsections (2), (3) and (4) may be treated as having been satisfied in certain circumstances

(7) If any of the conditions in subsections (2), (3) and (4) have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the *tax loss has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any *CGT event in relation to any *direct equity interests or *indirect equity interests in the company during the *ownership test period.

(7A) If the company is:

(a) a *non-profit company; or

(b) a *mutual affiliate company; or

(c) a *mutual insurance company;

during the whole of the *ownership test period, the conditions in subsections (3) and (4) are taken to have been satisfied by the company.

Time of happening of CGT event

(8) The happening of a *CGT event in relation to a *direct equity interest or *indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (2), (3) or (4) is taken, for the purposes of paragraph (7)(b), to have occurred during the *ownership test period.

165-13 Alternatively, the company must satisfy the same business test

(1) This section sets out the condition that a company must meet to be able to deduct the *tax loss if:

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the company fails to meet a condition in subsection 165-12(2), (3) or (4); or

(b) it is not practicable to show that the company meets the conditions in those subsections.

Note Other provisions may treat the company as meeting, or failing to meet, the conditions in subsections 165-12(2), (3) and (4).

(2) The company must satisfy the *same business test for the income year (the ***same business test period***). Apply the test to the *business the company carried on immediately before the time (the ***test time***) shown in the relevant item of the table.

Test time

Item	If:	The test time is:
1	It is practicable to show there is a period that meets these conditions: (a) the period starts at the start of the *ownership test period or, if the company came into being during the *loss year, at the time the company came into being; (b) the company would meet the conditions in subsections 165-12(2), (3) and (4) if the period were the ownership test period for the purposes of this Act	The latest time that it is practicable to show is in the period
2	Item 1 does not apply and the company was in being throughout the *loss year	The start of the loss year
3	Item 1 does not apply and the company came into being during the *loss year	The end of the loss year

For the same business test: see Subdivision 165-E.

165-15 The same people must control the voting power, or the company must satisfy the same business test

(1) Even if a company meets the conditions in section 165-12 or 165-13, it cannot deduct the *tax loss if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) for some or all of the part of the *ownership test period that started at the end of the *loss year, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and

(b) for some or all of the *loss year, that person did *not* control, and was *not* able to control, that voting power (directly, or indirectly in that way); and

(c) that person began to control, or became able to control, that voting power (directly, or indirectly in that way) for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

Note: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

(2) However, that person's control of the voting power, or ability to control it, does not prevent the company from deducting the *tax loss if the company satisfies the *same business test for the income year (the ***same business test period***).

(3) Apply the *same business test to the *business that the company carried on immediately before the time (the ***test time***) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

165-20 When company can deduct *part* of a tax loss

(1) If section 165-10 (which is about deducting a tax loss) prevents a company from deducting a *tax loss, the company can deduct the *part of the tax loss* that was incurred during a *part of the loss year*.

(2) However, the company can do this only if, assuming that *part* of the *loss year had been treated as the *whole* of the loss year for the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

purposes of section 165-10, the company would have been entitled to deduct the *tax loss.

Subdivision 165-B—Working out the taxable income and tax loss for the income year of the change

Guide to Subdivision 165-B

165-23 What this Subdivision is about

A company that has not had the same ownership and control during the income year, and has not satisfied the same business test, works out its taxable income and tax loss under this Subdivision.

Table of sections

165-25 Summary of this Subdivision
165-30 Flow chart showing the application of this Subdivision

When a company must work out its taxable income and tax loss under this Subdivision

165-35 On a change of ownership, unless the company satisfies the same business test
165-37 Who has *more than a 50% stake* in the company during a period
165-40 On a change of control of the voting power in the company, unless the company satisfies the same business test

Working out the company's taxable income

165-45 First, divide the income year into periods
165-50 Next, calculate the notional loss or notional taxable income for each period
165-55 How to attribute deductions to periods
165-60 How to attribute assessable income to periods
165-65 How to calculate the company's taxable income for the income year

Working out the company's tax loss

165-70 How to calculate the company's tax loss for the income year

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Special rules that apply if the company is in partnership

165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner
165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year
165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years
165-90 Company's full year deductions include a share of partnership's full year deductions

165-25 Summary of this Subdivision

(1) The company calculates its taxable income for the income year in this way:

Method statement

Step 1. Divide the income year into periods: each change in ownership or control is a dividing point between periods.

Step 2. Treat each period as if it were an income year and work out the notional loss or notional taxable income for that period.

Step 3. Work out the taxable income for the year of the change by adding up:

- each notional taxable income; and
- any full year amounts (amounts of assessable income not taken into account at Step 2);

and then subtracting any full year deductions (deductions not taken into account at Step 2).

Note: Do *not* take into account any notional loss.

(2) As well as a taxable income, the company will have a tax loss. It is the total of:

- each notional loss; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

- excess full year deductions of particular kinds.

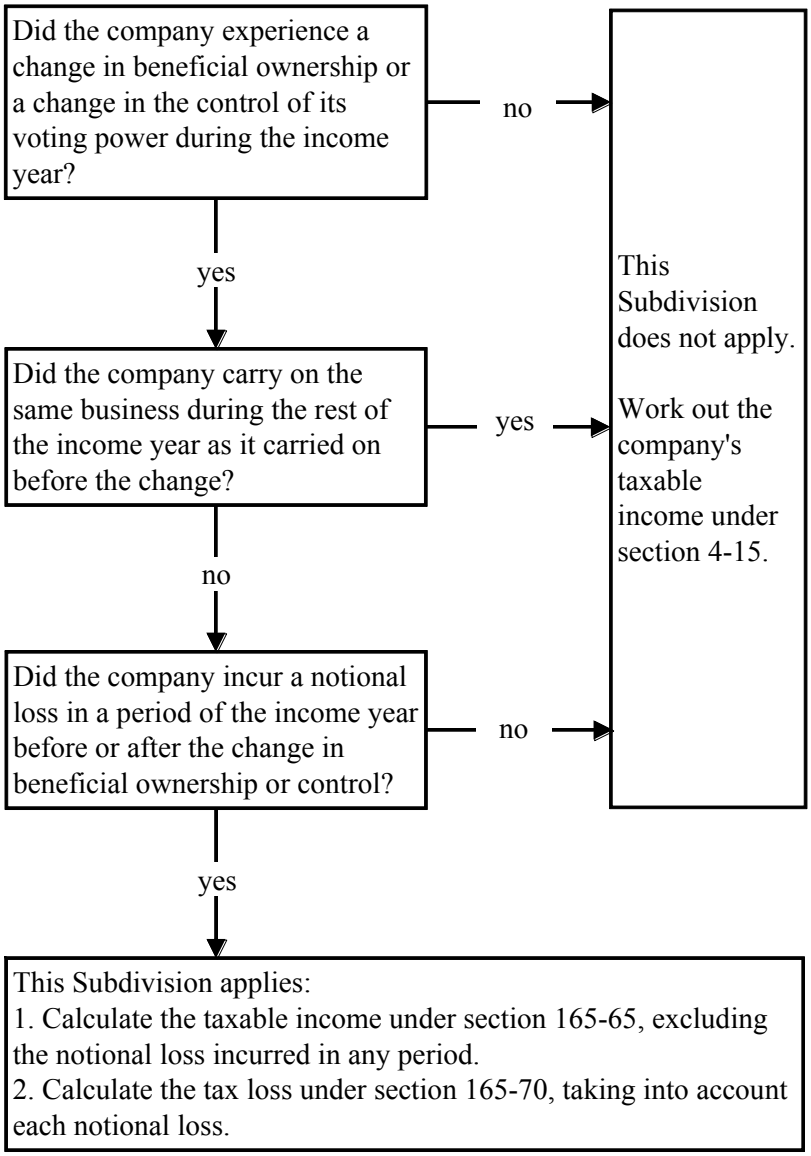
(3) Special rules apply if the company was in partnership at some time during the income year.

For the special rules that apply if the company was in partnership: see sections 165-75 to 165-90.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-30 Flow chart showing the application of this Subdivision



*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: If the company was a partner during the income year, special rules apply to calculating a notional loss or notional taxable income.

When a company must work out its taxable income and tax loss under this Subdivision

165-35 On a change of ownership, unless the company satisfies the same business test

A company must calculate its taxable income and *tax loss under this Subdivision unless:

(a) there are persons who had *more than a 50% stake in the company during the whole of the income year; or

Note: See section 165-220 for a special alternative to the condition in this paragraph.

(b) there is only *part* of the income year (a part that started at the start of the income year) during which the same persons had *more than a 50% stake in the company, but the company satisfies the *same business test for the *rest* of the income year (the ***same business test period***); or

(c) the company was a *designated infrastructure project entity during the whole of the income year.

Note: See subsection 415-35(7) if there is only part of the income year during which the company was a designated infrastructure project entity.

For the purposes of paragraph (b), apply the *same business test to the *business that the company carried on immediately before the time (the ***test time***) when that part ended.

Note 1: For the same business test, see Subdivision 165-E.

Note 2: In the case of a widely held or eligible Division 166 company, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

165-37 Who has *more than a 50% stake* in the company during a period

(1) If:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) there are persons who had *more than 50% of the voting power in the company during the whole of a period (the ***ownership test period***) consisting of the income year or a part of it; and

(b) there are persons who had rights to *more than 50% of the company's dividends during the whole of the ownership test period; and

(c) there are persons who had rights to *more than 50% of the company's capital distributions during the whole of the ownership test period;

those persons had ***more than a 50% stake*** in the company during the ownership test period.

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) To work out whether a condition in subsection (1) was satisfied during the *ownership test period, apply the primary test for that condition unless subsection (3) requires the alternative test to be applied.

For the primary tests: see subsections 165-150(1), 165-155(1) and 165-160(1).

(3) Apply the alternative test for that condition if one or more other companies beneficially owned *shares, or interests in shares, in the company at any time during the *ownership test period.

For the alternative tests: see subsections 165-150(2), 165-155(2) and 165-160(2).

Conditions in subsection (1) may be treated as having been satisfied in certain circumstances

(4) If any of the conditions in subsection (1) have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the *notional

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

loss for the *ownership test period has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any *CGT event in relation to any *direct equity interests or *indirect equity interests in the company during that period.

(4A) If the company is:

(a) a *non-profit company; or

(b) a *mutual affiliate company; or

(c) a *mutual insurance company;

during the whole of the *ownership test period, the conditions in paragraphs (1)(b) and (c) are taken to have been satisfied by the company.

Time of happening of CGT event

(5) The happening of a *CGT event in relation to a *direct equity interest or *indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (1) is taken, for the purposes of paragraph (4)(b), to have occurred during the *ownership test period.

165-40 On a change of control of the voting power in the company, unless the company satisfies the same business test

(1) A company must calculate its taxable income and tax loss under this Subdivision if, during the income year, a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:

(a) getting some benefit or advantage in relation to how this Act applies; or

(b) getting such a benefit or advantage for someone else.

Note 1: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

(2) However, that person's control of the voting power, or ability to control it, does not require the company to calculate its taxable income under this Subdivision if the company satisfies the *same business test for the *rest* of the income year (the ***same business test period***).

(3) Apply the *same business test to the *business that the company carried on immediately before the time (the ***test time***) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

Working out the company's taxable income

165-45 First, divide the income year into periods

(1) Divide the income year into periods as follows.

(2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.

(3) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:

(a) the *latest* time that would result in persons having *more than a 50% stake in the company during the whole of the period; or

(b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:

(i) getting some benefit or advantage to do with how this Act applies; or

(ii) getting such a benefit or advantage for someone else.

Note: See section 165-255 for the rule about incomplete periods.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) However, what would otherwise be 2 or more successive periods are treated as a single period if the company satisfies the *same business test for all of them, considered as a single period (the ***same business test period***). Apply the same business test to the *business the company carried on immediately before the end of the first of the periods (the ***test time***).

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-225 for a special alternative to subsections (3) and (4) of this section.

165-50 Next, calculate the notional loss or notional taxable income for each period

(1) The company has a *notional loss for a period if the deductions attributed to the period under section 165-55 exceed the assessable income attributed to the period under section 165-60. The ***notional loss*** is the amount of the excess.

For a period during which the company was in partnership, the notional loss is worked out under section 165-75.

(2) On the other hand, if that assessable income exceeds those deductions, the company has a ***notional taxable income*** for the period, equal to the excess.

For a period during which the company was in partnership, the notional taxable income is worked out under section 165-75.

(3) If the company has a *notional loss for *none* of the periods in the income year, this Subdivision has no further application, and the company's taxable income for the income year is calculated in the usual way.

The usual way of working out taxable income is set out in section 4-15.

165-55 How to attribute deductions to periods

(1) The company's deductions for the income year are attributed to periods in the income year as follows.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The following deductions are attributed to each period in proportion to the length of the period:

(a) deductions for the decline in value of a *depreciating asset;

See Division 40.

(b) deductions for *exploration or prospecting, or *mining capital expenditure, in connection with mining or quarrying;

See section 40-80 and Subdivisions 40-H and 40-I.

(c) deductions for expenditure, deductions for which are spread over 2 or more income years, but not:

(i) deductions for exploration or prospecting, or capital expenditure, in connection with mining or quarrying; or

See Subdivision 40-I.

(ii) *full year deductions (see subsection (5));

(d) deductions for expenditure of capital monies in connection with an Australian *film.

See former section 124ZAFA of the *Income Tax Assessment Act 1936*.

(3) All other deductions (except *full year deductions) are attributed to periods as if each period were an income year.

(4) *Full year deductions are not attributed to any of the periods. They are brought in at a later stage of the process of calculating the company's taxable income for the income year.

(5) These are ***full year deductions***:

(a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);

(b) deductions for losses on debt/equity swaps under section 63E of the *Income Tax Assessment Act 1936*;

(c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;

(fa) deductions for payments of pensions, gratuities or retiring allowances under section 25-50;

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(fb) deductions for gifts under Division 30;

(f) deductions for *tax losses of earlier income years.

See Division 36.

(6) However, a deduction for the balance of capital expenditure is *not* a ***full year deduction*** if the deduction results from the disposal, loss, lapse, termination of use or destruction of the property.

165-60 How to attribute assessable income to periods

(1) The company's assessable income for the income year is attributed to periods in the income year as follows.

(2) The following amounts are attributed to periods so far as they are reasonably attributable to those periods:

(a) amounts included in the company's assessable income under section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or

(b) amounts included in the company's assessable income under section 98A (Non-resident beneficiaries assessable in respect of certain income) of the *Income Tax Assessment Act 1936*.

(2A) However, so much of an amount included in the company's assessable income under section 97 or 98A of the *Income Tax Assessment Act 1936* as is a *capital gain that forms part of a *net capital gain is not attributed to a period.

(3) The following items of assessable income are attributed to each period in proportion to the length of the period:

(a) insurance recoveries for loss of *live stock or trees;

See section 385-130.

(b) amounts included in assessable income as a result of elections relating to the forced disposal of live stock;

See Subdivision 385-E and section 385-160.

(c) recoupment of mains electricity connection expenditure.

See items 1.16 and 2.5 in section 20-30, which lists deductions for which recoupments are assessable under Subdivision 20-A.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) An amount included in the company's assessable income under section 385-135 (Election to defer including profit on second wool clip) is attributed to the period when the wool would ordinarily have been shorn.

(5) An amount included in the company's assessable income that is a *dividend under:

(a) section 65 (Payments to associated persons); or

(c) section 109 (Excessive payments to shareholders and associates);

of the *Income Tax Assessment Act 1936* is attributed to the period when the amount was paid or credited, whichever occurred first.

(6) All other items of assessable income (except *full year amounts) are attributed to periods as if each period were an income year.

(6A) A *net capital gain is not attributed to a period.

Note: This is because Subdivision 165-CB provides for how the company must work out its net capital gain for the income year.

(7) ***Full year amounts*** are amounts referred to in paragraphs (2)(a) and (b), so far as they are *not* reasonably attributable to a period, but do not include any part of a *capital gain that forms part of a *net capital gain. Full year amounts are brought in at a later stage of the process of calculating the company's taxable income for the income year.

165-65 How to calculate the company's taxable income for the income year

(1) The company's ***taxable income*** for the income year is calculated as follows.

(2) Add up the *notional taxable incomes (if any) worked out under section 165-50 or 165-75.

Note: A notional *loss* for a period is *not* taken into account, but counts towards the company's tax loss for the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) Add the *full year amounts referred to in subsection 165-60(7) (if any) and any *net capital gain of the company for the income year.

(4) Subtract the company's *full year deductions of these kinds:

(a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);

(c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;

unless they exceed the total of the *notional taxable incomes and the *full year amounts. (If they equal or exceed that total, the company does not have a taxable income for the income year.)

(5) If an amount remains, subtract from it the company's other *full year deductions, in the order shown in subsection 165-55(5), unless they exceed the amount remaining. (If they equal or exceed that amount, the company does not have a taxable income for the income year.)

(6) If an amount remains, it is the company's ***taxable income*** for the income year.

Working out the company's tax loss

165-70 How to calculate the company's tax loss for the income year

(1) The company's ***tax loss*** for the income year is calculated as follows.

(2) Total the *notional losses worked out under section 165-50 or 165-75.

(3) Add to the total in subsection (2) the amount (if any) by which the company's *full year deductions of these kinds:

(a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;

exceed the total of:

(d) the *notional taxable incomes (if any); and

To work out the notional taxable income: see section 165-50.

(e) the *full year amounts referred to in section 165-60 (if any); and

(f) any *net capital gain of the company for the income year.

(4) If the company *derived exempt income, subtract its *net exempt income (worked out under section 36-20).

(5) Any amount remaining is the company's ***tax loss*** for the income year, which is called a ***loss year***.

Note: The meanings of ***tax loss*** and ***loss year*** are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

To find out *how much* of the tax loss can be deducted in later income years: see Subdivision 165-A.
To find out *how* to deduct it: see section 36-17.

Special rules that apply if the company is in partnership

165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner

(1) This section applies if at any time during a period the company was a partner in one or more partnerships.

(2) The company has a *notional loss for the period if the total (the ***loss total***) of:

(a) the deductions attributed to the period under section 165-55; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the *company's share of each *notional loss (if any) of a partnership for the period;

exceeds the total (the ***income total***) of:

(c) the assessable income attributed to the period under section 165-60; and

(d) the *company's share of each *notional net income (if any) of a partnership for the period.

The ***notional loss*** is the amount of the excess.

Note: A notional loss is taken into account in working out the company's tax loss under section 165-70.

(3) On the other hand, if the income total exceeds the loss total, the company has a ***notional taxable income*** for the period, equal to the excess.

Note: A notional taxable income is taken into account in working out the company's taxable income under section 165-65.

(4) If the company has a *notional taxable income for *all* periods in the income year, this Subdivision has no further application, and the company's taxable income for the income year is calculated in the usual way.

Note: The usual way of working out taxable income is set out in section 4-15.

165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year

(1) This section applies if at any time during a period the company is a partner in a partnership that has an income year that starts and ends when the company's income year starts and ends.

(2) The partnership's ***notional loss*** or ***notional net income*** for the period is calculated in the same way as the *notional loss or *notional taxable income of a company.

(3) The ***company's share*** is calculated by dividing:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

- the company's interest in the partnership's net income or partnership loss of the income year;

by

- the amount of that net income or partnership loss;

and expressing the result as a percentage.

(4) However, if the partnership had neither a net income nor a partnership loss, the ***company's share*** is a percentage that is fair and reasonable having regard to the extent of the company's interest in the partnership.

165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years

(1) This section applies if at any time during a period the company is a partner in a partnership that has an income year that starts and ends at a different time from when the company's income year starts and ends.

(2) So much of the partnership's net income or partnership loss of an income year as was *derived during the period is a ***notional net income*** or ***notional loss*** of the partnership for the period. (For the purposes of this subsection, the partnership's net income or partnership loss is calculated without taking account of the partnership's *full year deductions for that income year.)

Note: The partnership's full year deductions are dealt with in section 165-90.

(3) The ***company's share*** is calculated by dividing:

- the company's interest in the partnership's net income or partnership loss of that income year;

by

- the amount of that net income or partnership loss;

and expressing the result as a percentage.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-90 Company's full year deductions include a share of partnership's full year deductions

(1) This section applies if at any time during the income year the company is a partner in a partnership that has one or more *full year deductions for the income year of the partnership that corresponds to the income year of the company.

(2) The partnership's *full year deductions are treated as full year deductions of the company, but only to the extent of the *company's share.

(3) If the partnership's income year is the same as the company's, the ***company's share*** is calculated by dividing:

- the company's interest in the partnership's net income or partnership loss of the income year;

by

- the amount of that net income or partnership loss;

and expressing the result as a percentage.

(4) However, if the partnership had neither a net income nor a partnership loss, the ***company's share*** is a percentage that is fair and reasonable having regard to the extent of the company's interest in the partnership.

(5) If the partnership's income year does not start and end at the same time as the company's income year, the ***company's share*** is a percentage that is fair and reasonable having regard to all relevant circumstances.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 165-CA—Applying net capital losses of earlier income years

Guide to Subdivision 165-CA

165-93 What this Subdivision is about

In working out its net capital gain for an income year, a company cannot apply a net capital loss for an earlier income year unless:

(a) it has the same owners and the same control from the start of the loss year to the end of the income year; or

(b) it satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business.

Table of sections

Operative provisions

165-96 When a company cannot apply a net capital loss

Operative provisions

165-96 When a company cannot apply a net capital loss

(1) In working out its *net capital gain for the *current year, a company cannot apply a *net capital loss it has for an earlier income year if Subdivision 165-A would prevent it from deducting the loss for the current year if:

(a) the loss were a *tax loss of the company for that earlier income year; and

(b) section 165-20 (about deducting part of a tax loss) were disregarded.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: A company's net capital gain for an income year is usually worked out under section 102-5.

Note 2: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the period from the start of the loss year to the end of the income year.

Note 3: Subdivision 165-F may affect the application of Subdivision 165-A.

(2) If subsection (1) prevents the company from applying the *net capital loss, it can apply the *part* of the loss that it made during a *part* of that earlier income year, but only if, assuming that part of that income year had been treated as the whole of it, the company would have been entitled to apply the net capital loss.

Subdivision 165-CB—Working out the net capital gain and the net capital loss for the income year of the change

Guide to Subdivision 165-CB

165-99 What this Subdivision is about

A company that has not had the same ownership and control during the income year, and has not satisfied the same business test, works out its net capital gain and net capital loss under this Subdivision.

Table of sections

When a company must work out its net capital gain and net capital loss under this Subdivision

165-102 On a change of ownership, or of control of voting power, unless the company satisfies the same business test

Working out the company's net capital gain and net capital loss

165-105 First, divide the income year into periods

165-108 Next, calculate the notional net capital gain or notional net capital loss for each period

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-111 How to work out the company's net capital gain
165-114 How to work out the company's net capital loss

When a company must work out its net capital gain and net capital loss under this Subdivision

165-102 On a change of ownership, or of control of voting power, unless the company satisfies the same business test

A company must calculate its *net capital gain and *net capital loss for the income year under this Subdivision if:

(a) it must calculate its taxable income and *tax loss for the income year under Subdivision 165-B; or

Note: Subdivision 165-F may affect the application of Subdivision 165-B.

(b) it would be required to calculate them under that Subdivision but for subsection 165-50(3) (about cases where that Subdivision would make no difference to the taxable income).

Note: In the case of a widely held or eligible Division 166 company, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

Working out the company's net capital gain and net capital loss

165-105 First, divide the income year into periods

Divide the income year into periods according to section 165-45 (which is about working out the company's taxable income under Subdivision 165-B).

165-108 Next, calculate the notional net capital gain or notional net capital loss for each period

(1) The company has a ***notional net capital gain*** for a period if the total of the *capital gains it made during the period exceeds the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

total of the *capital losses it made during the period. The ***notional net capital gain*** is the amount of the excess.

(2) On the other hand, if the total of those losses exceeds the total of those gains, the company has a ***notional net capital loss*** for the period, equal to the excess.

(3) If the company has a *notional net capital loss for none of the periods in the income year, this Subdivision has no further application, and the company's *net capital gain for the income year is calculated in the usual way.

The usual way of working out the net capital gain is set out in section 102-5.

Trust's capital gain attributed to company beneficiary

(4) If some or all (the ***attributable amount***) of an amount included in the company's assessable income for the income year under:

(a) section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or

(b) section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act;

is attributable to a *capital gain that the trust made at a particular time during the period, this section applies to the attributable amount as if it were a *capital gain made by the company at that time.

165-111 How to work out the company's net capital gain

The company's ***net capital gain*** for the income year is worked out in this way:

Working out the company's net capital gain

Step 1. Add up the *notional net capital gains (if any) worked out under section 165-108.

Note: A notional net capital *loss* for a period is *not* taken into account, but counts towards the company's net capital loss for the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Step 2.	Add to the Step 1 amount so much of each amount included in the company's assessable income for the income year under: (a) section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or (b) section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act; as is attributable to a *capital gain that the trust made outside the income year. Note: This is relevant only if the trust has an income year that starts and ends at a different time from when the company's income year starts and ends.
Step 3.	If the Step 2 amount is *more than* zero, reduce it by applying any unapplied *net capital losses from previous income years. (If this reduces it to zero, the company has no net capital gain for the income year.) Note: To apply net capital losses: see section 102-15.
Step 4.	If the Step 3 amount is *more than* zero, it is the company's ***net capital gain***.

Note : For exceptions and modifications to these rules: see section 102-30.

165-114 How to work out the company's net capital loss

The company's ***net capital loss*** for the income year is worked out in this way:

Working out the company's net capital loss

Step 1.	Add up the *notional net capital losses (if any) worked out under section 165-108.
Step 2.	If the Step 1 amount is *more than* zero, it is the company's ***net capital loss***.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: For exceptions and modifications to these rules: see section 102-30.

Subdivision 165-CC—Change of ownership or control of company that has an unrealised net loss

Guide to Subdivision 165-CC

165-115 What this Subdivision is about

If a change occurs in the ownership or control of a company that has an unrealised net loss, the company cannot, to the extent of the unrealised net loss, have capital losses taken into account, or deduct revenue losses, in respect of CGT events that happen to CGT assets that it owned at the time of the change, unless it satisfies the same business test.

165-115AA Special rules to save compliance costs

(1) A company is exempt from these rules if, at the time of the change in ownership or control, it (together with certain related entities) has a net asset value of not more than $6,000,000 under the test in section 152-15 (for small business CGT relief).

(2) In working out whether it has an unrealised net loss, a company can choose to work out the market value of each of its assets individually, or of all of its assets together.

(3) If a company works out the market value of each of its assets individually, it may choose to exclude every asset that it acquired for less than $10,000, in which case:
   (a) unrealised losses and gains on the excluded assets will not be taken into account in calculating the company's unrealised net loss; and
   (b) losses on the excluded assets will be allowed without the company being subject to the same business test.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

165-115A Application of Subdivision
165-115B What happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset after a changeover time
165-115BA What happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock
165-115BB Order of application of assets: residual unrealised net loss
165-115C Changeover time—change in ownership of company
165-115D Changeover time—change in control of company
165-115E What is an unrealised net loss
165-115F Notional gains and losses

Operative provisions

165-115A Application of Subdivision

Application

(1) This Subdivision applies to a company if:

(a) a changeover time has occurred or occurs in relation to the company after the commencement time; and

(b) at the changeover time the company had an unrealised net loss (see section 165-115E); and

(c) either of the following applies:

(i) the company makes a *capital loss, or apart from this Subdivision would be entitled to a deduction, in respect of a *CGT event that happens to a *CGT asset referred to in subsection (1A);

(ii) the company makes a *trading stock loss in respect of a CGT asset referred to in subsection (1A) that is an item of *trading stock; and

(d) the company would not, at the changeover time, satisfy the maximum net asset value test under section 152-15.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

CGT assets in respect of which Subdivision applies

(1A) The *CGT assets for the purposes of paragraph (1)(c) are:

(a) any CGT asset that the company owned at the changeover time; and

(b) any CGT asset that the company did not own at the changeover time but had owned at a previous time, where:

(i) a deferral event referred to in subsection 170-255(1) happened before the changeover time; and

(ii) the deferral event involved the company as the originating company referred to in that subsection; and

(iii) the deferral event would have resulted in the company making a *capital loss, or becoming entitled to a deduction, in respect of the CGT asset except for section 170-270; and

(iv) the company is not taken to have made a capital loss at or before the changeover time, or to have become entitled to a deduction at that time, under section 170-275 in respect of the asset.

Company may choose to disregard CGT assets acquired for less than $10,000

(1B) A company may choose, for the purposes of the application of this Subdivision to it in respect of a particular changeover time, that every *CGT asset that has been acquired by it for less than $10,000 is to be disregarded.

However, the choice does not affect the application of the *global method of working out whether the company has an unrealised net loss (see subsection 165-115E(2)).

Time for making choice

(1C) A choice under subsection (1B) must be made on or before:

(a) the day on which the company lodges its *income tax return for the income year in which the relevant changeover time occurred; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) such later day as the Commissioner allows.

Trading stock loss

(1D) A company is taken to have made a ***trading stock loss*** in respect of an asset that is an item of *trading stock if, and only if:

(a) one of the following applies:

(i) the company *disposes of the item;

(ii) the item stops being trading stock (within the meaning of section 70-80);

(iii) the item is revalued under Division 70; and

(b) if subparagraph (a)(i) or (ii) applies—the item's *market value at the time when it is disposed of or stops being trading stock is less than:

(i) in respect of an item that has been valued under Division 70—its latest value under the Division; or

(ii) otherwise—its cost at that time; and

(c) if subparagraph (a)(iii) applies—the item's value under the revaluation is less than:

(i) in respect of an item that has previously been valued under Division 70—its latest value under that Division before the revaluation; or

(ii) otherwise—its cost at the time of the revaluation.

The difference worked out under paragraph (b) or (c), as the case may be, constitutes the amount of the *trading stock loss.

Commencement time

(2) For the purposes of this Subdivision, the ***commencement time*** of a company is:

(a) if the company was in existence at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999—that time; or

(b) if the company came into existence after that time—the time when it came into existence.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Reference time

(2A) For the purposes of the application of this Subdivision to a company in relation to a particular time (the ***test time***), the ***reference time*** is:

(a) if no changeover time occurred in respect of the company before the test time—the commencement time; or

(b) otherwise—the time immediately after the last changeover time that occurred in respect of the company before the test time.

Asset owned at more than one changeover time

(3) If:

(a) 2 or more changeover times have occurred or occur in relation to a company; and

(b) the company owned a particular asset at more than one of those changeover times;

this Subdivision applies to the company in respect of that asset only in relation to the later or latest of those changeover times.

Note: For ***changeover time*** see sections 165-115C and 165-115D.

165-115B What happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset after a changeover time

Where capital loss or deduction is equal to or less than residual unrealised net loss

(1) If the *capital loss or deduction referred to in subparagraph 165-115A(1)(c)(i) is equal to or less than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:

(a) the capital loss is taken to have been a *net capital loss; or

(b) the deduction is taken to have been a *tax loss;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

of the company for the income year immediately before the income year in which the changeover time occurred.

Where capital loss or deduction is greater than residual unrealised net loss

(2) If the *capital loss or deduction referred to in subparagraph 165-115A(1)(c)(i) is greater than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:

(a) the part of the capital loss that is equal to the residual unrealised net loss is taken to have been a *net capital loss; or

(b) the part of the deduction that is equal to the residual unrealised net loss is taken to have been a *tax loss;

of the company for the income year immediately before the income year in which the changeover time occurred.

Company does not meet certain conditions in relation to net capital loss or tax loss

(3) The company is taken not to have met, at the changeover time, the conditions in subsections 165-12(2), (3) and (4) in relation to the *net capital loss or the *tax loss. The changeover time is the ***test time*** for applying section 165-13 to the company.

Need to meet same business test

(4) The effect of subsection (3) is that the company cannot apply the *net capital loss (see section 165-10 as it applies because of section 165-96), or deduct the *tax loss (see section 165-10), unless it meets the condition in section 165-13 (the same business test).

Consequences for net capital loss

(5) The *net capital loss cannot be applied against *capital gains made in an income year before the income year in which the company

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

made the capital loss referred to in subparagraph 165-115A(1)(c)(i).

Consequences for tax loss

(6) The *tax loss cannot be deducted from assessable income *derived in an income year before the income year in which the company would have been entitled to the deduction referred to in subparagraph 165-115A(1)(c)(i).

Note: For ***changeover time*** see sections 165-115C and 165-115D.

165-115BA What happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock

Application

(1) This section applies to the company if, after the changeover time, the company makes a *trading stock loss in respect of an item of *trading stock as mentioned in subparagraph 165-115A(1)(c)(ii).

Where trading stock loss is equal to or less than residual unrealised net loss

(2) If the *trading stock loss is equal to or less than the company's residual unrealised net loss at the time of the occurrence of the trading stock loss, the amount of the trading stock loss is to be included in the company's assessable income.

Where trading stock loss is greater than unrealised net loss

(3) If the *trading stock loss is greater than the company's residual unrealised net loss at the time of the occurrence of the trading stock loss, the part of the trading stock loss that is equal to the residual unrealised net loss is to be included in the company's assessable income.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

No increase in assessable income if company satisfies the same business test

(4) Neither subsection (2) nor (3) applies to the company if the company meets the condition in section 165-13 (the same business test).

Assumptions for purposes of same business test

(5) In determining whether the company meets the condition in section 165-13, assume:

(a) that the *trading stock loss (if subsection (2) applies) or the part of the trading stock loss (if subsection (3) applies) is a *net capital loss of the company for the income year immediately before the income year in which the changeover time occurred; and

(b) that the company failed, at the changeover time, to meet the condition in subsections 165-12(2), (3) and (4) in relation to the net capital loss referred to in paragraph (a); and

(c) that the changeover time is the ***test time***; and

(d) that the same business test period is the income year in which the loss occurred.

165-115BB Order of application of assets: residual unrealised net loss

Order in which assets are to be applied

(1) In applying subsection 165-115B(2) or 165-115BA(3) in respect of assets that the company owned at the changeover time:

(a) the company's *capital losses are taken to have been made, the company is taken to have become entitled to deductions and the company is taken to have made *trading stock losses in the order in which the events that resulted in the capital losses, deductions or trading stock losses occurred; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) if 2 or more such events occurred at the same time, they are taken to have occurred in such order as the company determines.

Residual unrealised net loss

(2) The company's ***residual unrealised net loss***, at the time of an event (the ***relevant event***) that resulted in the company making a *capital loss, becoming entitled to a deduction or making a *trading stock loss, in respect of an asset, is the amount worked out using the following formula:

$$\text{Unrealised net loss} - \text{Previous capital losses, deductions or trading stock losses}$$

where:

previous capital losses, deductions or trading stock losses means the total of the following:

(a) capital losses that the company made, deductions to which the company became entitled, or *trading stock losses that the company made, as a result of events earlier than the relevant event in respect of assets that the company owned at the *changeover time;

(b) each reduction that section 715-105 (as applying to the company as the *head company of a *consolidated group or *MEC group) makes in respect of such an asset because an entity ceased before the time of the relevant event to be a *subsidiary member of the group (but counting only the greater or greatest such reduction if 2 or more are made for the same asset);

or nil if there are none.

unrealised net loss means the company's unrealised net loss at the last changeover time that occurred before the relevant event.

Note: For ***changeover time*** see sections 165-115C and 165-115D.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-115C Changeover time—change in ownership of company

(1) A time (the ***test time***) is a ***changeover time*** in respect of a company if:

(a) persons who had *more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the test time; or

(b) persons who had rights to *more than 50% of the company's dividends at the reference time do not have rights to more than 50% of those dividends immediately after the test time; or

(c) persons who had rights to *more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the test time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

Note 4: For ***reference time*** see subsection 165-115A(2A).

Note 5: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (3) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

(3) Apply the alternative test if one or more other companies beneficially owned *shares or interests in shares in the company at any time during the period from the reference time to the *test time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) A *test time that would, apart from this subsection, be a changeover time in respect of the company because of the application of subsection (1) is taken not to be a changeover time if:

(a) that subsection would not have applied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the company's unrealised net loss at the test time has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any *CGT event in relation to any *direct equity interests or *indirect equity interests in the company during the period from the reference time to the test time.

(4A) If the company is:

(a) a *non-profit company; or

(b) a *mutual affiliate company; or

(c) a *mutual insurance company;

during the whole of the period from the reference time to the *test time, the test time is taken not to be a *changeover time in respect of the company because of the application of paragraphs (1)(b) and (c).

(5) The happening of any *CGT event in relation to a *direct equity interest or *indirect equity interest in the company that results in the time of the happening of the event being a changeover time in respect of the company is taken, for the purposes of paragraph (4)(b), to have occurred during the period referred to in that paragraph.

165-115D Changeover time—change in control of company

(1) A time (the ***test time***) is also a ***changeover time*** in respect of a company if, at the test time:

(a) a person or persons who did not control, and were not able to control, the voting power in the company at the reference

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

time began to control, or became able to control, that voting power immediately after the test time; and

(b) that person or those persons so began, or became able, to control that voting power for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

Note 1: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

(2) In this section:

control of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

165-115E What is an unrealised net loss

(1) The question whether a company has an ***unrealised net loss*** at a particular time (the ***relevant time***) is worked out in this way (the ***individual asset method***), unless the company chooses to work it out using the *global method (set out in subsection (2)).

Method statement	
Step 1.	Work out under section 165-115F in respect of each *CGT asset that the company owned at the relevant time any notional capital gain or notional revenue gain or any notional capital loss or notional revenue loss that the company has at that time in respect of the asset.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

	The sum of the notional capital gains is the company's ***unrealised capital gain*** at the relevant time. The sum of the notional capital losses is the company's ***unrealised capital loss*** at the relevant time. The sum of the notional revenue gains is the company's ***unrealised revenue gain*** at the relevant time. The sum of the notional revenue losses is the company's ***unrealised revenue loss*** at the relevant time.
Step 2.	Add up the unrealised capital gain and the unrealised revenue gain at the relevant time. The total is the ***unrealised gross gain*** at that time.
Step 3.	Add up the unrealised capital loss and the unrealised revenue loss at the relevant time. The total is the ***unrealised gross loss*** at that time.
Step 4.	If the unrealised gross loss at the relevant time exceeds the unrealised gross gain at that time, the excess is the company's ***preliminary unrealised net loss*** at that time.
Step 5.	Add up the company's preliminary unrealised net loss and any *capital loss, deduction or share of a deduction disregarded under section 170-270 in relation to an asset referred to in paragraph 165-115A(1A)(b). The total is the company's ***unrealised net loss*** at the relevant time.

(2) The ***global method*** of working out whether the company has an ***unrealised net loss*** at the relevant time is as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Method statement

Step 1. Work out the total *market value of all *CGT assets that the company owned at the relevant time (including those it *acquired for less than $10,000), using a valuation method that would generally be regarded as appropriate in the circumstances.

Step 2. Work out the total of the *cost bases of those *CGT assets at the relevant time.

Note: If a CGT asset that the company owned at the relevant time was also trading stock or a revenue asset at that time, see subsection (3) of this section.

Step 3. If the step 2 amount exceeds the step 1 amount, the excess is the company's ***preliminary unrealised net loss*** at the relevant time.

Step 4. Add up the company's preliminary unrealised net loss and any *capital loss, deduction or share of a deduction disregarded under section 170-270 in relation to an asset referred to in paragraph 165-115A(1A)(b). The total is the company's ***unrealised net loss*** at the relevant time.

(3) If:

(a) a *CGT asset that the company owned at the relevant time was also *trading stock or a *revenue asset at that time; and

(b) the asset's *cost base at the relevant time is *less than* the amount that would be compared under section 165-115F with the asset's *market value in working out a notional revenue gain or notional revenue loss that the company has at the relevant time in respect of the asset;

then, for the purposes of step 2 of the method statement in subsection (2) of this section, the amount that would be so compared is to be taken into account *instead of* that cost base.

(4) A choice to use the *global method must be made on or before:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the day on which the company lodges its *income tax return for the income year in which the relevant time occurred; or

(b) such later day as the Commissioner allows.

165-115F Notional gains and losses

(1) This section applies for the purpose of calculating whether a company has at a particular time (the ***relevant time***) a notional capital gain, a notional capital loss, a notional revenue gain or a notional revenue loss in respect of a *CGT asset that it owned at that time.

(2) The calculation is to be made on the assumption that the company disposed of the asset at its *market value at the relevant time.

(3) In relation to an asset other than an item of *trading stock:

(a) if the company would make a *capital gain in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a ***notional capital gain*** equal to the amount of the capital gain; or

(b) if an amount (other than a capital gain) would be included in the company's assessable income in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a ***notional revenue gain*** equal to the amount so included; or

(c) if the company would make a *capital loss in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a ***notional capital loss*** equal to the amount of the capital loss; or

(d) if the company would be entitled to a deduction in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a ***notional revenue loss*** equal to the amount of the deduction.

(4) In relation to an asset that is an item of *trading stock:

(a) if the item's *market value at the relevant time exceeds:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) in respect of an item that has been valued under Division 70—the item's latest valuation under that Division; or

(ii) otherwise—the *cost of the item at the relevant time;

the company has at the relevant time in respect of the article a ***notional revenue gain*** equal to the excess; or

(b) if the item's market value at the relevant time is less than:

(i) in respect of an item that has been valued under Division 70—the item's latest valuation under that Division; or

(ii) otherwise—the *cost of the item at the relevant time;

the company has at the relevant time in respect of the article a ***notional revenue loss*** equal to the difference.

(5) A company may choose that this section is to apply to the company at the relevant time in respect of an asset to which subsection (6) applied at that time as if references to the *market value of the asset were references to its *written down value.

(6) This subsection applies to an asset at the relevant time if:

(a) the asset is a *depreciating asset (not a building or structure) for whose decline in value the company has deducted or can deduct an amount; and

(b) the expenditure incurred by the company to *acquire the asset was less than $1,000,000 (the expenditure can include the giving of property: see section 103-5); and

(c) it would be reasonable for the company to conclude that the *market value of the asset at that time was not less than 80% of its *written down value at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 165-CD—Reductions after alterations in ownership or control of loss company

Guide to Subdivision 165-CD

165-115GA What this Subdivision is about

This Subdivision prevents multiple recognition of a company's losses when significant equity and debt interests that entities (not individuals) have in the company are realised.

165-115GB When adjustments must be made

(1) The operation of this Subdivision is triggered at an alteration time, which is when:

(a) an alteration takes place in the ownership or control of the company; or

(b) a liquidator or administrator of the company declares that shares or financial instruments are worthless (CGT event G3).

(2) An alteration time is the trigger for making reductions and other adjustments to the reduced cost base of significant equity and debt interests in the company that are owned by an entity (not an individual) that, alone or with its associates, has a controlling stake in the company and either:

(a) has a *direct equity interest or *indirect equity interest of at least 10% in the company; or

(b) is owed a debt of at least $10,000 by the company or by another entity that has a significant equity or debt interest in the company.

Deductions that relate to such interests held as trading stock or otherwise on revenue account are also reduced.

(3) Adjustments may also be made when such an entity's interests in the company are partly realised within 12 months before an

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

alteration time or if, under an arrangement, such interests are realised partly within that period or at the alteration time and partly at an earlier time.

(4) However, entities in which there are no interests in respect of which the company's losses have been, or can be, duplicated are not affected by this Subdivision.

165-115GC How adjustments are calculated

(1) Adjustments are based on the overall loss of the company. This comprises its realised losses and unrealised losses on CGT assets.

(2) Special rules, directed at saving compliance costs, apply to determine whether unrealised losses have to be counted at an alteration time and, if so, how to work them out.

(3) The company may not have to calculate its unrealised losses if the alteration time is not also a changeover time for the purposes of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss), and the company has no realised losses.

(4) The company does not have to count unrealised losses at an alteration time if (together with certain related entities) it has a net asset value of not more than $6,000,000 under the test in section 152-15 (for small business CGT relief).

(5) In working out its unrealised losses on CGT assets, the company can choose to work out the *market value of each of its assets individually, or of all of its assets together.

(6) If the company works out the *market value of each of its assets individually, unrealised losses on assets acquired for less than $10,000 do not have to be calculated at any time.

(7) Amounts (whether realised or unrealised) counted at a previous alteration time are not counted again at a later alteration time. (This does not apply to unrealised losses worked out by reference to the *market value of all the company's assets together.)

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(8) However, if unrealised amounts are *not* counted at a previous alteration time (for example, because of the $10,000 exclusion, or because you satisfy the maximum net asset value test in section 152-15) and are not required to be taken into account in adjustments made at that time, they may be counted at a later time as part of a realised loss.

(9) A formula is provided for making adjustments in straightforward cases if applying the formula gives a reasonable result having regard to the object of the Subdivision. Otherwise, reasonable adjustments must be made having regard to a number of stated factors.

(10) To help entities to make the adjustments, any entity that, in its own right, has a controlling stake in the company is required to provide a written notice to its associates setting out relevant information. In limited circumstances, the company itself may have to provide a written notice to entities that, to its knowledge, have a significant equity or debt interest in it.

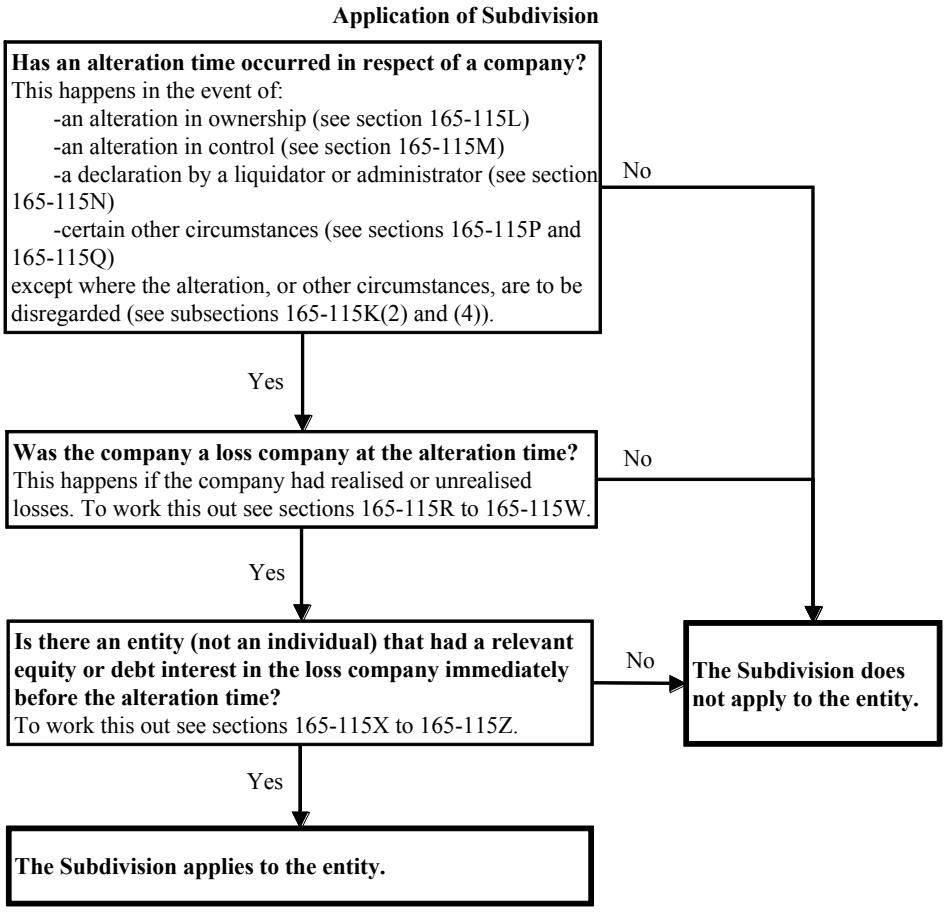
165-115H How this Subdivision applies

(1) This Subdivision provides for certain taxation consequences for an entity (not an individual) that had a significant equity or debt interest in a loss company immediately before an alteration time occurred in respect of the company.

(2) The following flowchart explains how to work out whether this Subdivision applies to an entity.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017



(3) If this Subdivision applies to an entity, reductions are made to:

(a) the reduced cost base of the entity's equity or debt (see subsection 165-115ZA(3)); or

(b) any deduction to which the entity is entitled in respect of the disposal of the equity or debt (see subsection 165-115ZA(4)); or

(c) deductions in respect of, and the cost of, any of the equity or debt that is trading stock (see subsection 165-115ZA(5)).

Example: The following is an example of how this Subdivision operates:

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Facts: Alpha Co acquired 80% of the shares in Beta Co on 5 May 1998 for $1,000.

Gamma Co owns 20% of the shares in Beta Co.

On 6 February 2000, Alpha Co disposed of its shares for $600.

At the beginning of the 1999-2000 income year, Beta Co had an unapplied net capital loss of $500 from the 1998-99 income year. This loss was fully reflected in the market value of shares in Beta Co.

Alpha Co and Gamma Co are not associated in any way.

Result:

Step 1: An alteration time occurred in respect of Beta Co as a result of the change in ownership that occurred when Alpha Co sold its shares.

Step 2: Beta Co was a loss company at the alteration time because it had an unapplied net capital loss from an earlier income year.

Step 3: Alpha Co had a relevant equity interest in Beta Co immediately before the alteration time because it had a controlling stake and significant interest (80% equity interest). Gamma Co did not have a relevant equity interest in Beta Co because it did not have a controlling stake.

Step 4: Because Alpha Co had a relevant equity interest in Beta Co, the reduced cost bases of its shares in Beta Co are reduced by 80% of Beta Co's net capital loss:

$$80\% \times \$500 = \$400$$

Alpha Co does not make a capital gain on the disposal of its shares in Beta Co because the capital proceeds ($600) are less than the cost bases ($1,000).

Nor did Alpha Co make a capital loss on the disposal of its shares in Beta Co because the capital proceeds ($600) are not less than the reduced cost bases as further reduced by this Subdivision ($600).

The net capital loss in Beta Co is not duplicated on the sale of Alpha Co's shares in Beta Co.

Step 5. There are no notice requirements in this simple case. If Gamma Co and Alpha Co were associates (so that Gamma Co had a relevant equity interest in Beta Co), Alpha Co would need to provide the following information to Gamma Co:

(a) the alteration time: 6 February 2000;
(b) Beta Co's overall loss at the alteration time: $500;
(c) details of the overall loss: a net capital loss of $500 for the 1998-99 income year.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

165-115J Object of Subdivision
165-115K Application and interpretation
165-115L Alteration time—alteration in ownership of company
165-115M Alteration time—alteration in control of company
165-115N Alteration time—declaration by liquidator or administrator
165-115P Notional alteration time—disposal of interests in company within 12 months before alteration time
165-115Q Notional alteration time—disposal of interests in company earlier than 12 months before alteration time
165-115R When company is a loss company at first or only alteration time in income year
165-115S When company is a loss company at second or later alteration time in income year
165-115T Reduction of certain amounts included in company's overall loss at alteration time
165-115U Adjusted unrealised loss
165-115V Notional losses
165-115W Calculation of trading stock decrease
165-115X Relevant equity interest
165-115Y Relevant debt interest
165-115Z What constitutes a controlling stake in a company
165-115ZA Reductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time
165-115ZB Adjustment amounts for the purposes of section 165-115ZA
165-115ZC Notices to be given
165-115ZD Adjustment (or further adjustment) for interest realised at a loss after global method has been used

Operative provisions

165-115J Object of Subdivision

The main object of this Subdivision is to make appropriate adjustments (under section 165-115ZA) to the tax values of significant equity and debt interests held directly or indirectly by entities other than individuals in a *loss company whose ownership

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

or control alters.
The purpose of the adjustments is to prevent the duplication of the company's realised and unrealised losses when any of those interests are *disposed of or otherwise realised. This happens because the company's losses are reflected in the values of the interests.

165-115K Application and interpretation

Application

(1) This Subdivision applies if:
  (a) an alteration time occurs in respect of a company; and
  (b) the company is a *loss company at the alteration time; and
  (c) one or more entities had relevant equity interests or relevant debt interests in the company immediately before the alteration time.

Note 1: For ***alteration time***, see sections 165-115L, 165-115M, 165-115N, 165-115P and 165-115Q.

Note 2: For ***relevant equity interests*** and ***relevant debt interests***, see sections 165-115X and 165-115Y.

Alteration time before commencement time to be disregarded

(2) An ***alteration time*** does not include a time before the commencement time.

Commencement time

(3) The ***commencement time*** for a company is:
  (a) if the company was in existence at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999—that time; or
  (b) if the company came into existence after that time—the time when it came into existence.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Certain alteration times to be disregarded

(4) If:

(a) a time (the ***test time***) would, apart from this subsection, be an alteration time in relation to a company; and

(b) the company does not have any losses of the kinds referred to in paragraphs 165-115R(3)(a), (b), (c) and (d) and 165-115S(3)(a) and (b); and

(c) the test time is not a changeover time in relation to the company under Subdivision 165-CC; and

(d) if the test time were such a changeover time, it would be reasonable for the company to conclude that it would not have an unrealised net loss at that time under section 165-115E;

the test time is taken not to be an alteration time in relation to the company.

Application to CGT events other than disposals

(5) This Subdivision applies to a *CGT event (other than a *disposal) happening in relation to a CGT asset (for example, an interest in a company that is constituted by an equity or debt):

(a) in the same way as it applies to a disposal of a CGT asset; and

(b) as if the asset had been disposed of at the time when the CGT event happens.

165-115L Alteration time—alteration in ownership of company

(1) A time (the ***test time***) is an ***alteration time*** in respect of a company if:

(a) persons who had *more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the test time; or

(b) persons who had rights to *more than 50% of the company's dividends at the reference time do not have rights to more

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

than 50% of those dividends immediately after the test time; or

(c) persons who had rights to *more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the test time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

Note 4: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) The ***reference time*** is:

(a) if no alteration time occurred in respect of the company before the *test time—the commencement time; or

(b) otherwise—the time immediately after the last alteration time.

(3) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (4) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

(4) Apply the alternative test if one or more other companies beneficially owned *shares or interests in shares in the company at any time during the period from the reference time to the *test time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

(5) If the company is:

(a) a *non-profit company; or

(b) a *mutual affiliate company; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) a *mutual insurance company;

during the whole of the period from the reference time to the *test time, the test time is taken not to be an *alteration time in respect of the company because of the application of paragraphs (1)(b) and (c).

165-115M Alteration time—alteration in control of company

(1) A time (the ***test time***) is also an ***alteration time*** in respect of a company if, at the test time:

(a) a person or persons who did not control, and were not able to control, the voting power in the company at the reference time began to control, or became able to control, that voting power immediately after the test time; and

(b) that person or those persons so began, or became able, to control that voting power for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

Note 1: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

(2) The ***reference time*** is:

(a) if no alteration time occurred in respect of the company before the *test time—the commencement time; or

(b) otherwise—the time immediately after the last alteration time.

(3) In this section:

control of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-115N Alteration time—declaration by liquidator or administrator

If a liquidator or administrator makes a declaration referred to in section 104-145 in relation to a company, the time of the declaration is also an ***alteration time*** in respect of the company.

165-115P Notional alteration time—disposal of interests in company within 12 months before alteration time

(1) This section applies if:

(a) an alteration time occurs in respect of a *loss company; and

(b) an entity *disposed of an interest in the company (an ***equity***) or a debt (a ***debt***) at a time (the ***disposal time***) within 12 months before the alteration time but not earlier than the commencement time; and

(c) immediately before the disposal time, the entity had a relevant equity interest or a relevant debt interest in the company that included the equity or debt, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred; and

(d) immediately before the alteration time, the entity had a relevant equity interest or a relevant debt interest in the company, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred.

(2) The references in paragraphs (1)(c) and (d) to previous *disposals of interests or debts by the entity are references to:

(a) previous disposals within the period referred to in paragraph (1)(b); and

(b) previous disposals before that period if those previous disposals and any one or more of the following:

(i) the disposal of the equity or debt;

(ii) a disposal referred to in paragraph (a);

(iii) a disposal at the alteration time;

occurred as part of an *arrangement.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) The time immediately before the *disposal of the equity or debt is taken to have been an alteration time (a ***notional alteration time***) in respect of the company.

(4) The entity:

(a) is taken to have had, immediately before the notional alteration time, a relevant equity interest in the company constituted by the equity or a relevant debt interest in the company constituted by the debt, as the case may be; and

(b) is taken not to have had, immediately before the notional alteration time, any other relevant equity interest or relevant debt interest in the company.

(5) No entity (other than the entity referred to in paragraph (1)(b)) is taken to have had a relevant equity interest or a relevant debt interest in the company immediately before the notional alteration time.

(6) In applying this Subdivision in relation to the company in respect of a time after a notional alteration time, the notional alteration time is taken not to have occurred.

Note: For ***relevant equity interests*** and ***relevant debt interests***, see sections 165-115X and 165-115Y.

165-115Q Notional alteration time—disposal of interests in company earlier than 12 months before alteration time

(1) This section applies if:

(a) an alteration time occurs in respect of a *loss company; and

(b) an entity that *disposed of an interest in the company (the ***later equity***) or a debt (the ***later debt***) at, or within 12 months before, the alteration time also disposed of an interest in the company (the ***earlier equity***) or a debt (the ***earlier debt***) at a time (the ***earlier disposal time***) earlier than 12 months before the alteration time but not earlier than the commencement time; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the disposal of the later equity or later debt and the disposal of the earlier equity or earlier debt occurred as part of an *arrangement; and

(d) immediately before the earlier disposal time, the entity had a relevant equity interest or a relevant debt interest in the company that included the earlier equity or earlier debt, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred; and

(e) immediately before the alteration time, the entity had a relevant equity interest or a relevant debt interest in the company, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred.

(2) The references in paragraphs (1)(d) and (e) to previous *disposals of interests or debts by the entity are references to:

(a) previous disposals within the period referred to in paragraph (1)(b); and

(b) previous disposals before that period if those previous disposals and any one or more of the following:

(i) the disposal of the equity or debt;

(ii) a disposal referred to in paragraph (a);

(iii) a disposal at the alteration time;

occurred as part of an *arrangement.

(3) The time immediately before the *disposal of the earlier equity or earlier debt is taken to have been an alteration time (a ***notional alteration time***) in respect of the company.

(4) The entity:

(a) is taken to have had, immediately before the notional alteration time, a relevant equity interest in the company constituted by the earlier equity or a relevant debt interest in the company constituted by the earlier debt, as the case may be; and

(b) is taken not to have had, immediately before the notional alteration time, any other relevant equity interest or relevant debt interest in the company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(5) No entity (other than the entity referred to in paragraph (1)(b)) is taken to have had a relevant equity interest or a relevant debt interest in the company immediately before the notional alteration time.

(6) In applying this Subdivision in relation to the company in respect of a time after a notional alteration time, the notional alteration time is taken not to have occurred.

Note: For ***relevant equity interests*** and ***relevant debt interests***, see sections 165-115X and 165-115Y.

165-115R When company is a loss company at first or only alteration time in income year

Application

(1) The question whether a company is a ***loss company*** at the first or only alteration time in a particular income year is to be worked out in this way.

Assumed income year

(2) Assume that the period that started at the beginning of the income year and ended at the alteration time is an income year and apply paragraphs (3)(a), (b), (c) and (d) on that assumption.

What is a loss company

(3) The company is a ***loss company*** at the alteration time if:

(a) at the beginning of the income year it had a *tax loss or tax losses for an earlier income year or earlier income years; or

(b) at the beginning of the income year it had a *net capital loss or net capital losses for an earlier income year or earlier income years; or

(c) it has a tax loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-B; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) it has a net capital loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-CB; or

(e) it has an adjusted unrealised loss at the alteration time.

Note: For ***adjusted unrealised loss***, see section 165-115U.

How losses are to be calculated

(4) In applying subsection (3):

(a) a *tax loss or *net capital loss that was taken into account in working out under this section whether the company was a *loss company at an alteration time in a previous income year is to be disregarded; and

(b) Subdivision 170-D is to be disregarded.

Overall loss

(5) The sum of:

(a) the amount or amounts of any *tax loss or tax losses referred to in paragraph (3)(a); and

(b) the amount or amounts of any *net capital loss or net capital losses referred to in paragraph (3)(b); and

(c) the amount of any tax loss referred to in paragraph (3)(c); and

(d) the amount of any net capital loss referred to in paragraph (3)(d); and

(e) the amount of any adjusted unrealised loss referred to in paragraph (3)(e);

is the *loss company's ***overall loss*** at the alteration time.

Note: The loss company's overall loss is relevant for the purposes of subsections 165-115ZB(3) and (6).

Certain losses to be disregarded

(6) A reference in a paragraph of subsection (3) and in the corresponding paragraph of subsection (5) to a particular loss is a

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

reference only to a loss to the extent to which it represents an outlay or loss of any of the economic resources of the company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(6A) Subsection (6) does not apply to paragraphs (3)(e) and (5)(e) if the company has chosen to use the *global method of working out whether it has an adjusted unrealised loss at the alteration time.

Amounts of losses may be reduced

(7) The amounts referred to in paragraphs (5)(a) to (d) may be reduced under section 165-115T.

165-115S When company is a loss company at second or later alteration time in income year

Application

(1) The question whether a company is a ***loss company*** at an alteration time (the ***current alteration time***) that is the second or a later alteration time in the same income year is to be worked out in this way.

Assumed income year

(2) Assume that the period that started immediately after the last alteration time and ended at the current alteration time is an income year and apply paragraphs (3)(a) and (b) on that assumption.

What is a loss company

(3) The company is a ***loss company*** at the current alteration time if:

(a) it has a *tax loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-B; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) it has a *net capital loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-CB; or

(c) it has an adjusted unrealised loss at the current alteration time.

Note: For ***adjusted unrealised loss***, see section 165-115U.

How losses are to be calculated

(4) In applying subsection (3), Subdivision 170-D is to be disregarded.

Overall loss

(5) The sum of:

(a) the amount of any *tax loss referred to in paragraph (3)(a); and

(b) the amount of any *net capital loss referred to in paragraph (3)(b); and

(c) the amount of any adjusted unrealised loss referred to in paragraph (3)(c);

is the *loss company's ***overall loss*** at the current alteration time.

Note: The loss company's overall loss is relevant for the purposes of subsections 165-115ZB(3) and (6).

Certain losses to be disregarded

(6) A reference in a paragraph of subsection (3) and in the corresponding paragraph of subsection (5) to a particular loss is a reference only to a loss to the extent to which it represents an outlay or loss of any of the economic resources of the company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(6A) Subsection (6) does not apply to paragraphs (3)(c) and (5)(c) if the company has chosen to use the *global method of working out

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

whether it has an adjusted unrealised loss at the current alteration time.

Amounts of losses may be reduced

(7) The amounts referred to in paragraphs (5)(a) and (b) may be reduced under section 165-115T.

165-115T Reduction of certain amounts included in company's overall loss at alteration time

(1) In working out under section 165-115R or 165-115S whether a company was a *loss company at an alteration time (the ***current alteration time***), if a loss (the ***realised loss***) referred to in paragraph 165-115R(3)(a), (b), (c) or (d) or 165-115S(3)(a) or (b) that the company had at the current alteration time reflected an amount of a notional revenue loss, a trading stock decrease or a notional capital loss included in an adjusted unrealised loss, that the company had at a previous alteration time, the realised loss is taken to be reduced by that amount.

Note 1: For ***notional revenue loss*** and ***notional capital loss*** see section 165-115V.

Note 2: For ***trading stock decrease*** see section 165-115W.

(2) Subsection (1) does not apply to an adjusted unrealised loss that the company had at a previous alteration time if the company has chosen to use the *global method of working out whether it has an adjusted unrealised loss at that previous time.

165-115U Adjusted unrealised loss

(1) The question whether a company has an ***adjusted unrealised loss*** at an alteration time (the ***relevant alteration time***) is worked out in this way (the ***individual asset method***), unless the company chooses to work it out using the *global method (set out in subsection (1B)).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Method statement

Step 1. Work out under section 165-115V or 165-115W in respect of each *CGT asset that the company owned at the relevant alteration time any notional capital loss, notional revenue loss or trading stock decrease that the company has at that time in respect of the asset.

To the extent that a notional capital loss or a notional revenue loss in respect of an asset at the relevant alteration time reflected an amount that was counted at an earlier alteration time, do not count it again at the relevant alteration time.

Step 2. Add up the notional capital losses and the notional revenue losses that the company had at the relevant alteration time. The total is the company's ***nominal unrealised loss*** at that time.

Step 3. Add up the trading stock decreases that the company had at the relevant alteration time. The total is the company's ***overall trading stock decrease*** at that time.

Step 4. The sum of the company's nominal unrealised loss and overall trading stock decrease at the relevant time is the company's ***adjusted unrealised loss*** at that time.

Note: Certain alteration times are disregarded (see subsections 165-115K(2) and (4)).

(1A) Step 1 in the method statement in subsection (1) does not apply to an amount that was counted at an earlier alteration time if the company has chosen to use the *global method of working out whether it has an adjusted unrealised loss at that earlier time.

(1B) The ***global method*** of working out whether the company has an ***adjusted unrealised loss*** at the relevant alteration time is as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Method statement

Step 1. Work out the total *market value of all *CGT assets that the company owned at the relevant alteration time (including those it *acquired for less than $10,000), using a valuation method that would generally be regarded as appropriate in the circumstances.

Step 2. Work out the total of the *cost bases of those *CGT assets at the relevant time.

Note: If a CGT asset that the company owned at the relevant time was also trading stock or a revenue asset at that time, see subsection (1C) of this section.

Step 3. If the step 2 amount exceeds the step 1 amount, the excess is the company's ***adjusted unrealised loss*** at the relevant time.

(1C) If:

(a) a *CGT asset that the company owned at the relevant alteration time was also *trading stock or a *revenue asset at that time; and

(b) the asset's *cost base at the relevant alteration time is *less than* the amount that, if the relevant alteration time were a changeover time, would be compared under section 165-115F with the asset's *market value in working out a notional revenue gain or notional revenue loss that the company would have at the changeover time in respect of the asset;

then, for the purposes of step 2 of the method statement in subsection (1B) of this section, the amount that would be so compared is to be taken into account *instead of* that cost base.

(1D) A choice to use the *global method must be made on or before:

(a) the day on which the company lodges its *income tax return for the income year in which the relevant alteration time occurred; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) such later day as the Commissioner allows.

(2) However, the company does not have an adjusted unrealised loss at the relevant alteration time if the company would, at that time, satisfy the maximum net asset value test under section 152-15.

165-115V Notional losses

(1) This section applies for the purpose of calculating whether a company has at an alteration time a notional capital loss or a notional revenue loss in respect of a *CGT asset that it owned at that time.

(2) However, a company does not have a notional capital loss or a notional revenue loss at an alteration time in respect of a CGT asset that it *acquired for less than $10,000.

(3) The calculation is to be made on the assumption that the company disposed of the asset at its *market value at the alteration time.

(4) If the company would make a *capital loss in respect of the disposal of the asset, the company has at the alteration time in respect of the asset a ***notional capital loss*** equal to the amount of the capital loss.

(5) If the company would be entitled to a deduction in respect of the disposal of the asset, the company has at the alteration time in respect of the asset a ***notional revenue loss*** equal to the amount of the deduction.

(6) A company may choose that this section is to apply to the company at the alteration time in respect of an asset to which subsection (7) applied at that time as if the reference in subsection (3) to the *market value of the asset were a reference to its *written down value.

(7) This subsection applies to an asset at the alteration time if:

(a) the asset is a *depreciating asset (not a building or structure) for whose decline in value the company has deducted or can deduct an amount; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the expenditure incurred by the company to *acquire the asset was less than $1,000,000 (the expenditure can include the giving of property: see section 103-5); and

(c) it would be reasonable for the company to conclude that the *market value of the asset at the alteration time was not less than 80% of its *written down value at that time.

165-115W Calculation of trading stock decrease

(1) The question whether there is a ***trading stock decrease*** in relation to a company at an alteration time for a *CGT asset of the company that was an item of *trading stock at that time is worked out in this way.

Method statement

Step 1. Work out whether the item's *market value immediately before the alteration time was less than:

(a) if there was no earlier alteration time in the income year in which that alteration time occurred—the item's value under subsection 70-40(1) at the start of that income year or its cost if subsection 70-40(2) applies; or

(b) if there was an earlier alteration time or there were earlier alteration times in that income year—the item's market value immediately before that earlier alteration time or the later or latest of those earlier alteration times, as the case may be, or its cost if the company did not own it at that time.

Step 2. If the item's *market value immediately before the alteration time was less than:

(a) the item's value or cost referred to in paragraph (a) in step 1; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) its market value or cost (as applicable) in paragraph (b) in step 1;

as the case requires, the difference is the ***trading stock decrease*** for the item.

To the extent (if any) to which the difference reflects an amount counted at an earlier alteration time, do not count that amount again.

Note: Certain alteration times are disregarded (see subsections 165-115K(2) and (4)).

(1A) Step 2 in the method statement in subsection (1) does not apply to an amount counted at an earlier alteration time if the company has chosen to use the *global method of working out whether it has an adjusted unrealised loss at that earlier time.

(2) However, a company does not have a trading stock decrease at an alteration time in respect of an item of *trading stock that it *acquired for less than $10,000.

165-115X Relevant equity interest

(1) An entity (not an individual) has a ***relevant equity interest*** in a *loss company at a particular time if:

(a) at that time the entity has a controlling stake in the loss company (see section 165-115Z); and

(b) at that time the entity has an interest (an ***equity***) that gives, or interests (each of which is also called an ***equity***) that between them give, the entity:

(i) the control of, or the ability to control, 10% or more of the voting power in the loss company (either directly, or indirectly through one or more interposed entities); or

(ii) the right to receive (either directly, or indirectly through one or more interposed entities) 10% or more of any dividends that the loss company may pay; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(iii) the right to receive (either directly, or indirectly through one or more interposed entities) 10% or more of any distribution of capital of the loss company; and

(c) the equity or each equity is either:

(i) an interest (including a *share or shares, or an option or right to acquire a share or shares) in the loss company; or

(ii) an interest (including an option or right to acquire an interest) held by the entity directly in another entity that has a relevant equity interest or relevant debt interest in the loss company.

Note: For paragraph (b), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) The equity or equities constitute the entity's relevant equity interest in the *loss company.

(2A) A *widely held company that, apart from this subsection, would have a relevant equity interest in a *loss company at a particular time does not have such an interest at that time.

(2B) Subsection (2A) does not apply if:

(a) an entity has a controlling stake in the loss company (see section 165-115Z); and

(b) that entity has a direct or indirect interest in, or is owed a debt by, the *widely held company, being an interest or debt in respect of which:

(i) the entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(ii) the entity has deducted or can deduct, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

reflected, or would reflect, as the case may be, any part of the company's overall loss.

(2C) Subsection (2A) does not apply in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the *widely held company at an earlier time, and had a controlling stake in the loss company (see section 165-115Z) at the earlier time:

(a) made a capital loss (other than a capital loss that was disregarded) because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the *loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(3) An entity (the ***first entity***) that, apart from this subsection, would have a relevant equity interest in a *loss company at a particular time does not have such an interest if, at that time, there is no other entity that has a direct or indirect interest in, or is owed a debt by, the first entity, being an interest or debt in respect of which:

(a) the other entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(b) the other entity has deducted or can deduct, or could deduct at a later time:

(i) an amount in respect of the cost of the *acquisition of the interest or debt; or

(ii) a net loss on the *disposal of the interest or debt;

where the deduction reflected, or would reflect, any part of the loss company's overall loss.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3A) Subsection (3) does not apply if the first entity is a *widely held company.

(4) Subsection (3) does not apply to the first entity in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the first entity at an earlier time:

(a) made a capital loss (other than a capital loss that was disregarded) because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the *loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(5) An individual is not taken to have a ***relevant equity interest*** in a *loss company at any time.

(6) A partnership that consists only of individuals is not taken to have a ***relevant equity interest*** in a *loss company at any time.

(7) If section 106-30, 106-50 or 106-60 would treat an act referred to in that section that is done in relation to an interest as having been done by an individual, the interest is not a relevant equity interest.

165-115Y Relevant debt interest

(1) An entity (not an individual) has a ***relevant debt interest*** in a *loss company at a particular time if, at that time:

(a) the entity has a controlling stake in the loss company (see section 165-115Z); and

(b) the entity is owed by the loss company a debt of not less than $10,000 (a ***debt***) or debts at least one of which is not less than $10,000 (each debt of not less than $10,000 is also called a ***debt***).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) An entity (not an individual) also has a ***relevant debt interest*** in a *loss company at a particular time if, at that time:

(a) the entity has a controlling stake in the loss company; and

(b) the entity is owed by an entity (the ***debtor entity***) other than the loss company a debt of not less than $10,000 (also a ***debt***) or debts at least one of which is not less than $10,000 (each debt of not less than $10,000 is also called a ***debt***); and

(c) the debtor entity has a relevant equity interest or a relevant debt interest in the loss company.

(3) The total of the debts referred to in subsections (1) and (2) constitutes the entity's relevant debt interest in the *loss company.

(3A) A *widely held company that, apart from this subsection, would have a relevant debt interest in a *loss company at a particular time does not have such an interest at that time.

(3B) Subsection (3A) does not apply if:

(a) an entity has a controlling stake in the loss company (see section 165-115Z); and

(b) that entity has a direct or indirect interest in, or is owed a debt by, the *widely held company, being an interest or debt in respect of which:

(i) the entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(ii) the entity has deducted or can deduct, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(3C) Subsection (3A) does not apply in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the *widely held company at an earlier time, and had a

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

controlling stake in the *loss company (see section 165-115Z) at the earlier time:

(a) made a *capital loss (other than a capital loss that was disregarded) because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(4) An entity (the ***first entity***) that, apart from this subsection, would have a relevant debt interest in a *loss company at a particular time does not have such an interest if, at that time, there is no other entity that has a direct or indirect interest in, or is owed a debt by, the first entity, being an interest or debt in respect of which:

(a) the other entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(b) the other entity could deduct, or can deduct or could deduct at a later time:

(i) an amount in respect of the cost of the *acquisition of the interest or debt; or

(ii) a net loss on the *disposal of the interest or debt;

where the deduction reflects, or would have reflected, any part of the loss company's overall loss.

(4A) Subsection (4) does not apply if the first entity is a *widely held company.

(5) Subsection (4) does not apply to the first entity in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the first entity at an earlier time:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) made a capital loss (other than a capital loss that would be disregarded) at an earlier time because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the *loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(6) An individual is not taken to have a ***relevant debt interest*** in a *loss company at any time.

(7) A partnership that consists only of individuals is not taken to have a ***relevant debt interest*** in a *loss company at any time.

(8) If section 106-30, 106-50 or 106-60 would treat an act referred to in that section that is done in relation to a debt as having been done by an individual, the debt is not a relevant debt interest.

165-115Z What constitutes a controlling stake in a company

(1) An entity has a ***controlling stake in a company*** at a particular time if the entity, or the entity and the entity's *associates between them:

(a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or

(b) have at that time the right to receive (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or

(c) have at that time the right to receive (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: The effect of subsection (1) is that, if an entity has a controlling stake in a company, each associate of the entity also has a controlling stake in the company.

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) If:

(a) apart from this subsection, an interest that gives an entity and its *associates (if any):

(i) the ability to exercise, or control the exercise of, any of the voting power in a company; or

(ii) the right to receive dividends that a company may pay; or

(iii) the right to receive a distribution of capital of a company;

would, in the application of paragraph (1)(a), (b) or (c), be counted more than once; and

(b) the interest is both direct and indirect;

only the direct interest is to be counted.

165-115ZA Reductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time

Application of section

(1) This section applies to an entity (an ***affected entity***) that has a relevant equity interest or a relevant debt interest, or both, in a *loss company immediately before a time (a ***relevant time***) that is an alteration time in respect of the loss company.

Note: This section and section 165-115ZB can apply differently for a company that has used the global method of working out whether it has an adjusted unrealised loss at an alteration time. See section 165-115ZD.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Application of section nullified in certain circumstances

(2) However, if:

(a) this section has applied to an entity in respect of a debt owed to the entity; and

(b) Subdivisions 245-C to 245-G (which relate to the forgiveness of commercial debts) also applied in respect of the debt at the same time or at a later time;

any reductions or other consequences affecting the entity in respect of the debt under this section are taken not to have occurred or to have been required to occur.

Note: An amendment of an assessment can be made at any time to give effect to this subsection (see subsection 170(10AA) of the *Income Tax Assessment Act 1936*).

Reduction of reduced cost base

(3) The *reduced cost base of an equity or debt that was *acquired on or after 20 September 1985 is to be reduced immediately before the relevant time by the adjustment amount calculated under section 165-115ZB.

Reduction of deduction—equity or debt is not trading stock

(4) If an equity or debt is not an item of *trading stock of the affected entity immediately before the relevant time, any amount that the entity can deduct in respect of the disposal of any of the equity or debt is to be reduced by the adjustment amount calculated under section 165-115ZB.

Reduction of cost—equity or debt is trading stock

(5) If:

(a) an equity or debt is an item of *trading stock of the affected entity immediately before the relevant time; and

(b) the *cost for the purposes of Division 70 of the equity or debt exceeds its *market value immediately before the relevant time;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

then, subject to any later application or applications of this Subdivision, the cost of the equity or debt for the purposes of Division 70, and any deduction for an outlay to *acquire it, are reduced by the lesser of the following amounts or, if they are equal, by one of them:

(c) the adjustment amount calculated under section 165-115ZB;

(d) the amount of the excess referred to in paragraph (b).

Subsection (4) to apply only in respect of certain income years

(6) For the purpose of working out:

(a) deductions under section 8-1; or

(b) whether an amount is included in assessable income under subsection 70-35(2); or

(c) whether an amount can be deducted under subsection 70-35(3);

subsection (5) applies only in respect of income years ending after the later of the following:

(d) the commencement time;

(e) the time 12 months before the relevant time.

Further election to value trading stock

(7) If an election has been made under section 70-45 to value an item of *trading stock on hand at the end of an income year otherwise than at its *cost and subsection (5) applies in respect of it, a further election may be made under that section to value the item of trading stock at cost.

Previous applications of this section in relation to trading stock to be taken into account

(8) In applying this section to the affected entity in respect of an equity or debt that is *trading stock of the entity, any previous applications of this section to the entity in respect of the equity or debt are to be taken into account.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Cost of equity or debt that becomes trading stock after relevant time

(9) If:

(a) an equity or debt becomes an item of *trading stock of the affected entity after the relevant time; and

(b) had the equity or debt been an item of trading stock of the affected entity at an earlier time that was, or at 2 or more earlier times each of which was, the relevant time for the purposes of a previous application or previous applications of this section, its *cost for the purposes of Division 70 would have exceeded its *market value at the earlier time or at one of the earlier times;

its cost for the purposes of Division 70 is taken to be its market value at the earlier time or the smallest of its market values at the earlier times.

Reduction of proceeds of disposal of trading stock

(10) If:

(a) an equity or debt was an item of *trading stock of the affected entity immediately before a relevant time or became such an item of trading stock after a relevant time; and

(b) the equity or debt is *disposed of by the entity after the relevant time concerned; and

(c) the equity or debt is an item of trading stock of the affected entity at the time of the disposal; and

(d) the proceeds of the disposal exceed the *market value of the equity or debt immediately before the relevant time concerned or the market value of the equity or debt immediately before any previous relevant time;

the proceeds of the disposal are taken to be reduced by so much of the amount or the total of the amounts of any reductions made by any previous application or applications of subsection (5) in relation to the affected entity in respect of the equity or debt as does not exceed the excess amount or the greater or greatest of the excess amounts referred to in paragraph (d).

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-115ZB Adjustment amounts for the purposes of section 165-115ZA

(1A) This section has effect for the purposes of:

(a) section 165-115ZA; and

(b) sections 715-255 and 715-270 (about effect of alteration time for head company on membership interests of leaving entity just before leaving time).

Calculation of adjustment amount

(1) An adjustment amount in relation to an equity or debt is to be worked out by the affected entity, and applied by it in making reductions:

(a) if subsection (2) applies—in accordance with subsection (3); or

(b) otherwise—in accordance with subsection (6).

Selection of method of calculation

(2) This subsection applies if:

(a) the affected entity has a relevant equity interest, but does not have a relevant debt interest, in the *loss company immediately before the alteration time and:

(i) all the *shares in the loss company are of the same class and have the same *market value; and

(ii) the equity consists only of a share or shares in the loss company; or

(b) the affected entity has both a relevant equity interest, and a relevant debt interest under subsection 165-115Y(1), in the loss company immediately before the alteration time and:

(i) all the shares in the loss company are of the same class and have the same market value; and

(ii) the equity consists only of a share or shares in the loss company; and

(iii) the debt consists of a single debt or 2 or more debts of the same kind;

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

and the reductions that would result from the application of subsection (3) would be reasonable in the circumstances.

Formula method

(3) The ***adjustment amount*** to be worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{The number of shares in the loss company constituted by the equity immediately before the alteration time}}{\text{The total number of shares in the loss company immediately before the alteration time}} \times \text{The amount of the loss company's overall loss at the alteration time}$$

and the amount so worked out is to be applied in making reductions as follows:

(a) the adjustment amount is to be applied in relation to the *share or shares constituting the equity; and

(b) if there is an amount remaining after making reductions in relation to those shares—the amount remaining is to be applied in relation to any debt or, if there is a debt consisting of 2 or more separate debts, in relation to those debts.

Applying adjustment amount under formula method to shares

(4) If the adjustment amount referred to in subsection (3) is to be applied in relation to an equity consisting of 2 or more *shares:

(a) it is to be applied equally among the shares; and

(b) if there is any amount remaining after the application of part of the adjustment amount to a share, the amount remaining is to be applied to any other share, or equally among any other shares, to the maximum extent possible.

Applying adjustment amount under formula method to debt

(5) If the adjustment amount referred to in subsection (3) or part of it is to be applied in relation to a debt (the ***overall debt***) and the overall debt consists of 2 or more debts (the ***constituent debts***), the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

amount to be applied in relation to each constituent debt is the amount worked out using the formula:

$$\text{The adjustment amount or part of the adjustment amount} \times \frac{\text{The amount of the constituent debt}}{\text{The amount of the overall debt}}$$

Non-formula method

(6) The ***adjustment amount*** to be worked out under this subsection is the amount that is appropriate having regard to:

(a) the object of this Subdivision and other matters set out in section 165-115J; and

(b) the extent of the affected entity's relevant equity interests or relevant debt interests, as the case may be, in the *loss company immediately before the alteration time; and

(c) when, and under what circumstances, the relevant equity interests or relevant debt interests were *acquired by the affected entity; and

(d) the loss company's overall loss at the alteration time; and

(e) the extent to which that overall loss has reduced the *market values of the equity or debt; and

(f) to prevent double counting, the extent of any adjustments required under this Subdivision because of any application of this Subdivision to another loss company in which the affected entity has a relevant equity interest or relevant debt interest;

and the amount so worked out is to be applied in making reductions in an appropriate way.

How to work out the extent to which the overall loss has reduced the market value of an equity or debt

(7) To avoid doubt in applying paragraph (6)(e) in relation to an equity or a debt, if factors other than an overall loss altered the *market value of the equity or debt, the extent to which the overall loss reduced that market value is taken to be the extent to which that

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

market value would have been reduced apart from those other factors.

Note 1: For a company's ***overall loss*** see subsections 165-115R(5) and 165-115S(5).

Note 2: An example of a factor other than the overall loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

165-115ZC Notices to be given

Application

(1) This section applies when an alteration time occurs in respect of a *loss company.

Note: Section 165-115ZC of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this section.

Controlling entity

(2) For the purposes of this section, an entity is a ***controlling entity*** of a *loss company if:

(a) the entity is not an individual; and

(b) the entity, disregarding any of its *associates, has a controlling stake in the loss company; and

(c) no other entity (except an individual or 2 or more individuals between them) has a controlling stake in the entity.

Foreign resident controlling entity to be disregarded in certain circumstances

(3) If:

(a) apart from this subsection, an entity that is a foreign resident would be a controlling entity of a *loss company; and

(b) there is an entity that is an Australian resident and would be a controlling entity of the loss company if all the foreign

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

residents that held direct or indirect interests in the Australian resident were individuals;

then, for the purposes of this section, the entity referred to in paragraph (a) is taken not to be a controlling entity of the company but the Australian resident is taken to be a controlling entity of the company.

Notice by controlling entity of loss company

(4) An entity that was a controlling entity of the *loss company immediately before the alteration time must, before the end of 6 months after the latest of the following:

(a) the alteration time;

(b) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

(c) the time (if any) specified by the Commissioner;

give a written notice, setting out the information mentioned in subsection (6), to each of its *associates that, to the loss company's knowledge, had a relevant equity interest or relevant debt interest in the loss company immediately before the alteration time.

Penalty: 30 penalty units.

Notice by loss company

(5) If:

(a) there was no controlling entity of the *loss company immediately before the alteration time; or

(b) no entity that was a controlling entity of the loss company immediately before the alteration time told the loss company in writing, within 2 months after the later of the following:

(i) the alteration time;

(ii) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

that it had given, or proposed to give, notices to its associates under subsection (4);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

the loss company must, before the end of 6 months after the latest of the following:

(c) the alteration time;

(d) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

(e) the time (if any) specified by the Commissioner;

give a written notice, setting out the information mentioned in subsection (6), to each entity that, to the loss company's knowledge, had a relevant equity interest or relevant debt interest in the company immediately before the alteration time.

Penalty: 30 penalty units.

Offences are strict liability

(5A) An offence under subsection (4) or (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Information to be included in notice

(6) The information to be contained in a notice given under subsection (4) or (5) must include:

(a) the time that is the alteration time; and

(b) the amount of the *loss company's overall loss at that time; and

(c) for each income year for which the loss company had at that time a *tax loss or *net capital loss referred to in subsection 165-115R(3) or 165-115S(3)—the type and amount of the loss; and

(d) the amount of any adjusted unrealised loss that the loss company had at that time; and

(e) particulars (for the purpose of assisting the entity to whom the notice is given (the ***recipient***) to comply with the requirements of this Subdivision) of the amounts, proportions, and times of *acquisition, of all relevant equity interests and relevant debt interests in the loss company held

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

by entities through which the recipient had relevant equity interests or relevant debt interests in the loss company.

Entity or loss company not required to give information about matters that are not known to it

(7) An entity or *loss company is not required by this section to set out information in a notice unless:

(a) the information is known to the entity or company; or

(b) the entity or company could reasonably be expected to know the information and can readily obtain it.

Commissioner's power to specify a later time for giving notice

(7A) The Commissioner may, by written notice given to an entity, or *loss company, that is required to give a notice under subsection (4) or (5), specify a time later than the alteration time as the start of the 6 months mentioned in the subsection.

Commissioner's power to waive requirement for notice

(7B) The Commissioner may give an entity or *loss company a written declaration that subsection (4) or (5) does not apply to require the entity or company to give a notice relating to the alteration time. If the Commissioner does so, the subsection does not apply in relation to the alteration time.

Considerations relating to Commissioner's powers

(7C) In deciding whether to specify a time for the purposes of subsection (4) or (5) or declare that the subsection does not apply, the Commissioner must consider:

(a) the consequences of doing so for each entity to which notice must be given under the subsection (apart from any such declaration); and

(b) any other matters that the Commissioner considers relevant.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Obligations of person not affected by failure to give notice

(8) Any failure by an entity or the *loss company to give a notice to a person under this section does not affect any obligation of the person to comply with the requirements of this Subdivision.

165-115ZD Adjustment (or further adjustment) for interest realised at a loss after global method has been used

(1) This section affects how sections 165-115ZA and 165-115ZB apply to an interest (the ***equity***) in, or a debt owed by, a company if, apart from this section, a loss (the ***realised loss***):

(a) would be *realised for income tax purposes by a *realisation event that happens to the equity or debt; or

(b) would be so realised but for Subdivision 170-D (which defers realisation of capital losses and deductions);

and the company chose to use the *global method of working out whether it had an adjusted unrealised loss at the last alteration time:

(c) that happened for the company before the realisation event; and

(d) immediately before which the equity or debt was, or was part of:

(i) if the company was a *loss company at that alteration time—a relevant equity interest, or a relevant debt interest, that an entity had in the company; or

(ii) otherwise—what would have been such an interest if the company had been a loss company at that alteration time.

Note: If that last alteration time is before the day on which the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* received the Royal Assent, the owner of the equity or debt may choose to apply section 165-115ZD of the *Income Tax (Transitional Provisions) Act 1997* instead of this section.

(2) In addition to any application to the equity or debt, in relation to that last alteration time, that sections 165-115ZA and 165-115ZB have apart from this section, those sections apply (and are taken

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

always to have applied) to the equity or debt, in relation to that last alteration time, as if:

(a) the company had an adjusted unrealised loss at that time worked out under this section; and

(b) the company were therefore a *loss company at that time; and

(c) that adjusted unrealised loss were the company's overall loss at that time.

(3) For the purposes of how sections 165-115ZA and 165-115ZB apply because of this section, the adjustment amount under section 165-115ZB is to be worked out and applied in accordance with subsection 165-115ZB(6) (the non-formula method).

Adjusted unrealised loss worked out under this section

(4) The adjusted unrealised loss referred to in paragraph (2)(a) is worked out using this method statement:

Method statement

Step 1. Add up the amount or value of each thing covered by subsection (5). (If the total exceeds the realised loss, reduce the total by the excess.)

Step 2. Reduce the step 1 amount by so much of the realised loss as it is reasonable to conclude is attributable to *none* of these:

(a) a notional capital loss, or a notional revenue loss, that the company has at that last alteration time in respect of a *CGT asset;

(b) a trading stock decrease in relation to that time for a CGT asset that was *trading stock of the company at that time.

Note: If the equity or debt is a revenue asset, the realised loss is different from the loss referred to in subsection (1): see subsection (9).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(5) This subsection covers each thing covered by an item in the table, except to the extent that:

(a) it is reasonable to conclude that the thing was *not* attributable to value that is reflected in what would, if that last alteration time had been a *changeover time for the company, be a notional capital gain or notional revenue gain that the company had under section 165-115F at that changeover time in respect of a *CGT asset; or

(b) the thing has resulted in a reduction of the *reduced cost base of the equity or debt.

Things that might expose an unrealised loss netted off by use of global method

Item	Thing covered
1	A *dividend that the company pays during the period referred to in subsection (6)
2	A thing that is taken under this Act to be a dividend and that the company pays during the period referred to in subsection (6)
3	A distribution of income or capital to a *member that the company makes during the period referred to in subsection (6) and is not covered by item 1 or 2
4	An amount of income tax to which the company becomes liable at any time, to the extent that it is reasonably attributable to a realisation event that happens, during the period referred to in subsection (6), to a *CGT asset (in its character as a CGT asset, *trading stock or a *revenue asset) that the company owned at that last alteration time and *acquired for not less than $10,000
5	A loss or outgoing to which the company becomes liable at any time, to the extent that it is reasonably attributable to a realisation event of the kind referred to in item 4

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Things that might expose an unrealised loss netted off by use of global method	
Item	**Thing covered**
6	The difference between: (a) the *capital proceeds (as worked out under subsection (7)) of a *CGT event: (i) that happens, during the period referred to in subsection (6), to a *CGT asset that the company owned at that last alteration time and *acquired for not less than $10,000; and (ii) as a result of which the asset is *acquired by an entity that is an *associate of the company at the time of the CGT event; and (b) the *market value of the asset at the time of the CGT event; but only if those capital proceeds are *less than* that market value

(6) The period starts at that last alteration time and ends at the earlier of:

(a) the time of the *realisation event referred to in paragraph (1)(a); or

(b) the time immediately before the earliest time when the equity or debt is no longer, or is no longer part of:

(i) if the company was a *loss company at that last alteration time—a relevant equity interest, or a relevant debt interest, that an entity has in the company; or

(ii) otherwise—what would have been such an interest if the company had been a loss company at that last alteration time.

(7) For the purposes of item 6 of the table in subsection (5), the *capital proceeds of the *CGT event are to be worked out:

(a) under subsection 116-20(1) only; and

(b) disregarding subsection 103-10(1) and paragraph 103-10(2)(a) (about entitlement to receive money or property).

Notices under section 165-115ZC not affected

(8) To avoid doubt:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) a notice need not be given under section 165-115ZC because of this section; and

(b) this section does not affect the requirements that apply to a notice that otherwise must be given under that section.

If equity or debt is a revenue asset

(9) If the equity or debt is a *revenue asset at the time of the *realisation event, subsection (4) applies on the basis that the realised loss is the total of:

(a) the loss (if any) *realised for income tax purposes by the realisation event happening to the equity or debt in its character as a *CGT asset; and

(b) the loss (if any) realised for income tax purposes by the realisation event happening to the equity or debt in its character as a revenue asset.

Subdivision 165-C—Deducting bad debts

Guide to Subdivision 165-C

165-117 What this Subdivision is about

A company cannot deduct a bad debt unless:

(a) if the debt was incurred in an earlier income year—the company had the same owners and the same control throughout the period from the day on which the debt was incurred to the end of the income year in which it writes off the debt as bad; or

(b) if the debt was incurred in the current year—the company had the same owners and the same control during the income year both before and after the debt was incurred;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

or, if there has been a change of ownership or control, the company satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business.

Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-40.

Table of sections

Operative provisions

165-119 Application of Subdivision
165-120 To deduct a bad debt
165-123 Company must maintain the same owners
165-126 Alternatively, the company must satisfy the same business test
165-129 Same people must control the voting power, or the company must satisfy the same business test
165-132 When tax losses resulting from bad debts cannot be deducted

Operative provisions

165-119 Application of Subdivision

This Subdivision applies to a debt only to the extent (if any) to which Subdivision 165-CC does not apply in respect of the debt.

Note: Subdivision 165-CC applies to certain capital losses or tax losses of a company to the extent to which the capital loss or tax loss does not exceed the company's unrealised net loss.

165-120 To deduct a bad debt

(1) A company cannot deduct a debt (or part of a debt) that it writes off as bad in the *current year unless:

(a) it meets the conditions in section 165-123 (which is about the company maintaining the same owners); or

Note: See section 165-230 for a special alternative to the condition in this paragraph.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the Commissioner thinks it would be unreasonable to require the company to meet the conditions in that section, having regard to the entities that beneficially owned the shares in the company when (in the Commissioner's opinion) the debt (or part) became bad; or

(c) the company meets the condition in section 165-126 (which is about the company satisfying the same business test).

Note 1: In the case of a widely held or eligible Division 166 company, Subdivision 166-C modifies how this Subdivision applies, unless the company chooses otherwise.

Note 2: Normally bad debts are deductible under section 8-1 or 25-35.

Note 3: Subdivisions 709-D and 719-I modify how this Subdivision operates in relation to a company that used to be a member of a consolidated group or MEC group and that writes off as bad a debt that used to be owed to a member of the group.

(2) The conditions in section 165-123 or 165-126 apply to different periods, depending on whether the debt was incurred in the *current year or an earlier income year:

Meaning of *first continuity period* and *second continuity period*

In this case:	**the *first continuity period*:**	**and the *second continuity period*:**
the debt was incurred in an earlier income year	• starts on the day when the debt was incurred; and • ends at the end of that income year	is the *current year
the debt was incurred in the *current year (but not on the last day of it)	• starts on the first day of the *current year; and • ends on the day when the debt was incurred	• starts on the day after the debt was incurred; and • ends on the last day of the *current year

(3) A company cannot deduct a debt (or part of a debt) that it writes off as bad on the last day of the *current year if the debt was also incurred on that day.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-123 Company must maintain the same owners

Ownership test period

(1) In determining whether section 165-120 prevents a company from deducting a debt or a part of a debt, the ***ownership test period*** is the period from the start of the *first continuity period to the end of the *second continuity period.

Note: See section 165-255 for the rule about incomplete test periods.

Voting power

(2) There must be persons who had *more than 50% of the voting power in the company at all times during the *ownership test period.

Note 1: See section 165-150 to work out who had more than 50% of the voting power.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

Rights to dividends

(3) There must be persons who had rights to *more than 50% of the company's dividends at all times during the *ownership test period.

Note 1: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 2: Subdivision 167-A has special rules for working out rights to dividends in a company whose shares do not all carry the same rights to dividends.

Rights to capital distributions

(4) There must be persons who had rights to *more than 50% of the company's capital distributions at all times during the *ownership test period.

Note 1: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 2: Subdivision 167-A has special rules for working out rights to capital distributions in a company whose shares do not all carry the same rights to capital distributions.

When to apply the primary test

(5) To work out whether a condition in this section was satisfied at all times during the *ownership test period, apply the primary test for that condition unless subsection (6) requires the alternative test to be applied.

Note: For the primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

When to apply the alternative test

(6) Apply the alternative test for that condition if one or more other companies beneficially owned *shares or interests in shares in the company at any time during the *ownership test period.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

Conditions in subsections (2), (3) and (4) may be treated as having been satisfied in certain circumstances

(7) If any of the conditions in subsections (2), (3) and (4) have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the debt or of the part of a debt has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any *CGT event in relation to any *direct equity interests or *indirect equity interests in the company during the *ownership test period.

(7A) If the company is:

(a) a *non-profit company; or

(b) a *mutual affiliate company; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) a *mutual insurance company;

during the whole of the *ownership test period, the conditions in subsections (3) and (4) are taken to have been satisfied by the company.

Time of happening of CGT event

(8) The happening of any *CGT event in relation to a *direct equity interest or *indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (2), (3) or (4) is taken, for the purposes of paragraph (7)(b), to have occurred during the *ownership test period.

165-126 Alternatively, the company must satisfy the same business test

(1) This section sets out the condition that a company must meet to be able to deduct a debt or part of a debt that it writes off as bad in the *current year if:

(a) either:

(i) the company fails to meet a condition in subsection 165-123(2), (3) or (4); or

(ii) it is not practicable to show that the company meets the conditions in those subsections; and

(b) paragraph 165-120(1)(b) (about the Commissioner thinking it is unreasonable to require the company to meet the conditions in section 165-123) does not apply.

Note Other provisions may treat the company as meeting, or failing to meet, the conditions in subsections 165-123(2), (3) and (4).

(2) The company must satisfy the *same business test for the *second continuity period (the ***same business test period***). Apply the test to the *business the company carried on immediately before the time (the ***test time***) shown in the relevant item of the table.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Test time

Item	If:	The test time is:
1	It is practicable to show there is a period that meets these conditions: (a) the period starts at the start of the *first continuity period; (b) the company would meet the conditions in subsections 165-123(2), (3) and (4) if the period were the *ownership test period for the purposes of this Act	The latest time that it is practicable to show is in the period
2	Item 1 does not apply and either: (a) the debt was incurred before the *current year; or (b) the company came into being during the current year	The end of the day on which the debt was incurred
3	All these conditions are met: (a) item 1 does not apply; (b) the debt was incurred in the *current year; (c) the company was in being throughout the current year	The start of the current year

For the same business test: see Subdivision 165-E.

165-129 Same people must control the voting power, or the company must satisfy the same business test

(1) Even if section 165-120 does not prevent a company from deducting a bad debt (or part of one), it cannot deduct the bad debt (or that part of it) if:

(a) for some or all of the part of the *ownership test period that started at the end of the *first continuity period, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and

(b) for some or all of the *first continuity period, that person did *not* control, and was not *able* to control, that voting power (directly, or indirectly in that way); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) that person began to control, or became able to control, that voting power (directly, or indirectly in that way) for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

Note 1: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

(2) However, that person's control of the voting power, or ability to control it, does not prevent the company from deducting the bad debt (or that part of it) if the company satisfies the *same business test for the *second continuity period (the ***same business test period***).

(3) Apply the *same business test to the *business that the company carried on immediately before the time (the ***test time***) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

165-132 When tax losses resulting from bad debts cannot be deducted

(1) If:

(a) a company can deduct a debt (or part of a debt) that it wrote off as bad in an income year; and

(b) because the company failed to meet a condition in section 165-123 (about the company maintaining the same owners), it could not have deducted the debt (or part) apart from section 165-126 (about the company satisfying the same business test); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the company wrote off the debt *after* the *test time worked out under section 165-126; and

(d) because of the deduction, the company has a *tax loss for that income year, or there was an increase in the amount of its *tax loss for that income year; and

(e) the company carried on a *business during that income year for the purpose, or for purposes including the purpose, of securing a deduction for the debt (or part) by relying on section 165-126;

the company cannot deduct the *tax loss for a later income year, or cannot deduct it to the extent of the increase, unless it also satisfies the *same business test for the later income year (the ***same business test period***).

(2) Apply the test to the *business that the company carried on immediately before the *test time worked out for section 165-126.

For the same business test: see Subdivision 165-E.

Subdivision 165-D—Tests for finding out whether the company has maintained the same owners

Table of sections

The primary and alternative tests

165-150 Who has more than 50% of the voting power in the company
165-155 Who has rights to more than 50% of the company's dividends
165-160 Who has rights to more than 50% of the company's capital distributions
165-165 Rules about tests for a condition or occurrence of a circumstance
165-175 Tests can be satisfied by a single person

Rules affecting the operation of the tests

165-180 Arrangements affecting beneficial ownership of shares
165-185 Shares treated as not having carried rights
165-190 Shares treated as always having carried rights
165-200 Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units
165-202 Shares held by government entities and charities etc.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-203 Companies where no shares have been issued
165-205 Death of share owner
165-207 Trustees of family trusts
165-208 Companies in liquidation etc.
165-209 Dual listed companies

The primary and alternative tests

165-150 Who has more than 50% of the voting power in the company

The primary test

(1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) *shares that carry (between them) the right to exercise more than 50% of the voting power in the company, those persons have ***more than 50% of the voting power*** in the company at that time.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies or *trustees) who (between them) at a particular time control, or are able to control (whether directly, or indirectly through one or more interposed entities) the voting power in the company, those persons have ***more than 50% of the voting power*** in the company at that time.

165-155 Who has rights to more than 50% of the company's dividends

The primary test

(1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) *shares that carry (between them) the right to receive more than 50% of any *dividends that the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

company may pay, those persons have rights to ***more than 50% of the company's dividends*** at that time.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have the right to receive for their own benefit (whether directly or *indirectly) more than 50% of any *dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** at that time.

165-160 Who has rights to more than 50% of the company's capital distributions

The primary test

(1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) *shares that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** at that time.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have the right to receive for their own benefit (whether directly or *indirectly) more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-165 Rules about tests for a condition or occurrence of a circumstance

Exactly the same shares or interests must continue to be held

(1) For the purpose of determining whether a company has satisfied a condition or whether a time is a changeover time or an alteration time in respect of a company:

(a) a condition that has to be satisfied is not satisfied; or

(b) a time that, apart from this subsection, would not be a changeover time or alteration time is taken to be a changeover time or alteration time, as the case may be;

unless, at all relevant times:

(c) the only *shares in the company that are taken into account are exactly the same shares and are held by the same persons; and

(d) the only interests in any other entity (including shares in another company) that are taken into account are exactly the same interests and are beneficially owned by the same persons.

What happens in case of share splitting

(2) If:

(a) a particular *share (an ***old share***) in a company of which a person is the beneficial owner at the start of a *test period is divided into 2 or more new shares; and

(b) the person becomes the beneficial owner of each of the new shares immediately after the division takes place and remains the beneficial owner until the end of that period;

the new shares are taken to be exactly the same shares as the old share.

What happens in case of splitting of units in a unit trust

(3) If:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) a particular unit (the ***old unit***) in a unit trust of which a person is the holder at the start of a *test period is divided into 2 or more new units; and

(b) the person becomes the holder of each of the new units immediately after the division takes place and remains the holder until the end of that period;

the new units are taken to be exactly the same units as the old unit.

What happens in case of consolidation of shares

(4) If:

(a) a particular *share (an ***old share***) in a company of which a person is the beneficial owner at the start of a *test period, and other shares (each of which also called an ***old share***) in the company of which the person is the beneficial owner at the start of that period, are consolidated into a new share; and

(b) the person becomes the beneficial owner of the new share immediately after the consolidation takes place;

the new share is taken to be exactly the same share as the old shares.

What happens in case of consolidation of units in a unit trust

(5) If:

(a) a particular unit (an ***old unit***) in a unit trust of which a person is the holder at the start of a *test period and other units (each of which also called an ***old unit***) in the trust of which the person is the holder at the start of that period are consolidated into a new unit; and

(b) the person becomes the holder of the new unit immediately after the consolidation takes place;

the new unit is taken to be exactly the same unit as the old units.

Test period

(6) A ***test period*** is:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) for the purpose of determining whether a condition in section 165-12 has been satisfied—the *ownership test period; or

(b) for the purpose of determining whether a test time is a changeover time for the purposes of section 165-115C—the period between the reference time referred to in subsection 165-115A(2A) and the test time; or

(c) for the purpose of determining whether a test time is an alteration time for the purposes of section 165-115L—the period between the reference time referred to in subsection 165-115L(2) and the test time.

Satisfaction by primary test by public company

(7) A *public company is taken to satisfy the primary test if it is reasonable to assume that the test is satisfied.

165-175 Tests can be satisfied by a single person

To avoid doubt, a test for a condition can be satisfied by one person.

Rules affecting the operation of the tests

165-180 Arrangements affecting beneficial ownership of shares

(1) For the purposes of a test, the Commissioner may treat a person as not having beneficially owned particular *shares at a particular time if the conditions in subsections (2) and (3) are met.

Example: The Commissioner may treat a person as not having beneficially owned redeemable shares at a particular time if the conditions in subsections (2) and (3) are met in respect of those shares.

(2) An *arrangement must have been entered into at some time that in any way (directly or indirectly) related to, affected, or depended for its operation on:

(a) the beneficial interest in the *shares, or the value of that beneficial interest; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) a right carried by, or relating to, the shares; or
(c) the exercise of such a right.

(3) The *arrangement must also have been entered into for the purpose, or for purposes including the purpose, of eliminating or reducing a liability of an entity to pay income tax for a *financial year.

165-185 Shares treated as not having carried rights

(1) In applying a test for the purposes of this Division other than Subdivision 165-CC, *shares are taken *not* to have carried particular rights during a part of the *ownership test period if the Commissioner is satisfied that:
(a) the shares *stopped* carrying those rights after the ownership test period; or
(b) the shares will or may *stop* carrying those rights after the ownership test period;
because of:
(c) the company's *constitution as in force at some time *during* the ownership test period; or
(d) an *arrangement entered into before or during the ownership test period.

(2) In applying a test for the purposes of Subdivision 165-CC, *shares are taken not to have carried particular rights after a particular time if the Commissioner is satisfied that:
(a) the shares *stopped* carrying those rights after that time; or
(b) the shares will or may *stop* carrying those rights after that time;
because of:
(c) the company's *constitution as in force at any time; or
(d) an *arrangement entered into at any time.

165-190 Shares treated as always having carried rights

(1) In applying a test for the purposes of this Division other than Subdivision 165-CC, *shares are taken to have carried particular

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

rights *at all times* during a part of the *ownership test period if the Commissioner is satisfied that:

(a) the shares *started* to carry those rights after the ownership test period; or

(b) the shares will or may *start* to carry those rights after the ownership test period;

because of:

(c) the company's *constitution as in force at some time *during* the ownership test period; or

(d) an *arrangement entered into before or during the ownership test period.

(2) In applying a test for the purposes of Subdivision 165-CC, *shares are taken to have carried particular rights after a particular time if the Commissioner is satisfied that:

(a) the shares *started* to carry those rights after that time; or

(b) the shares will or may *start* to carry those rights after that time;

because of:

(c) the company's *constitution as in force at any time; or

(d) an *arrangement entered into at any time.

165-200 Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units

(1) Sections 165-165, 165-180, 165-185 and 165-190 do not affect how *shares, and rights carried by *shares, are counted for the purposes of determining:

(a) the total voting power in the company; or

(b) the total *dividends that the company may pay; or

(c) the total distributions of capital of the company.

(2) Section 165-165 does not affect how units in a unit trust, or the rights carried by such units, are counted for the purposes of determining the total rights, or the total rights of a particular kind, in the trust of the holders of such units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-202 Shares held by government entities and charities etc.

(1) For the purposes of a test, *shares that are beneficially owned by each of the following entities are taken to be beneficially owned instead by a person (who is not a company):

(a) the Commonwealth, a State or a Territory;

(b) a municipal corporation;

(c) a *local governing body;

(d) the government of a foreign country, or of part of a foreign country;

(e) a company, established under a law, in which no person has a *membership interest;

(f) a *non-profit company;

(g) a charity that is not a trust;

(h) a *complying superannuation fund;

(i) a superannuation fund that is established in a foreign country and is regulated under a *foreign law;

(j) a *complying approved deposit fund;

(k) a *special company;

(l) a *managed investment scheme.

(2) For the purposes of a test, *shares that are beneficially owned through a charity that is a trust are taken to be beneficially owned instead by a person (who is neither a company nor a trustee).

165-203 Companies where no shares have been issued

For the purposes of a test, if no *shares have been issued in a company, each *membership interest in the company is taken to be a share in the company.

165-205 Death of share owner

(1) If an individual beneficially owns *shares in a company when he or she dies, this section applies if and while the shares:

(a) are owned by the trustee of the deceased's estate; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) are beneficially owned by someone who receives them as a beneficiary of the deceased's estate.

(2) For the purposes of a test:

(a) the *shares are taken to continue to be beneficially owned by the deceased; and

(b) as a result of being taken to continue to beneficially own the shares, the deceased is taken to continue:

(i) to have any rights to exercise, or to be able to control (whether directly, or indirectly through one or more interposed entities), any of the voting power in the company; and

(ii) to have any rights to receive for the deceased's own benefit (whether directly or *indirectly) any *dividends that the company may pay; and

(iii) to have any rights to receive for the deceased's own benefit (whether directly or indirectly) any distributions of capital of the company.

165-207 Trustees of family trusts

(1) This section applies if one or more trustees of a *family trust:

(a) owns *shares in a company; or

(b) controls, or is able to control, (whether directly, or indirectly through one or more interposed entities) voting power in a company; or

(c) has a right to receive (whether directly, or *indirectly through one or more interposed entities) a percentage of a *dividend or a distribution of capital of a company.

(2) For the purposes of a primary test, a single notional entity that is a person (but is neither a company nor a trustee) is taken to own the *shares beneficially.

Note: For a primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) For the purposes of an alternative test, a single notional entity that is a person (but is neither a company nor a trustee) is taken:
   (a) to control, or have the ability to control, the voting power in the company; or
   (b) to have the right to receive (whether directly or *indirectly) the percentage of the *dividend or distribution for the entity's own benefit.

Note: For an alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

(4) If a trustee of the trust is subsequently replaced by another trustee of the trust, the same single notional entity is taken:
   (a) to own the *shares beneficially; or
   (b) to control, or have the ability to control, the voting power in the company; or
   (c) to have the right to receive (whether directly or *indirectly) the percentage of the *dividend or distribution for the entity's own benefit.

165-208 Companies in liquidation etc.

(1) For the purposes of a primary test or an alternative test, an entity is not prevented from:
   (a) beneficially owning *shares in a company; or
   (b) having the right to exercise, controlling, or being able to control, voting power in a company; or
   (c) having the right to receive any *dividends that a company may pay; or
   (d) having the right to receive any distribution of capital of a company;

merely because:
   (e) the company is or becomes:
      (i) a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*; or
      (ii) an entity with a similar status under a *foreign law to a Chapter 5 body corporate; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(f) either:

(i) a provisional liquidator is appointed to the company under section 472 of the *Corporations Act 2001*; or

(ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the company.

Note 1: For a primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

Note 2: For an alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

(2) For the purposes of a primary test or an alternative test, a company (the ***stakeholding company***) is not prevented from:

(a) beneficially owning *shares in another company, or any other interest in another entity; or

(b) having the right to exercise, controlling, or being able to control, voting power in another company or any other entity; or

(c) having the right to receive any *dividends that another company or any other entity may pay; or

(d) having the right to receive any distribution of capital of another company or of any other entity;

merely because:

(e) the stakeholding company is or becomes:

(i) a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*; or

(ii) an entity with a similar status under a *foreign law to a Chapter 5 body corporate; or

(f) either:

(i) a provisional liquidator is appointed to the stakeholding company under section 472 of the *Corporations Act 2001*; or

(ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the stakeholding company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-209 Dual listed companies

Section 165-150 does not apply to *shares that are *dual listed company voting shares.

Subdivision 165-E—The same business test

165-210 The test

(1) A company satisfies the ***same business test*** if throughout the *same business test period it carries on the same *business as it carried on immediately before the *test time.

(2) However, the company does *not* satisfy the *same business test if, at any time during the *same business test period, it *derives assessable income from:

(a) a *business of a kind that it did not carry on before the *test time; or

(b) a transaction of a kind that it had not entered into in the course of its business operations before the *test time.

(3) The company also does *not* satisfy the *same business test if, before the *test time, it:

(a) started to carry on a *business it had not previously carried on; or

(b) in the course of its business operations, entered into a transaction of a kind that it had not previously entered into;

and did so for the purpose, or for purposes including the purpose, of being taken to have carried on throughout the *same business test period the same business as it carried on immediately before the test time.

(4) So far as the *same business test is applied for the purpose of Subdivision 165-B (which is about working out the taxable income and *tax loss for the income year of change of ownership or control), the company also does *not* satisfy the test if, at any time during the *same business test period, it incurs expenditure:

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) in carrying on a *business of a kind that it did not carry on before the *test time; or

(b) as a result of a transaction of a kind that it had not entered into in the course of its business operations before the test time.

165-212D Restructure of MDOs etc.

(1) An *MDO does not fail to satisfy the *same business test merely because, before 1 July 2003:

(a) the MDO restructured the way it *provides medical indemnity cover; or

(b) the MDO ceased to provide medical indemnity cover;

in order to comply with the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

(2) A *general insurance company which is an *associate of an *MDO does not fail to satisfy the *same business test merely because, before 1 July 2003:

(a) the MDO restructured the way it *provides medical indemnity cover; or

(b) the MDO ceased to provide medical indemnity cover;

in order to comply with the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

165-212E Entry history rule does not apply for the purposes of section 165-210

For the purposes of section 165-210, section 701-5 (the entry history rule) does not operate in relation to an entity becoming a *subsidiary member of a *consolidated group or a *MEC group.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 165-F—Special provisions relating to ownership by non-fixed trusts

Table of sections

165-215 Special alternative to change of ownership test for Subdivision 165-A
165-220 Special alternative to change of ownership test for Subdivision 165-B
165-225 Special way of dividing the income year under Subdivision 165-B
165-230 Special alternative to change of ownership test for Subdivision 165-C
165-235 Information about non-fixed trusts with interests in company
165-240 Notices where requirements of section 165-235 are met
165-245 When an entity has a fixed entitlement to income or capital of a company

165-215 Special alternative to change of ownership test for Subdivision 165-A

(1) If a company does not meet the conditions in section 165-12, it is nevertheless taken to meet the conditions if it meets the conditions in this section.

First condition

(2) At all times during the *ownership test period:

(a) both:

(i) persons must have held *fixed entitlements to all of the income and capital of the company; and

(ii) *non-fixed trusts, other than *family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or

(b) both:

(i) a *fixed trust or a company (which trust or company is the ***holding entity***) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and

(ii) non-fixed trusts, other than *family trusts, must have held fixed entitlements to a 50% or greater share of the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

income or a 50% or greater share of the capital of the holding entity.

Second condition

(3) The persons holding *fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:

(a) in a paragraph (2)(a) case—the company; or

(b) in a paragraph (2)(b) case—the holding entity;

at the beginning of the *loss year must have held those entitlements to those shares at all times during the *ownership test period.

Third condition

(4) At the beginning of the *loss year:

(a) individuals must not have had (between them), directly or indirectly, and for their own benefit, *fixed entitlements to a greater than 50% share of the income of the company; or

(b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

Fourth condition

(5) It must be the case that, for each *non-fixed trust (other than an *excepted trust) that, at any time during the *ownership test period, held directly or indirectly a *fixed entitlement to a share of the income or capital of the company, section 267-20 in Schedule 2F to the *Income Tax Assessment Act 1936* would not have prevented the non-fixed trust from deducting the *tax loss concerned if it, rather than the company, had incurred the tax loss.

Note: See section 165-245 for when an entity is taken to have held or had, directly or indirectly, a fixed entitlement to a share of income or capital of a company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-220 Special alternative to change of ownership test for Subdivision 165-B

(1) If the company does not meet the condition in paragraph 165-35(a), it is nevertheless taken to meet the condition if it meets the conditions in this section.

First condition

(2) At all times during the income year:

(a) both:

(i) persons must have held *fixed entitlements to all of the income and capital of the company; and

(ii) *non-fixed trusts, other than *family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or

(b) both:

(i) a *fixed trust or a company (which trust or company is the ***holding entity***) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and

(ii) non-fixed trusts, other than family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

Second condition

(3) The persons holding *fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:

(a) in a paragraph (2)(a) case—the company; or

(b) in a paragraph (2)(b) case—the holding entity;

at the beginning of the income year must have held those entitlements to those shares at all times during the income year.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Third condition

(4) At the beginning of the income year:

(a) individuals must not have had (between them), directly or indirectly, and for their own benefit, *fixed entitlements to a greater than 50% share of the income of the company; or

(b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

Fourth condition

(5) It must be the case that, for each *non-fixed trust (other than an *excepted trust) that, at any time in the income year, held directly or indirectly a *fixed entitlement to a share of the income or capital of the company, section 267-60 in Schedule 2F to the *Income Tax Assessment Act 1936* does not require the non-fixed trust to work out its net income and *tax loss for the income year under Division 268.

Note: See section 165-245 for when an entity is taken to have held or had, directly or indirectly, a fixed entitlement to a share of income or capital of a company.

165-225 Special way of dividing the income year under Subdivision 165-B

(1) If:

(a) the company is required to calculate:

(i) its taxable income and *tax loss for the income year under Subdivision 165-B; and

(ii) its *net capital gain and *net capital loss for the income year under Subdivision 165-CB; and

(b) the company meets the requirements of subsections 165-220(2) and (4);

then, in dividing the income year into periods, apply subsection (2) of this section instead of subsections 165-45(3) and (4).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The last period ends at the end of the income year. Each period (except the last) ends at the earliest of:

(a) the latest time that would result in the persons holding *fixed entitlements to shares of the income or shares of the capital of:

(i) if the company meets the requirements of paragraph 165-220(2)(a)—the company; or

(ii) if the company meets the requirements of paragraph 165-220(2)(b)—the holding entity mentioned in that paragraph;

and the percentages of the shares that they hold, remaining the same during the whole of the period; and

(b) the times that, for all of the *non-fixed trusts, other than *excepted trusts, holding directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the income year, are the latest times that would result in individuals having *more than a 50% stake in their income or capital; and

(c) the earliest time in the period when a group (within the meaning of Schedule 2F to the *Income Tax Assessment Act 1936*) begins to *control a non-fixed trust, other than an excepted trust, that holds directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the income year.

Note: See section 165-245 for when an entity is taken to have held or had, directly or indirectly, a fixed entitlement to a share of income or capital of a company.

165-230 Special alternative to change of ownership test for Subdivision 165-C

(1) If a company does not meet the conditions in section 165-123, it is nevertheless taken to meet the conditions if it meets the conditions in this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

First condition

(2) At all times during the *ownership test period:

(a) both:

(i) persons must have held *fixed entitlements to all of the income and capital of the company; and

(ii) *non-fixed trusts, other than *family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or

(b) both:

(i) a *fixed trust or a company (which trust or company is the ***holding entity***) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and

(ii) non-fixed trusts, other than family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

Second condition

(3) The persons holding *fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:

(a) in a paragraph (2)(a) case—the company; or

(b) in a paragraph (2)(b) case—the holding entity;

at the beginning of the *first continuity period must have held those entitlements to those shares at all times during the *ownership test period.

Third condition

(4) At the beginning of the *first continuity period:

(a) individuals must not have had (between them), directly or indirectly, and for their own benefit, *fixed entitlements to a greater than 50% share of the income of the company; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

Fourth condition

(5) It must be the case that, for each *non-fixed trust (other than an *excepted trust) that, at any time during the *ownership test period, held directly or indirectly a *fixed entitlement to a share of the income or capital of the company, section 267-25 in Schedule 2F to the *Income Tax Assessment Act 1936* would not have prevented the non-fixed trust from deducting the amount in respect of the debt if it, rather than the company, would otherwise be entitled to deduct the amount.

Note: See section 165-245 for when an entity is taken to have held or had, directly or indirectly, a fixed entitlement to a share of income or capital of a company.

165-235 Information about non-fixed trusts with interests in company

Notice about foreign resident non-fixed trust

(1) The Commissioner may give the company a notice in accordance with section 165-240 if the requirements of subsections (2) to (5) of this section are met.

Tax detriment under Division 165

(2) In its *income tax return for the income year:

(a) the company must have deducted a *tax loss from a *loss year where it would not be allowed to deduct the tax loss unless it met the conditions in section 165-215; or

(b) the company must not have calculated:

(i) its taxable income and tax loss for the income year under Subdivision 165-B; and

(ii) its *net capital gain and *net capital loss for the income year under Subdivision 165-CB;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

where it would have been required to calculate them unless it met the conditions in section 165-220; or

(c) the company must have applied a net capital loss for an earlier income year in working out its net capital gain where it would not have been allowed to apply the loss unless it met the conditions in section 165-215 as applied on the assumption mentioned in subsection 165-96(1); or

(d) the company must have deducted a debt that it wrote off as bad in the income year where it would not be allowed to deduct the debt unless it met the conditions in section 165-230.

Information about non-fixed trust

(3) In order to determine whether it meets the conditions concerned, the Commissioner must need information about a *non-fixed trust mentioned in:

(a) if paragraph (2)(a) applies—subsection 165-215(5); or

(b) if paragraph (2)(b) applies—subsection 165-220(5); or

(c) if paragraph (2)(c) applies—subsection 165-215(5) as applied on the assumption mentioned in subsection 165-96(1); or

(d) if paragraph (2)(d) applies—subsection 165-230(5).

Foreign resident trust

(4) When the Commissioner gives the notice:

(a) a trustee of the *non-fixed trust must be a foreign resident; or

(b) the central management and control of the non-fixed trust must be outside Australia.

When notice must be given

(5) The Commissioner must give the notice before the later of:

(a) 5 years after the income year; and

(b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

165-240 Notices where requirements of section 165-235 are met

Information required

(1) The notice that the Commissioner may give if the requirements of subsections 165-235(2) to (5) are met must require the company to give the Commissioner specified information that is relevant in determining whether:

(a) if paragraph 165-235(2)(a) applies—the requirements of subsection 165-215(5); or

(b) if paragraph 165-235(2)(b) applies—the requirements of subsection 165-220(5); or

(c) if paragraph 165-235(2)(c) applies—the requirements of subsection 165-215(5) as applied on the assumption mentioned in subsection 165-96(1); or

(d) if paragraph 165-235(2)(d) applies—the requirements of subsection 165-230(5);

are satisfied in relation to the *non-fixed trust mentioned in subsections 165-235(3) and (4).

Company knowledge

(2) The information need not be within the knowledge of the company at the time the notice is given.

Period for giving information

(3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

(4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is taken not to meet, and never to have met, the conditions mentioned in whichever paragraph of subsection 165-235(2) is applicable.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Application of Subdivision 165-B

(5) If, because of subsection (4), the company is required to calculate under Subdivision 165-B its taxable income and *tax loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest possible taxable income for the income year.

Application of Subdivision 165-CB

(6) If, because of subsection (4), the company is required to calculate under Subdivision 165-CB its *net capital gain and *net capital loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest net capital gain for the income year.

165-245 When an entity has a fixed entitlement to income or capital of a company

For the purposes of this Act, an entity is taken to have held or had, directly or indirectly, a *fixed entitlement to a share of income or capital of a company at a time if and only if the entity held or had, directly or indirectly, that fixed entitlement at that time for the purposes of Schedule 2F to the *Income Tax Assessment Act 1936*.

Subdivision 165-G—Other special provisions

Table of sections

165-250 Control of companies in liquidation etc.
165-255 Incomplete periods

165-250 Control of companies in liquidation etc.

(1) For the purposes of sections 165-15, 165-40, 165-115D, 165-115M and 165-129, a person is not prevented from controlling, or being or becoming able to control, voting power in a company merely because:

(a) the company is or becomes:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*; or

(ii) an entity with a similar status under a *foreign law to a Chapter 5 body corporate; or

(b) either:

(i) a provisional liquidator is appointed to the company under section 472 of the *Corporations Act 2001*; or

(ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the company.

(2) For the purposes of sections 165-15, 165-40, 165-115D, 165-115M and 165-129, a company (the ***stakeholding company***) is not prevented from controlling, or being or becoming able to control, voting power in another company merely because:

(a) the stakeholding company is or becomes:

(i) a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*; or

(ii) an entity with a similar status under a *foreign law to a Chapter 5 body corporate; or

(b) either:

(i) a provisional liquidator is appointed to the stakeholding company under section 472 of the *Corporations Act 2001*; or

(ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the stakeholding company.

165-255 Incomplete periods

(1) If:

(a) this Division or Division 166 requires a company to meet or satisfy a condition or test, or work out an amount, for a period; and

(b) the company is only in existence after the beginning of the period;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

then the period is taken to start on the first day that the company is in existence.

(2) If:

(a) this Division or Division 166 requires a company to meet or satisfy a condition or test, or work out an amount, for a period; and

(b) the company ceases to be in existence before the end of the period;

then the period is taken to end on the day the company ceases to be in existence.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 166—Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Table of Subdivisions

Guide to Division 166

166-AA The object of this Division

166-A Deducting tax losses of earlier income years

166-B Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change

166-C Deducting bad debts

166-CA Changeover times and alteration times

166-D Tests for finding out whether the widely held or eligible Division 166 company has maintained the same owners

166-E Concessional tracing rules

Guide to Division 166

166-1 What this Division is about

This Division modifies the way the rules in Division 165 apply to a widely held or eligible Division 166 company by making it easier for the company to apply the rules.

If the company has maintained the same owners as between certain points of time, it does not need to prove it has maintained the same owners throughout the periods in between.

In certain cases, special concessional tracing rules deem entities to hold voting, dividend or capital stakes in the company so that the company does not have to trace through to the ultimate beneficial owners of the stakes.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 166-AA—The object of this Division

166-3 The object of this Division

(1) The object of this Division is to make it easier for a *widely held company, or an *eligible Division 166 company, to apply the rules in Division 165 (because of the difficulty the company might have under that Division in actually tracing through to the ultimate beneficial owners of *voting stakes, *dividend stakes and *capital stakes in the company).

(2) This Division makes it easier to apply the rules in Division 165 by:
  (a) making it unnecessary for the company to prove that it has maintained the same owners throughout a period, if the company had the same owners at certain test times; and
  (b) making it unnecessary for the company to trace through to the ultimate beneficial owners of:
    (i) *voting stakes, *dividend stakes and *capital stakes in the company held by certain entities (whether directly, or *indirectly through one or more interposed entities); and
    (ii) small voting stakes, dividend stakes and capital stakes in the company.

Subdivision 166-A—Deducting tax losses of earlier income years

Table of sections

166-5 How Subdivision 165-A applies to a widely held or eligible Division 166 company
166-15 Companies can choose that this Subdivision is not to apply to them

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-5 How Subdivision 165-A applies to a widely held or eligible Division 166 company

(1) This Subdivision modifies the way Subdivision 165-A applies to a company that is:

(a) a *widely held company at all times during the income year; or

(b) an *eligible Division 166 company at all times during the income year; or

(c) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year.

Note 1: Subdivision 165-A is about the conditions a company must meet before it can deduct a tax loss for an earlier income year.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-15.

Note 3: See section 165-255 for the rule about incomplete income years.

*Meaning of **test period***

(2) The company's ***test period*** is the period consisting of the *loss year, the income year and any intervening period.

Note: See section 165-255 for the rule about incomplete test periods.

Substantial continuity of ownership

(3) The company is taken to have met the conditions in section 165-12 (which is about the company maintaining the same owners) if there is *substantial continuity of ownership of the company as between the start of the *test period and:

(a) the end of each income year in that period; and

(b) the *end of each *corporate change in that period.

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

No substantial continuity of ownership

(4) The company is taken to have *failed* to meet the conditions in section 165-12 if there is *no* *substantial continuity of ownership of the company as between the start of the *test period and:

(a) the end of an income year in that period; or

(b) the *end of a *corporate change in that period.

Satisfies the same business test

(5) However, if the company satisfies the *same business test for the income year (the ***same business test period***), it is taken to have satisfied the condition in section 165-13.

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-255 for the rule about incomplete test periods.

(6) Apply the *same business test to the *business that the company carried on immediately before the earlier of the following times (the ***test time***):

(a) the end of the first income year;

(b) the first time in the test period that a *corporate change in the company *ends;

for which there is no *substantial continuity of ownership of the company as between the start of the *test period and that time.

166-15 Companies can choose that this Subdivision is not to apply to them

(1) The company can choose that Subdivision 165-A is to apply to it for the income year *without* the modifications made by this Subdivision.

(2) The company must choose on or before the day it lodges its *income tax return for the income year, or before a later day if the Commissioner allows.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 166-B—Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change

Table of sections

166-20 How Subdivisions 165-B and 165-CB apply to a widely held or eligible Division 166 company
166-25 How to work out the taxable income, tax loss, net capital gain and net capital loss
166-35 Companies can choose that this Subdivision is not to apply to them

166-20 How Subdivisions 165-B and 165-CB apply to a widely held or eligible Division 166 company

(1) This Subdivision modifies how Subdivisions 165-B and 165-CB apply to a company that is:

(a) a *widely held company at all times during the income year (the ***test period***); or

(b) an *eligible Division 166 company at all times during the income year (the ***test period***); or

(c) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year (the whole year being the ***test period***).

Note 1: Subdivision 165-B is about when a company must calculate its taxable income and tax loss for the income year in a special way. Subdivision 165-CB is about when a company must calculate its net capital gain and net capital loss for the income year in a special way.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-35.

Note 3: See section 165-255 for the rule about incomplete test periods.

No corporate change etc.

(2) If:

(a) *no* *corporate change in the company *ends at any time in the *test period; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) a corporate change in the company *ends during the test period, but there is *substantial continuity of ownership as between the start of the test period and immediately after the corporate change ends;

the company is taken to have met the condition in paragraph 165-35(a) (which is about there being persons having *more than a 50% stake in it during the whole of the income year).

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

Corporate change

(3) If:

(a) a *corporate change in the company *ends at any time in the *test period; and

(b) there is no *substantial continuity of ownership as between the start of the test period and immediately after the corporate change ends;

then the company is taken to have *failed* to meet the condition in paragraph 165-35(a).

Satisfies the same business test

(4) However, if the company satisfies the *same business test for the rest of the income year (the ***same business test period***) after the first time (the ***test time***) in the *test period that a *corporate change in the company *ended, the company is taken to have satisfied the condition in paragraph 165-35(b).

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-255 for the rule about incomplete test periods.

(5) Apply the *same business test to the *business that the company carried on immediately before the *test time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-25 How to work out the taxable income, tax loss, net capital gain and net capital loss

(1) If the company must calculate its taxable income and *tax loss for the income year under Subdivision 165-B, and its *net capital gain and *net capital loss under Subdivision 165-CB, then, in dividing the income year into periods, apply subsection (2) of this section instead of subsection 165-45(3).

(2) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:

(a) the *earliest* time when:

(i) a *corporate change in the company *ends; and

(ii) there is no *substantial continuity of ownership of the company as between the start of the *test period and that time; or

(b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:

(i) getting some benefit or advantage to do with how this Act applies; or

(ii) getting such a benefit or advantage for someone else.

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

166-35 Companies can choose that this Subdivision is not to apply to them

(1) The company can choose that Subdivisions 165-B and 165-CB are to apply to it for the income year *without* the modifications made by this Subdivision.

(2) The company must choose on or before the day it lodges its *income tax return for the income year, or before a later day if the Commissioner allows.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 166-C—Deducting bad debts

Table of sections

166-40 How Subdivision 165-C applies to a widely held or eligible Division 166 company
166-50 Companies can choose that this Subdivision is not to apply to them

166-40 How Subdivision 165-C applies to a widely held or eligible Division 166 company

(1) This Subdivision modifies the way Subdivision 165-C applies to a company that is:

(a) a *widely held company at all times during the *current year; or

(b) an *eligible Division 166 company at all times during the current year; or

(c) a widely held company for a part of the current year and an eligible Division 166 company for the rest of the current year.

Note 1: Subdivision 165-C is about the conditions a company must meet before it can deduct a bad debt.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-50.

Note 3: See section 165-255 for the rule about incomplete current years.

*Meaning of **test period***

(2) The company's ***test period*** is the period:

(a) that begins at whichever of the following times the company chooses:

(i) the start of the income year in which the debt was incurred;

(ii) the start of the *first continuity period; and

(b) that ends at the end of the *second continuity period;

and includes any intervening period.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: See section 165-255 for the rule about incomplete test periods.

Substantial continuity of ownership

(3) The company is taken to have met the conditions in section 165-123 (about the company maintaining the same owners) if there is *substantial continuity of ownership of the company as between the start of the *test period and:

(a) the end of each income year in that period; and

(b) the *end of each *corporate change in that period.

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

No substantial continuity of ownership

(4) The company is taken to have *failed* to meet the conditions in section 165-123 if there is *no* *substantial continuity of ownership of the company as between the start of the *test period and:

(a) the end of an income year in that period; or

(b) the *end of a *corporate change in that period.

Satisfies the same business test

(5) However, if the company satisfies the *same business test for the *second continuity period (the ***same business test period***), it is taken to have satisfied the condition in section 165-126.

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-255 for the rule about incomplete test periods.

(6) Apply the *same business test to the *business that the company carried on immediately before the earlier of the following times (the ***test time***):

(a) the end of the first income year;

(b) the first time in the test period that a *corporate change in the company *ends;

for which there is no *substantial continuity of ownership of the company as between the start of the *test period and that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-50 Companies can choose that this Subdivision is not to apply to them

(1) The company can choose that Subdivision 165-C is to apply to it for the income year *without* the modifications made by this Subdivision.

(2) The company must choose on or before the day it lodges its *income tax return for the income year, or before a later day if the Commissioner allows.

Subdivision 166-CA—Changeover times and alteration times

Table of sections

166-80 How Subdivision 165-CC or 165-CD applies to a widely held or eligible Division 166 company
166-90 Companies can choose that this Subdivision is not to apply to them

166-80 How Subdivision 165-CC or 165-CD applies to a widely held or eligible Division 166 company

(1) This Subdivision modifies the way in which:

(a) Subdivision 165-CC applies in determining whether a changeover time (within the meaning of section 165-115C) has occurred; or

(b) Subdivision 165-CD applies in determining whether an alteration time (within the meaning of section 165-115L) has occurred;

in relation to a company that is:

(c) a *widely held company at all times during the income year; or

(d) an *eligible Division 166 company at all times during the income year; or

(e) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: Subdivision 165-CC is about the conditions a company that has an unrealised net loss must satisfy before it can have capital losses taken into account or deduct revenue losses. Subdivision 165-CD provides for reductions in cost bases and certain other reductions after alterations have occurred in the ownership or control of a loss company.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-90.

Note 3: See section 165-255 for the rule about incomplete income years.

*Meaning of **test period** and **test time***

(2) The company's ***test period*** is the period starting at the time that is the reference time for the purposes of Subdivision 165-CC or section 165-115L, as the case may be, and ending at each of the following times (the ***test time***):

(a) the end of the income year in which the reference time occurred;

(b) the end of a later income year;

(c) the *end of a *corporate change in the company.

Note 1: See section 165-255 for the rule about incomplete test periods.

Note 2: See section 166-175 to work out whether there is a corporate change.

Substantial continuity of ownership

(3) A changeover time or an alteration time is taken not to have occurred in respect of the company during the test period if there is *substantial continuity of ownership of the company as between the start of the *test period and the *test time.

Note: See section 166-145 to work out whether there is substantial continuity of ownership.

No substantial continuity of ownership

(4) Subsections (5) and (6) have effect if there is no *substantial continuity of ownership of the company as between the start of the *test period and the *test time.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(5) The *test time is taken to have been a changeover time or an alteration time, as the case may be, in respect of the company.

(6) No other time during the *test period is a changeover time or an alteration time in respect of the company.

166-90 Companies can choose that this Subdivision is not to apply to them

(1) The company can choose that Subdivision 165-CC or 165-CD is to apply to it in respect of a *test period for the purposes of section 166-80 *without* the modifications made by this Subdivision.

(2) The company must choose on or before the day it lodges its *income tax return for the income year in which the *test period begins, or before a later day if the Commissioner allows.

Subdivision 166-D—Tests for finding out whether the widely held or eligible Division 166 company has maintained the same owners

Guide to Subdivision 166-D

166-135 What this Subdivision is about

This Subdivision has the tests to work out whether a widely held or eligible Division 166 company has maintained the same owners as between different times. (Subdivision 166-E has rules which make it easier for the company to satisfy these tests.)

This Subdivision also defines when there has been a corporate change in the company.

Table of sections

The ownership tests: substantial continuity of ownership

166-145 The ownership tests: substantial continuity of ownership

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-165 Relationship with rules in Division 165

Corporate change in a company

166-175 Corporate change in a company

The ownership tests: substantial continuity of ownership

166-145 The ownership tests: substantial continuity of ownership

(1) There is ***substantial continuity of ownership*** of the company as between the start of the *test period and another time in the test period if (and only if) the conditions in this section are met.

Note: Section 166-165, and Subdivision 166-E, affect how this section is applied.

Voting power

(2) There must be persons (none of them companies or trustees) who had *more than 50% of the voting power in the company at the start of the *test period. Also, those persons must have had *more than 50% of the voting power in the company immediately after the other time in the test period.

Note 1: To work out who had more than 50% of the voting power, see section 165-150.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

Rights to dividends

(3) There must be persons (none of them companies) who had rights to *more than 50% of the company's dividends at the start of the *test period. Also, those persons must have had rights to *more than 50% of the company's dividends immediately after the other time in the test period.

Note 1: To work out who had rights to more than 50% of the company's dividends, see section 165-155.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 2: Subdivision 167-A has special rules for working out rights to dividends in a company whose shares do not all carry the same rights to dividends.

Rights to capital distributions

(4) There must be persons (none of them companies) who had rights to *more than 50% of the company's capital distributions at the start of the *test period. Also, those persons must have had rights to *more than 50% of the company's capital distributions immediately after the other time in the test period.

Note 1: To work out who had rights to more than 50% of the company's capital distributions, see section 165-160.

Note 2: Subdivision 167-A has special rules for working out rights to capital distributions in a company whose shares do not all carry the same rights to capital distributions.

When to apply the test

(5) To work out whether a condition in this section was satisfied at a time (the ***ownership test time***), apply the alterative test for that condition.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

Conditions in subsections (3) and (4) satisfied by non-profit and mutual companies

(6) If the company is:

(a) a *non-profit company; or

(b) a *mutual affiliate company; or

(c) a *mutual insurance company;

during the whole of the *test period, the conditions in subsections (3) and (4) are taken to have been satisfied by the company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-165 Relationship with rules in Division 165

(1) The provisions of Subdivision 165-D (other than section 165-165) apply for the purposes of the tests in section 166-145.

(2) The following provisions apply for the purposes of the tests in section 166-145 as if the reference to a particular time were a reference to the *ownership test time:

(a) section 165-180 (which is about arrangements affecting beneficial ownership of shares);

(b) subsection 165-185(2) (which treats some shares as never having carried rights);

(c) subsection 165-190(2) (which treats some shares as always having carried rights).

Corporate change in a company

166-175 Corporate change in a company

*Meaning of **corporate change***

(1) There is a ***corporate change*** in a company if:

(a) there is a *takeover bid for *shares in the company; or

(b) there is a scheme of arrangement, involving more than 50% of the company's shares, that has been approved by a court; or

(c) there is any other arrangement, involving the acquisition of more than 50% of the company's shares, that is regulated under the *Corporations Act 2001* or a *foreign law; or

(d) there is an issue of *shares in the company that results in an increase of 20% or more in:

(i) the issued share capital of the company; or

(ii) the number of the company's shares on issue; or

(e) there is a corporate change in another company which beneficially owns one or more of the following stakes in the first company:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) a *voting stake that carries rights to more than 50% of the voting power of the first company;

(ii) a *dividend stake that carries rights to receive more than 50% of any dividends the first company may pay;

(iii) a *capital stake that carries rights to receive more than 50% of any distribution of capital of the first company;

(whether the other company owns those stakes directly, or *indirectly through one or more interposed entities).

Note: For paragraph (e), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

When a corporate change ends

(2) A *corporate change ***ends***:

(a) if paragraph (1)(a) applies (or paragraph (1)(e) applies because of paragraph (1)(a))—at the latest time when a *bid period of the *takeover bid ends; and

(b) if paragraph (1)(b) or (c) applies (or paragraph (1)(e) applies because of paragraph (1)(b) or (c))—when the scheme of arrangement or other arrangement ends; and

(c) if paragraph (1)(d) applies (or paragraph (1)(e) applies because of paragraph (1)(d))—when the offer period for the issue of *shares ends.

Subdivision 166-E—Concessional tracing rules

Guide to Subdivision 166-E

166-215 What this Subdivision is about

This Subdivision has rules which make it easier for a widely held or eligible Division 166 company to satisfy the ownership tests in Subdivision 166-D.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Section 166-215

Special concessional tracing rules deem entities to hold the following stakes in the company so that the company does not have to trace through to the beneficial owners of the stakes:

(a) stakes of less than 10% in the company;

(b) stakes of between 10% and 50% that are held by widely held companies;

(c) stakes that are held by complying superannuation funds, complying approved deposit funds, special companies and managed investment schemes;

(d) stakes in interposed foreign listed companies that are held as bearer shares;

(e) stakes in interposed foreign listed companies that are held by depository entities.

Table of sections

Application of this Subdivision

166-220 Application of this Subdivision

Stakes of less than 10% in the tested company

166-225 Direct stakes of less than 10% in the tested company
166-230 Indirect stakes of less than 10% in the tested company
166-235 Voting, dividend and capital stakes

Stakes held directly and/or indirectly by widely held companies

166-240 Stakes held directly and/or indirectly by widely held companies
166-245 Stakes held by other entities

When identity of foreign stakeholders is not known

166-255 Bearer shares in foreign listed companies
166-260 Depository entities holding stakes in foreign listed companies

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Other rules relating to voting power and rights

166-265 Persons who actually control voting power or have rights are taken not to control power or have rights
166-270 Single notional entity stakeholders taken to have minimum voting control, dividend rights and capital rights
166-272 Same shares or interests to be held

When the rules in this Subdivision do not apply

166-275 Rules in this Subdivision intended to be concessional
166-280 Controlled test companies

Application of this Subdivision

166-220 Application of this Subdivision

This Subdivision applies to a company (the ***tested company***) that is:

(a) a *widely held company at all times during the income year; or

(b) an *eligible Division 166 company at all times during the income year; or

(c) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year.

Note: See section 165-255 for the rule about incomplete income years.

Stakes of less than 10% in the tested company

166-225 Direct stakes of less than 10% in the tested company

(1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:

(a) a *voting stake that carries rights to less than 10% of the voting power in the company is held directly in the company; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) a *dividend stake that carries the right to receive less than 10% of any dividends that the company may pay is held directly in the company; or

(c) a *capital stake that carries the right to receive less than 10% of any distribution of capital of the company is held directly in the company.

Note 1: Other rules might affect this provision: see sections 166-270, 166-275 and 166-280.

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

Notional shareholder

(2) The tests are applied to the tested company as if, at the *ownership test time, a single notional entity:

(a) directly controlled the voting power that is carried by each such *voting stake; and

(b) had the right to receive, for its own benefit and directly:

(i) any *dividends the tested company may pay in respect of each such *dividend stake; and

(ii) any distributions of capital of the tested company in respect of each such *capital stake; and

(c) were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

(3) To avoid doubt, the single notional entity mentioned in subsection (2) is a different single notional entity from the one mentioned in section 166-207 and the one mentioned in section 166-255.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-230 Indirect stakes of less than 10% in the tested company

(1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if it is the case, or it is reasonable to assume that:

(a) an entity (the ***stakeholder***) indirectly holds any of these stakes in the tested company:

(i) a *voting stake that carries rights to less than 10% of the voting power in the company; or

(ii) a *dividend stake that carries the right to receive less than 10% of any dividends that the company may pay; or

(iii) a *capital stake that carries the right to receive less than 10% of any distribution of capital of the company; and

(b) either:

(i) the stakeholder indirectly holds the stake in the tested company by holding *shares directly in a company (the ***top interposed entity***) that is interposed between the stakeholder and the tested company; or

(ii) the stakeholder indirectly holds the stake in the tested company by holding another interest directly in an entity (the ***top interposed entity***) that is not a company and that is interposed between the stakeholder and the tested company.

Note 1: There might also be other entities interposed between the top interposed entity and the tested company.

Note 2: Other rules might affect this provision: see subsection (3) and sections 166-272, 166-275 and 166-280.

Note 3: For paragraph (a), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Top interposed entity deemed to hold stakes directly in the tested company

(2) The tests are applied to the tested company as if, at the *ownership test time:

(a) if the stake is a *voting stake—the top interposed entity controls, or is able to control, the voting power in the tested company that is carried by that stake at that time; and

(b) if the stake is a *dividend stake—the top interposed entity *indirectly had the right to receive, for its own benefit, any *dividends the tested company may pay in respect of that stake at that time; and

(c) if the stake is a *capital stake—the top interposed entity indirectly had the right to receive, for its own benefit, any distributions of capital of the tested company in respect of that stake at that time; and

(d) in any case—the top interposed entity were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

Acquisition of top interposed entity by another entity

(3) If:

(a) a new entity (the ***new interposed entity***) acquires all the *shares or other interests in the top interposed entity (the ***old interposed entity***); and

(b) the new interposed entity has the same classes of shares or other interests as the old interposed entity; and

(c) if the new interposed entity is a company—the shares are not *redeemable shares; and

(d) in any case—each stakeholder holds the same proportion of the total *voting stakes, *dividend stakes or *capital stakes in the new interposed entity immediately after the acquisition as the stakeholder held in the old interposed entity immediately before the acquisition;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

then, at all times that the old interposed entity held or is taken to have held a stake in the tested company, the new interposed entity is taken to have held that stake.

(4) Except for the purposes of determining whether a time is an alteration time (within the meaning of section 165-115L), section 166-272 (which is about the same shares or interests) is to be disregarded when applying subsection (3).

166-235 Voting, dividend and capital stakes

*Meaning of **voting stake***

(1) An entity holds a ***voting stake*** in a company if:
  (a) the entity is the registered holder of *shares in the company; and
  (b) the shares carry rights to exercise voting power in the company.

(2) An entity (the ***stakeholder***) also holds a ***voting stake*** in a company if:
  (a) one or more other entities are interposed between the company and the stakeholder; and
  (b) the stakeholder controls, or is able to control, voting power in the company indirectly through the interposed entity or entities.

Note: For working out the size of a voting stake (for example, for paragraph 166-225(1)(a)), Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

*Meaning of **dividend stake***

(3) An entity holds a ***dividend stake*** in a company if:
  (a) the entity is the registered holder of *shares in the company; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the shares carry rights to all or any *dividends that the company may pay.

(4) An entity (the ***stakeholder***) also holds a ***dividend stake*** in a company if:

(a) one or more other entities are interposed between the company and the stakeholder; and

(b) the stakeholder has the right to receive, for its own benefit and *indirectly through the interposed entity or entities, all or any *dividends that the company may pay.

Note: For working out the size of a dividend stake (for example, for paragraph 166-225(1)(b)), Subdivision 167-A has special rules for a company whose shares do not all carry the same rights to dividends.

*Meaning of **capital stake***

(5) An entity holds a ***capital stake*** in a company if:

(a) the entity is the registered holder of *shares in the company; and

(b) the shares carry rights to all or any of a distribution of capital of the company.

(6) An entity (the ***stakeholder***) also holds a ***capital stake*** in a company if:

(a) one or more other entities are interposed between the company and the stakeholder; and

(b) the stakeholder has the right to receive, for its own benefit and *indirectly through the interposed entity or entities, all or any of a distribution of capital of the company.

Note: For working out the size of a capital stake (for example, for paragraph 166-225(1)(c)), Subdivision 167-A has special rules for a company whose shares do not all carry the same rights to capital distributions.

Stakes held by nominees

(7) For the purposes of sections 166-225 and 166-230, if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) an entity (the ***nominee entity***) holds a *voting stake, a *dividend stake, or a *capital stake, in a company; and

(b) the nominee entity is itself a company; and

(c) the nominee entity holds the stake as a nominee for more than one other entity;

then, for each entity for whom a part of the stake is held by the nominee entity, that entity's part of the stake may be treated instead as a separate stake.

Stakes held directly and/or indirectly by widely held companies

166-240 Stakes held directly and/or indirectly by widely held companies

(1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if a *widely held company directly or indirectly (through one or more interposed entities), or both directly and indirectly, holds any of the following:

(a) a *voting stake that carries rights to between 10% and 50% (inclusive) of the voting power in the company;

(b) a *dividend stake that carries the right to receive between 10% and 50% (inclusive) of any dividends that the company may pay;

(c) a *capital stake that carries the right to receive between 10% and 50% (inclusive) of any distribution of capital of the company.

Note 1: Other rules might affect this provision: see subsections (3) and (4) and sections 166-272, 166-275 and 166-280.

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) The tests are applied to the tested company as if, at the *ownership test time:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) if the stake is a *voting stake—the *widely held company controls, or is able to control, the voting power in the tested company that is carried by that stake at that time; and

(b) if the stake is a *dividend stake—the widely held company had the right to receive (whether directly or *indirectly), for its own benefit, any *dividends the tested company may pay in respect of that stake at that time; and

(c) if the stake is a *capital stake—the widely held company had the right to receive (whether directly or indirectly), for its own benefit, any distributions of capital of the tested company in respect of that stake at that time; and

(d) in any case—the widely held company were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

Exception

(3) This section does not apply in respect of a *widely held company if the company is not a widely held company for the whole income year in which the *ownership test time occurs.

Note: See section 165-255 for the rule about incomplete periods.

Acquisition of widely held company by another entity

(4) If:

(a) a new company acquires all the *shares in the *widely held company; and

(b) immediately before the acquisition, the shares in the widely held company were listed for quotation in the official list of an *approved stock exchange; and

(c) immediately after the acquisition, the shares in the new company are listed for quotation in the official list of an approved stock exchange; and

(d) the new company has the same classes of shares (not being *redeemable shares) as the widely held company; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) each entity that held stakes in the widely held company immediately before the acquisition holds the same proportion of the total *voting stakes, *dividend stakes or *capital stakes in the new company immediately after the acquisition as the entity held in the widely held company immediately before the acquisition;

then, at all times that the widely held company held or is taken to have held a stake in the tested company, the new company is taken to have held that stake.

(5) Except for the purposes of determining whether a time is an alteration time (within the meaning of section 165-115L), section 166-272 (which is about same shares or interests) is to be disregarded when applying subsection (4).

166-245 Stakes held by other entities

(1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:

(a) an entity mentioned in subsection (2) directly or indirectly (through one or more interposed entities) holds a *voting stake, a *dividend stake or a *capital stake in the company; and

(b) neither the entity nor another entity has, under section 166-225, 166-230 or 166-240, been taken to control voting power or have rights in respect of the stake; and

(c) the entity mentioned in subsection (2) satisfies the condition in subsection (3).

Note: Other rules might affect this provision: see sections 166-272, 166-275 and 166-280.

(2) For the purposes of subsection (1), these are the entities:

(a) a *superannuation fund; and

(b) an *approved deposit fund; and

(c) a *special company; and

(d) a *managed investment scheme; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) any other entity, or entity of a kind, prescribed by the regulations.

(3) For the purposes of paragraph (1)(c), an entity satisfies the condition in this subsection if at all times during the income year of the tested company in which the *ownership test time occurs:

(a) if the entity is a *superannuation fund:

(i) the fund is a *complying superannuation fund; or

(ii) the fund is a superannuation fund that is established in a foreign country and is regulated under a *foreign law; or

(b) if the entity is an *approved deposit fund—the fund is a *complying approved deposit fund; or

(c) if the entity is a *special company—the company is a special company; or

(d) if the entity is a *managed investment scheme:

(i) the scheme is registered under the *Corporations Act 2001*; or

(ii) the entity is recognised, under a *foreign law relating to corporate regulation, as an entity with a similar status to a managed investment scheme; or

(e) if the entity is an entity, or an entity of a kind, prescribed by the regulations—the entity meets any conditions prescribed by the regulations.

Note: See section 165-255 for the rule about incomplete periods.

If the entity has 10 members or fewer

(4) If the entity has 10 *members or fewer, the tests are applied to the tested company as if, at the *ownership test time:

(a) if the stake is a *voting stake—each member controls, or is able to control, an equal proportion of the voting power in the tested company that is carried by that stake at that time; and

(b) if the stake is a *dividend stake—each member had the right to receive (whether directly or *indirectly), for its own benefit, an equal proportion of any *dividends the tested company may pay in respect of that stake at that time; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) if the stake is a *capital stake—each member had the right to receive (whether directly or indirectly), for its own benefit, an equal proportion of any distributions of capital of the tested company in respect of that stake at that time; and

(d) in any case—each member were a person (other than a company or a trustee).

Note 1: If each member's proportion of the voting power, the dividends or the distributions is less than 10%, then subsections (5) and (6) apply instead.

Note 2: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

If the entity has more than 10 members etc.

(5) The ownership tests are applied as set out in subsection (6) if:

(a) the entity has more than 10 *members; or

(b) under subsection (4):

(i) the proportion of the voting power in the company that each member controls, or is able to control, is less than 10% of the total voting power; or

(ii) the proportion of the *dividends that the tested company may pay for the benefit of each member is less than 10% of the total dividends; or

(iii) the proportion of the distributions of capital that the tested company may pay for the benefit of each member is less than 10% of the total distributions.

(6) The ownership tests are applied to the tested company as if, at the *ownership test time:

(a) if the stake is a *voting stake—the entity controls, or is able to control, the voting power in the tested company that is carried by that stake at that time; and

(b) if the stake is a *dividend stake—the entity had the right to receive (whether directly or *indirectly), for its own benefit, any *dividends the tested company may pay in respect of that stake at that time; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) if the stake is a *capital stake—the entity had the right to receive (whether directly or indirectly), for its own benefit, any distributions of capital of the tested company in respect of that stake at that time; and

(d) in any case—the entity were a person (other than a company or a trustee).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

When identity of foreign stakeholders is not known

166-255 Bearer shares in foreign listed companies

(1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:

(a) at the *ownership test time, it is the case, or it is reasonable to assume, that persons (none of them companies or trustees) hold a *voting stake, a *dividend stake or a *capital stake in the tested company; and

(b) an entity has not, under section 166-225, 166-230, 166-240 or 166-245, been taken to control voting power or have rights in respect of the stake; and

(c) another company (the ***foreign listed company***) is interposed, at that time, between those persons and the tested company; and

(d) at all times during the income year of the tested company in which the ownership test time occurs, the *principal class of shares in the foreign listed company is listed for quotation in the official list of an *approved stock exchange; and

(e) at the ownership test time:

(i) voting stakes that carry rights to 50% or more of the voting power in the foreign listed company; or

(ii) dividend stakes that carry rights to receive 50% or more of any dividends that the foreign listed company may pay; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(iii) capital stakes that carry rights to receive 50% or more of any distribution of capital of the foreign listed company;

as the case requires, are directly held by way of bearer shares; and

(f) the beneficial owners of some or all of those bearer shares have not been disclosed to the foreign listed company.

Note 1: See section 165-255 for the rule about incomplete test periods.

Note 2: Other rules might affect this provision: see sections 166-270, 166-275 and 166-280.

Note 3: For paragraph (e), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) The tests are applied to the tested company as if, at the *ownership test time, for each of those bearer shares whose owners have not been disclosed:

(a) a single notional entity controls, or is able to control, the voting power in the tested company that is carried by those shares at that time; and

(b) the entity *indirectly had the right to receive, for its own benefit:

(i) any *dividends the tested company may pay in respect of those shares at that time; and

(ii) any distributions of capital of the tested company in respect of those shares at that time; and

(c) the entity were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

(3) To avoid doubt, the single notional entity mentioned in subsection (2) is a different single notional entity from the one mentioned in section 165-207 and the one mentioned in section 166-225.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Section 166-260

166-260 Depository entities holding stakes in foreign listed companies

(1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:

(a) at the *ownership test time, it is the case, or it is reasonable to assume, that persons (none of them companies or trustees) have a *voting stake, a *dividend stake or a *capital stake in the tested company; and

(b) an entity has not, under section 166-225, 166-230, 166-240, 166-245 or 166-255, been taken to control voting power or have rights in respect of the stake; and

(c) another company (the ***foreign listed company***) is interposed, at that time, between those persons and the tested company; and

(d) at all times during the income year of the tested company in which the ownership test time occurs, the *principal class of shares in the foreign listed company is listed for quotation in the official list of an *approved stock exchange; and

(e) at the ownership test time:

(i) voting stakes that carry rights to 50% or more of the voting power in the foreign listed company; or

(ii) dividend stakes that carry rights to receive 50% or more of any dividends that the foreign listed company may pay; or

(iii) capital stakes that carry rights to receive 50% or more of any distribution of capital of the foreign listed company;

as the case requires, are directly held by one or more *depository entities (see subsection (3)); and

(f) a law of a foreign country, or a part of a foreign country, in which the approved stock exchange is located, prevents the disclosure of the beneficial owners of some or all of those shares that are held by the depository entities; and

(g) the beneficial owners of some or all of the shares held by the depository entities have not been disclosed to the foreign listed company.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: See section 165-255 for the rule about incomplete test periods.

Note 2: This rule might not apply in all circumstances: see sections 166-275 and 166-280.

Note 3: For paragraph (e), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(2) The tests are applied to the tested company as if, at the *ownership test time, for each of those *shares held by a *depository entity whose owners have not been disclosed, the depository entity:

(a) controls, or is able to control, the voting power in the tested company that is carried by those shares at that time; and

(b) *indirectly had the right to receive, for its own benefit:

(i) any *dividends the tested company may pay in respect of those shares at that time; and

(ii) any distributions of capital of the tested company in respect of those shares at that time; and

(c) were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

(3) If the effect of subsection (2) is that the *depository entity is taken to hold:

(a) a *voting stake that carries rights to less than 10% of the voting power in the tested company; or

(b) a *dividend stake that carries the right to receive less than 10% of any dividends that the tested company may pay; or

(c) a *capital stake that carries the right to receive less than 10% of any distribution of capital of the tested company;

then neither section 166-225 nor section 166-230 applies in respect of that stake.

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) If the *depository entity (the ***old depository entity***) is subsequently replaced by another depository entity (the ***new depository entity***), then, at all times that the old depository entity held or is taken to have held a stake in the tested company, the new entity is taken to have held that stake.

(5) A ***depository entity*** is an entity:
  (a) that is a central securities repository; and
  (b) that provides custody of share certificates; and
  (c) that provides services for the exchange of shares.

Other rules relating to voting power and rights

166-265 Persons who actually control voting power or have rights are taken not to control power or have rights

If any of sections 166-225, 166-230, 166-240, 166-245, 166-255 or 166-260 apply, the ownership tests in section 166-145 are also applied to the tested company as if, at the *ownership test time:

(a) the persons who control, or are able to control, the voting power in the tested company (whether directly, or indirectly through one or more interposed entities) that is carried by each *voting stake in the tested company mentioned in that section had *not* had that control; and

(b) the persons who have the right to receive for their own benefit (whether directly, or *indirectly through one or more interposed entities):
  (i) any *dividends that the tested company may pay in respect of each *dividend stake in the tested company mentioned in that section; and
  (ii) any distributions of capital of the tested company in respect of each *capital stake in the tested company mentioned in that section;

had *not* had that right.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-270 Single notional entity stakeholders taken to have minimum voting control, dividend rights and capital rights

Minimum control of voting power

(1) If:

(a) the *ownership test time is after the start of the *test period; and

(b) a single notional entity mentioned in section 166-225 or 166-255 has voting power in a company; and

(c) the voting power that the entity has at the ownership test time is greater than the voting power that the entity had at the start of the test period;

then the entity is taken to have voting power in the company at the ownership test time only to the extent that it had it at the start of the test period.

Minimum percentage of rights to dividends and capital

(2) If:

(a) the *ownership test time is after the start of the *test period; and

(b) a single notional entity mentioned in section 166-225 or 166-255 has a percentage of rights to the *dividends or distributions of capital of a company; and

(c) the percentage that the entity has rights to at the ownership test time is greater than the percentage (the ***lower percentage***) of the dividends or distributions of capital of the company that the entity had rights to at the start of the test period;

then the entity is taken to have rights to the lower percentage of the dividends or distributions of capital at the ownership test time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

166-272 Same shares or interests to be held

Application

(1) This section modifies how the ownership tests in section 166-145 are applied to a *voting stake, a *dividend stake or a *capital stake in the tested company held by one of the following entities (the ***stakeholder***):

(a) a top interposed entity mentioned in section 166-230 (which is about indirect stakes of less than 10%);

(b) a *widely held company mentioned in section 166-240;

(c) an entity mentioned in subsection 166-245(2) (which is about stakes held by other entities);

(d) a *depository entity mentioned in section 166-260;

(whether directly, or *indirectly through one or more interposed entities).

Exactly the same shares or interests must continue to be held

(2) For the purpose of determining whether the tested company has satisfied a condition or whether a time is a changeover time or an alteration time in respect of the tested company:

(a) a condition that has to be satisfied is not satisfied; or

(b) a time that, apart from this subsection, would not be a changeover time or alteration time is taken to be a changeover time or alteration time, as the case may be;

unless, at all relevant times:

(c) the only *shares in the tested company that are taken into account are exactly the same shares and are held by the same persons; and

(d) the only interests (including shares) in any other entity that is interposed between the stakeholder and the tested company that are taken into account are exactly the same interests and are held by the same persons.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

What happens in case of share splitting

(3) If:

(a) a particular *share (an ***old share***) in a company of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the *test period is divided into 2 or more new shares during that period; and

(b) the stakeholder or entity becomes the holder of each of the new shares immediately after the division takes place and remains the holder until the end of that period;

the new shares are taken to be exactly the same shares as the old share.

What happens in case of splitting of units in a unit trust

(4) If:

(a) a particular unit (an ***old unit***) in a unit trust of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the *test period is divided into 2 or more new units during that period; and

(b) the stakeholder or entity becomes the holder of each of the new units immediately after the division takes place and remains the holder until the end of that period;

the new units are taken to be exactly the same units as the old unit.

What happens in case of consolidation of shares

(5) If:

(a) a particular *share (an ***old share***) in a company of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the *test period, and other shares (each of which is also called an ***old share***) in the company of which the stakeholder or entity is the holder at the start of that period, are consolidated into a new share during that period; and

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the stakeholder or entity becomes the holder of the new share immediately after the consolidation takes place;

the new share is taken to be exactly the same share as the old shares.

What happens in case of consolidation of units in a unit trust

(6) If:

(a) a particular unit (an ***old unit***) in a unit trust of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the *test period and other units (each of which is also called an ***old unit***) in the trust of which the stakeholder or entity is the holder at the start of that period are consolidated into a new unit during that period; and

(b) the stakeholder or entity becomes the holder of the new unit immediately after the consolidation takes place;

the new unit is taken to be exactly the same unit as the old units.

Totals of shares or rights not affected

(7) This section does not affect how *shares, and rights carried by shares, are counted for the purpose of determining:

(a) the total voting power in the tested company; or

(b) the total dividends that the tested company may pay; or

(c) the total distributions of capital of the tested company.

Conditions in section 166-145 may be treated as having been satisfied in certain circumstances

(8) If any of the conditions in section 166-145 have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of subsection (2) of this section; and

(b) the tested company has information from which it would be reasonable to conclude that less than 50% of:

(i) the *tax loss; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(ii) the *notional loss; or
(iii) the bad debt; or
(iv) the unrealised net loss (within the meaning of section 165-115E);

as the case requires, has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any *CGT event in relation to any *direct equity interests or *indirect equity interests held in the tested company by the stakeholder, or an entity interposed between the stakeholder and the tested company, during the *test period.

Subsection (8) not to apply for purpose of determining whether an alteration time has occurred

(9) However, subsection (8) does not apply in relation to any of the conditions in section 166-145 in so far as those conditions have effect for the purpose of determining whether an alteration time (within the meaning of section 165-115L) has occurred.

Time of happening of CGT event

(10) The happening of any *CGT event in relation to a *direct equity interest or *indirect equity interest in the tested company that results in the failure of the tested company to satisfy a condition in section 166-145 is taken, for the purposes of paragraph (8)(b), to have occurred during the *test period.

When the rules in this Subdivision do not apply

166-275 Rules in this Subdivision intended to be concessional

A company is taken to have met the conditions in section 165-12, paragraph 165-35(a) or section 165-123, or a changeover time or an alteration time is taken not to have occurred in respect of a company, (as the case requires), if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) a *tracing rule modifies how the ownership tests in section 166-145 apply to the tested company in respect of a *voting stake, a *dividend stake or a *capital stake; and

(b) the company fails the tests (whether at the time of applying the tracing rule or at another time); and

(c) the company believes, on reasonable grounds, that if the tracing rule did not modify how the tests apply to the company in respect of that stake, it would not fail the tests.

Example: 11 people own shareholdings of 9% in the listed company. Under section 166-225, one notional shareholder is deemed to hold all of those shareholdings. 2 of the people sell their shareholdings so that 9 of the original 11 people now own shareholdings of 11%. Without the rule in this section, the company would fail the ownership tests (as the rule in section 166-225 no longer applies).

166-280 Controlled test companies

(1) A *tracing rule does not modify how the ownership tests in section 166-145 apply to the tested company in respect of all or part of the voting power in the tested company, or all or some of the rights to *dividends of, or capital in, the tested company, if:

(a) either:

(i) an entity (the ***controlling entity***) directly holds that power or has those rights; or

(ii) an entity (the ***controlling entity***) indirectly holds that power or has those rights through one or more interposed entities; and

(b) the tested company is sufficiently influenced (within the meaning of paragraph 318(6)(b) of the *Income Tax Assessment Act 1936*) by the controlling entity.

Note: However, a tracing rule can modify how the ownership tests in section 166-145 apply to the tested company in respect of voting power or dividend or capital rights held by entities other than controlling entities.

(2) A *tracing rule does not modify how the ownership tests in section 166-145 apply to the tested company in respect of all or part of the voting power in the tested company if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the tested company is a *widely held company; and

(b) that voting power:

(i) is more than 25% of the total voting power in the tested company and is controlled (whether directly, or indirectly through one or more interposed entities) by a natural person, together with his or her *associates; or

(ii) is more than 50% of the total voting power in the tested company and is controlled (whether directly, or indirectly through one or more interposed entities) by a trustee or company, together with its associates.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 167—Companies whose shares carry unequal rights to dividends, capital distributions or voting power

Table of Subdivisions

Guide to Division 167
167-A Rights to dividends or capital distributions
167-B Voting power

Guide to Division 167

167-1 What this Division is about

This Division modifies the way conditions relating to this Part apply to companies whose shares:

(a) do not all carry the same rights to dividends or capital distributions; or

(b) do not all carry the same voting rights, or do not carry all of the voting rights in the company.

Subdivision 167-A—Rights to dividends or capital distributions

Guide to Subdivision 167-A

167-5 What this Subdivision is about

Companies whose shares do not all carry the same rights to dividends or capital distributions may test the possession of those rights similarly to companies whose shares are all of a single class with the same rights.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

167-7 Simplified outline of this Subdivision

If a condition of the continuity of ownership test cannot be worked out for a company:

(a) because of its unequal share structure; or

(b) because of a holding company's unequal share structure;

an entity can choose to reconsider that condition in up to 3 ways.

The first way involves disregarding debt interests.

The second way involves disregarding debt interests and secondary share classes.

The third way involves disregarding those shares, and treating the remaining shares as carrying certain percentages of the rights to receive dividends and capital distributions.

The second way can only be tried after the first way, while the third way can only be tried after the second way.

Table of sections

Operative provisions

167-10 When this Subdivision applies
167-15 First way—disregard debt interests
167-20 Second way—also disregard secondary share classes
167-25 Third way—treat remaining shares as having fixed rights to dividends and capital distributions
167-30 Fixing rights if practicable to work out market values
167-35 Fixing rights if impracticable to work out market values etc.
167-40 The valuing times for conditions listed in subsection 167-10(1)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

167-10 When this Subdivision applies

When this Subdivision applies

(1) This Subdivision applies in relation to a company if:

(a) as described in the following table, a condition (the ***unsatisfied condition***) cannot be worked out for the company for a particular period (the ***test period***); and

(b) at one or more times during the test period:

(i) the company; or

(ii) a company that has a *shareholding interest in it;

(an ***unequally structured company***) has an *unequal share structure.

Conditions that can be reconsidered under this Subdivision

Item	Column 1 Each of the following provisions contains a condition:	Column 2 that cannot be worked out for:
1	(a) subsection 165-12(3) or (4); (b) paragraph 165-37(1)(b) or (c); (c) subsection 165-123(3) or (4); (d) paragraph 175-10(3)(b) or (c), 175-45(3)(b) or (c) or 175-85(3)(b) or (c); (e) subparagraph (b)(ii) or (iii) of the definition of ***eligible Division 166 company*** in subsection 995-1(1)	a period that is all or part of the period to which that provision relates

Note: Each of these conditions is about rights to the company's dividends or capital distributions.

(2) This Subdivision also applies in relation to a company if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) as described in the following table, a condition (the ***unsatisfied condition***) cannot be worked out for the company for a particular time (the ***test time***); and

(b) at the test time, the company, or a company that has a *shareholding interest in it, (an ***unequally structured company***) has an *unequal share structure.

Conditions that can be reconsidered under this Subdivision

Item	Column 1 Each of the following provisions contains a condition:	Column 2 that cannot be worked out for:
1	(a) paragraph 165-115C(1)(b) or (c) or 165-115L(1)(b) or (c); (b) subparagraph 165-115X(1)(b)(ii) or (iii); (c) paragraph 165-115Z(1)(b) or (c); (d) subsection 166-145(3) or (4); (e) subparagraph 166-175(1)(e)(ii) or (iii); (f) paragraph 166-225(1)(b) or (c); (g) subparagraph 166-230(1)(a)(ii) or (iii); (h) paragraph 166-240(1)(b) or (c); (i) subparagraph 166-255(1)(e)(ii) or (iii) or 166-260(1)(e)(ii) or (iii); (j) paragraph 166-260(3)(b) or (c) or 166-270(2)(c); (k) paragraph 170-260(3)(b) or (c) or 170-265(2)(b) or (c)	a time that is the time, or one of the times, to which that provision relates

Note 1: Each of these conditions is about rights to the company's dividends or capital distributions.

Note 2: If a condition cannot be worked out for several of the times to which the provision relates, apply this Subdivision separately for each of those times.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

*Meaning of **unequal share structure***

(3) A company has an ***unequal share structure*** at a particular time if, at that time:

(a) the company's *shares do not all carry the same rights to *dividends, or capital distributions, of the company; or

(b) some or all of the company's shares carry discretionary rights to dividends, or capital distributions, of the company; or

(c) the company is a *co-operative company that has *on issue one or more interests (other than shares) in the company's capital.

167-15 First way—disregard debt interests

(1) The unsatisfied condition may be reconsidered by disregarding any *debt interests in each unequally structured company.

(2) The way an entity prepares its *income tax return is sufficient evidence of it choosing to work out the unsatisfied condition under subsection (1).

167-20 Second way—also disregard secondary share classes

(1) This section applies in relation to each unequally structured company if:

(a) despite section 167-15, the unsatisfied condition cannot be worked out; and

(b) on the last day of the test period or at the test time (as appropriate), there is *on issue in that company one or more classes of *shares (the ***secondary share classes***) other than:

(i) the class or classes of ordinary or common shares that represent the majority of that company's value; and

(ii) *debt interests; and

(c) it is reasonable to conclude that the total *market value of the secondary share classes does not exceed 25% of the total market value of all of that company's shares (other than debt interests); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) for one or more of the secondary share classes, it is reasonable to conclude that the market value of each of them does not exceed 10% of the total market value of all of that company's shares (other than debt interests).

Note: This section can apply separately for each unequally structured company.

(2) For the purposes of subsection (1), use *market values on the last day of the test period, or at the test time, (as appropriate).

(3) The unsatisfied condition may be reconsidered by disregarding:
(a) those of the secondary share classes that, under paragraph (1)(d), caused this section to apply; and
(b) any *debt interests in that company.

(4) The way an entity prepares its *income tax return is sufficient evidence of it choosing to work out the unsatisfied condition under subsection (3).

167-25 Third way—treat remaining shares as having fixed rights to dividends and capital distributions

When this section applies

(1) This section applies if, despite sections 167-15 and 167-20, the unsatisfied condition cannot be worked out for the test period or test time (as appropriate).

How to fix rights to dividends and capital distributions

(2) The unsatisfied condition may be reconsidered by applying subsections (3) and (4) to each unequally structured company. When doing this for an unsatisfied condition listed in subsection 167-10(1), assume:
(a) that the test period consists only of the valuing times worked out under section 167-40; and
(b) that each of those valuing times is a test time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) Firstly, disregard any *debt interests in that company and any of its *shares that can be disregarded under subsection 167-20(3).

(4) Secondly, treat each of that company's remaining *shares *on issue at the test time as having at that time the percentage of the rights to receive *dividends, and capital distributions, worked out either:

(a) under section 167-30; or

(b) under section 167-35 if:

(i) it is not reasonably practicable to work out the market values of each of those remaining shares; or

(ii) the sum of the *market values of all of those remaining shares is nil.

Note: The remaining shares are those remaining after disregarding the shares mentioned in subsection (3).

Evidence of a choice under this section

(5) The way an entity prepares its *income tax return is sufficient evidence of it choosing to work out the unsatisfied condition under this section.

167-30 Fixing rights if practicable to work out market values

Each remaining *share is treated at the test time as carrying the following percentage of the rights to receive *dividends, and capital distributions, from the company:

$$\frac{\text{*Share's *market value}}{\text{Sum of market values of all of the remaining shares in the company}} \times 100$$

where market value is worked out at the test time.

167-35 Fixing rights if impracticable to work out market values etc.

(1) Each remaining *share is treated at the test time as carrying such a percentage of the rights to receive *dividends, and capital distributions, from the company as is reasonable worked out:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) at the test time; and

(b) having regard to the purpose of the unsatisfied condition.

(2) In working out what is reasonable for subsection (1), have regard to the following:

(a) the company's *constitution;

(b) any agreements between the company and either or both of the following:

(i) any or all of the shareholders in the company;

(ii) any or all of the *associates of a shareholder in the company;

(c) any statement by the company of its policy in paying *dividends or making capital distributions;

(d) the ability of an entity to control (whether directly, or indirectly through one or more interposed entities) how the company pays dividends or makes capital distributions;

(e) how the company has previously paid dividends or made capital distributions;

(f) whether all classes of *shares carry substantially the same rights to receive dividends and capital distributions;

(g) the principle that:

(i) a *tax loss or bad debt should only be deductible; and

(ii) a *net capital loss should only be applied;

if a majority of the persons entitled to the benefits of dividend and capital distributions of the company is maintained.

167-40 The valuing times for conditions listed in subsection 167-10(1)

(1) For the purposes of subsection 167-25(2), the valuing times for the test period are:

(a) the time the test period starts; and

(b) the time just before, and the time just after, any of the following events that happen during the test period:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) the issue of *shares of a class of remaining shares;
(ii) the variation of rights attached to any remaining shares to receive *dividends or capital distributions;
(iii) the redemption or cancellation of any remaining shares; and

(c) the time the test period ends.

(2) For paragraph (1)(b), disregard a time if it is outside the test period.

Subdivision 167-B—Voting power

Guide to Subdivision 167-B

167-75 What this Subdivision is about

Companies whose shares:
(a) do not all carry the same voting rights; or
(b) do not carry all of the voting rights in the company;
may test the possession of voting rights similarly to companies whose shares are all of a single class with the same rights.

Table of sections

Operative provisions

167-80 When this Subdivision applies
167-85 Different method for working out voting power
167-90 Dual listed companies

Operative provisions

167-80 When this Subdivision applies

(1) For the purposes of this Part, voting power in a company at one or more times can be worked out under section 167-85 if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the company's *shares do not all, at those times, carry the same voting rights for all matters affecting the company; or

(b) the company's shares do not carry all of the voting rights in the company;

whether this is because of the company's *constitution, an *arrangement or some other reason.

Note: Disregard dual listed company voting shares (see section 167-90).

(2) Further, if those times are consecutive times during a period, the voting power in the company can be worked out under section 167-85 as if that period consists only of:

(a) the time that period starts; and

(b) each later time (if any) during that period when there is a change in the maximum number of votes any entity could cast on a poll described in paragraph 167-85(1)(a) or (b).

167-85 Different method for working out voting power

(1) An entity may choose whether voting power in the company at a particular time is worked out solely by reference to:

(a) the maximum number of votes that could be cast on a poll on the election of a director of the company, if such a poll were to be held at that time; or

(b) the maximum number of votes that could be cast on a poll on an amendment to the company's *constitution, other than an amendment altering:

(i) the rights carried by any of the company's *shares; or

(ii) other forms of voting power in the company;

if such a poll were to be held at that time.

(2) The way the entity prepares its *income tax return is sufficient evidence of it making a choice under subsection (1).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Section 167-90

167-90 Dual listed companies

For the purposes of this Subdivision, disregard *shares that are *dual listed company voting shares.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 170—Treatment of certain company groups for income tax purposes

Table of Subdivisions

170-A Transfer of tax losses within certain wholly-owned groups of companies
170-B Transfer of net capital losses within certain wholly-owned groups of companies
170-C Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies
170-D Transactions by a company that is a member of a linked group

Subdivision 170-A—Transfer of tax losses within certain wholly-owned groups of companies

Guide to Subdivision 170-A

170-1 What this Subdivision is about

A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. One of the companies must be an Australian branch of a foreign bank, and both companies must be members of the same wholly-owned group.

Table of sections

170-5 Basic principles for transferring tax losses

Effect of transferring a tax loss

170-10 When a company can transfer a tax loss
170-15 Income company is taken to have incurred transferred loss
170-20 Who can deduct transferred loss

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

170-25 Tax treatment of consideration for transferred tax loss

Conditions for transfer

170-30 Companies must be in existence and members of the same wholly-owned group etc.
170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A
170-33 Alternative test of relations between the loss company and other companies
170-35 The loss company
170-40 The income company
170-42 If the income company has become the head company of a consolidated group or MEC group
170-45 Maximum amount that can be transferred
170-50 Transfer by written agreement
170-55 Losses must be transferred in order they are incurred
170-60 Income company cannot transfer transferred tax loss

Effect of agreement to transfer more than can be transferred

170-65 Agreement transfers as much as can be transferred
170-70 Amendment of assessments

Australian permanent establishments of foreign financial entities

170-75 Treatment like Australian branches of foreign banks

170-5 Basic principles for transferring tax losses

(1) A company can transfer a tax loss to another company so that the other company can deduct it in the income year of the transfer.

(2) Both companies must be members of the same wholly-owned group. There are other eligibility requirements that they must also satisfy.

(2A) One of the companies must be an Australian branch of a foreign bank. The other company must be:

(a) the head company of a consolidated group or MEC group; or

(b) *not* a member of a consolidatable group.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: This Subdivision applies to Australian permanent establishments of foreign entities that are financial entities in the same way as it applies to Australian branches of foreign banks. See section 170-75.

(3) The transferred loss must be "surplus" in the sense that the transferring company cannot use it because there is not enough assessable income to offset it. The other company must have enough assessable income to offset the transferred tax loss.

(4) Neither company must be prevented from deducting the loss by Division 165 or 175.

Note: Division 165 deals with the income tax consequences of changing ownership or control of a company. Division 175 deals with using a company's tax losses to avoid income tax.

(5) The tax loss is transferred by an agreement between the 2 companies.

(6) The tax loss can be transferred in the same year as it is incurred. In that case different rules apply.

Effect of transferring a tax loss

170-10 When a company can transfer a tax loss

(1) A company (the ***loss company***) can transfer an amount of its *tax loss for an income year (the ***loss year***) to another company (the ***income company***) if the conditions in this Subdivision are met.

(2) The amount transferred can be the whole or part of the *tax loss.

Note: A PDF cannot transfer a tax loss, except one for a period before it became a PDF: see section 195-10.

170-15 Income company is taken to have incurred transferred loss

(1) If an amount of a *tax loss is transferred, the amount is taken to be a tax loss incurred by the *income company in the *loss year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) However, if the *loss year is the same as the income year of the transfer, the *income company is taken to have incurred the *tax loss in the income year before the loss year.

Note: This rule is needed because Division 36 allows a tax loss to be deducted only if it was incurred in an *earlier* income year.

(3) Despite subsection (1), if the *tax loss is transferred because the conditions in section 170-32 are met, the *income company is taken to have incurred the tax loss for the income year for which the first prior transferor mentioned in that section incurred the tax loss.

(4) Despite subsection (1), if the *tax loss is transferred because the condition in subsection 170-42(4) is met, the *income company is taken to have incurred the tax loss for the income year for which that subsection assumes the income company incurred the tax loss.

170-20 Who can deduct transferred loss

(1) If an amount of a *tax loss is transferred, the *income company can deduct the amount in accordance with section 36-17 (which is about how to deduct a tax loss), but only for the income year of the income company for which the amount is transferred. That income year is called the ***deduction year***.

(2) The *loss company can no longer *utilise the transferred amount and is taken not to have incurred the *tax loss to the extent of that amount.

170-25 Tax treatment of consideration for transferred tax loss

(1) If the *loss company receives any consideration from the *income company for the amount of the *tax loss:

(a) so much of the consideration as is given for the amount of the tax loss is neither assessable income nor exempt income of the loss company; and

(b) a *capital gain does not accrue to the loss company because of the receipt of the consideration.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: However, the consideration may affect how section 170-210 modifies the cost base of direct and indirect interests in the loss company.

(2) If the *income company gives any consideration to the *loss company for the amount of the *tax loss:

(a) the income company cannot deduct the amount or value of the consideration; and

(b) the income company does not incur a *capital loss because of the giving of the consideration.

Note: However, the consideration may affect how section 170-215 modifies the cost base of direct and indirect interests in the income company.

Conditions for transfer

170-30 Companies must be in existence and members of the same wholly-owned group etc.

(1) Both companies must be in existence during at least part of each of the following income years:

(a) the *loss year; and

(b) the *deduction year; and

(c) any intervening income year.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-32 and 170-33.

(2) Also, both companies must be members of the same *wholly-owned group during the whole or part of those income years when both companies were in existence.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-32 and 170-33.

(3) One of the companies must be an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank.

Note: The Australian branch can be taken to be a separate entity from the foreign bank for this Subdivision. See Part IIIB of the *Income Tax Assessment Act 1936*.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) The other company must be covered by an item of this table.

The other company		
Item	**The other company must:**	**At this time:**
1	Be the *head company of a *consolidated group	The end of the *deduction year or, if the company ceases to be in existence during the deduction year, just before the cessation
2	Be the *head company of a *MEC group	The end of the *deduction year or, if the group ceases to exist during the deduction year because the company ceases to be in existence, just before the cessation
3	Not be a *member of a *consolidatable group	The end of the *deduction year or, if the company ceases to be in existence during the deduction year, just before the cessation

170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A

When the conditions in this section apply

(1) The conditions in this section apply instead of the conditions in subsections 170-30(1) and (2) if:

(a) the *income company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the *loss company incurred the *tax loss because of one or more transfers of the tax loss under Subdivision 707-A.

Conditions

(2) Each transferor (***prior transferor***) of the *tax loss under Subdivision 707-A must have been a company.

(3) It must have been possible to meet the conditions in subsections 170-30(1) and (2) in relation to the *loss company and the *income company assuming:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the *loss year were so much of the income year in which the *tax loss was transferred to the loss company under Subdivision 707-A as occurred after the transfer; and

(b) so much (if any) of the *deduction year as occurred before the transfer were disregarded.

(4) The *income company and each prior transferor must both be in existence during at least part of each of these periods:

(a) the period consisting of:

(i) if the prior transferor incurred the *tax loss apart from Subdivision 707-A—the *loss year; or

(ii) if the prior transferor incurred the tax loss because of a transfer under Subdivision 707-A (other than a transfer from the prior transferor to itself)—so much of the income year in which the transfer occurred as was after the transfer (but before any later transfer of the loss from the prior transferor under that Subdivision);

(b) so much of the income year during which the tax loss was transferred under Subdivision 707-A from the prior transferor to another company as occurs before the transfer (but after the start of the period described in paragraph (a));

(c) any intervening income year.

(5) The *income company must be a member of the same *wholly-owned group as each prior transferor during the whole or part of the periods described in subsection (4) for the prior transferor when both were in existence.

170-33 Alternative test of relations between the loss company and other companies

(1) The conditions in subsections 170-30(1) and (2) are taken to be met in relation to the *loss company and the *income company if:

(a) the loss company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the income company is covered by item 1 or 2 of the table in subsection 170-30(4) (because the company is the *head company of a *consolidated group or *MEC group at the time described in that item); and

(c) the relevant circumstances in this section exist.

Circumstances

(2) One circumstance is that there is another company (the ***first link company***) in relation to which all these conditions are met:

(a) the first link company became a *subsidiary member of a *consolidated group or *MEC group after the start of the *loss year but before the time described in the item of the table in subsection 170-30(4) that covers the *income company;

(b) the *tax loss could have been transferred from the *loss company to the first link company under this Subdivision (apart from subsection 170-30(4) and this section) for a *deduction year consisting of the *trial year for the first link company becoming a subsidiary member of that group had:

(i) the first link company continued to be *in existence as a separate entity (rather than being part of the head company of that group) when it was a subsidiary member of that group; and

(ii) the trial year not started before the start of the loss year; and

(iii) the first link company had enough assessable income for the trial year;

(c) the tax loss would have been incurred by the income company because of one or more transfers under Subdivision 707-A assuming the tax loss had been made by the first link company (apart from that Subdivision) for the loss year.

(3) If the condition in paragraph (2)(c) could be met only if there had been a transfer described in that paragraph involving a company other than the first link company and the *income company, another circumstance is that the other company and the *loss

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

company were *in existence and members of the same *wholly-owned group for the period:

(a) starting when the *tax loss would have been transferred under Subdivision 707-A *to* the other company as described in that paragraph; and

(b) ending when the tax loss would have been transferred under Subdivision 707-A *from* the other company as described in that paragraph.

(4) It does not matter whether or not any of the transfers mentioned in subsection (3) would have involved the first link company or the *income company as well as the other company.

(5) Another circumstance is that the conditions in subsections 170-30(1) and (2) would have been met for the *loss company and the *income company assuming:

(a) the *loss year consisted of the part of the income year in which the *tax loss would have been transferred to the income company under Subdivision 707-A as described in paragraph (2)(c) occurring after the time the transfer would have occurred; and

(b) so much (if any) of the *deduction year as occurred before the time the transfer would have occurred were disregarded.

170-35 The loss company

(1) The *loss company:

(a) must be an Australian resident and not a *prescribed dual resident; and

(b) must not be a *dual resident investment company in either the *loss year or the *deduction year.

(2) If the *loss year and the *deduction year are the same, it must be the case that the *loss company was *not* required to calculate the *tax loss:

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) under section 165-70 (because of a change in ownership or control); or

(b) under section 175-35 (because of injected income or deductions).

(3) Also, it must be the case that neither Subdivision 165-A nor Subdivision 175-A would have prevented the *loss company from deducting the *tax loss in the *deduction year if it had had enough assessable income (including *assessable film income) to offset the tax loss.

Note 1: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year. Subdivision 175-A is about the Commissioner preventing a company from getting certain tax benefits through its unused tax losses.

Note 2: Division 707 affects the operation of Subdivision 165-A if the loss company incurred the tax loss because of a transfer under Subdivision 707-A.

170-40 The income company

(1) The *income company must be an Australian resident and not a *prescribed dual resident.

(2) It must not be prevented by Division 165 or 175 from deducting the transferred amount in the *deduction year. Those Divisions do not apply to the *income company if the *loss year and the *deduction year are the same.

Note 1: Division 165 deals with the income tax consequences of changing ownership or control of a company. Division 175 deals with using a company's tax losses to avoid income tax.

Note 2: The condition in subsection (2) may not apply in some cases. See section 170-42.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

170-42 If the income company has become the head company of a consolidated group or MEC group

(1) The condition in subsection (2) of this section applies to the *income company instead of the condition in subsection 170-40(2) if the conditions in subsections 170-30(1) and (2) are met in relation to the *loss company and the income company apart from section 170-33 and either:

(a) both these circumstances exist:

(i) after the start of the *loss year but before the relevant time described in subsection 170-30(4), the income company became the *head company of a *consolidated group or of a *MEC group that came into existence after the start of the loss year;

(ii) the loss year and *deduction year are not the same; or

(b) all these circumstances exist:

(i) the income company is, at the relevant time described in subsection 170-30(4), the head company of a MEC group;

(ii) before that time but after the end of the loss year, the MEC group was involved in an application event described in section 719-300 (but not covered by subsection 719-300(4) or (5));

(iii) the income company would be taken under section 719-305 to have transferred losses to itself under Subdivision 707-A, assuming it had made losses while head company of the group or of a consolidated group involved in the event;

(iv) the MEC group or consolidated group came into existence before the start of the *loss year.

Note: An application event involves either expanding an existing MEC group by including extra eligible tier-1 companies of the top company for the group or creating a MEC group because more companies become eligible tier-1 companies of the top company of which the head company of a consolidated group is an eligible tier-1 company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The *income company must have been able to deduct the *tax loss in the *deduction year assuming that it had incurred the tax loss for the *loss year.

(3) The condition in subsection (4) of this section applies to the *income company instead of the condition in subsection 170-40(2) if the conditions in subsections 170-30(1) and (2) are met in relation to the *loss company and the income company because of section 170-33.

(4) The *income company must have been able to deduct the *tax loss in the *deduction year assuming that it had incurred the tax loss, for the income year in which the loss would have been transferred to it as described in paragraph 170-33(2)(c), because of one or more transfers under Subdivision 707-A described in that paragraph.

170-45 Maximum amount that can be transferred

Loss company can only transfer what it cannot use itself

(1) The amount transferred cannot exceed what would be the amount of the *loss company's *unutilised *tax loss at the end of the *deduction year if the loss company utilised the tax loss to the greatest extent possible.

Transferred loss must not exceed what the income company can use

(2) The amount transferred also cannot exceed the amount worked out as follows:

Method statement	
Step 1.	Add together the *income company's assessable income and *net exempt income (if any) for the *deduction year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Step 2.	Subtract the *income company's deductions for the *deduction year, except deductions for amounts of *tax losses transferred to the income company (by the *loss company or any other company).
Step 3.	Subtract the *income company's deductions for the *deduction year for amounts of *tax losses transferred to the income company (by the *loss company or any other company) by agreements made *before* the agreement by which the first amount is transferred.

Example: In the deduction year:

- the income company has assessable income of $60,000, net exempt income of $10,000 and deductions of $25,000 (apart from the transferred loss); and
- another company, being a member of the same wholly-owned group as the income company, transferred a tax loss of $15,000 to the income company; and
- the loss company incurred a tax loss of $50,000.

Of the $50,000 loss, the loss company can transfer no more than $30,000 ($60,000+$10,000-$25,000-$15,000) to the income company.

(3) Subsection (2) does not apply if the *tax loss is a *film loss. In that case, the amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1.	Add together the *income company's *net assessable film income and *net exempt film income (if any) for the *deduction year.
Step 2.	Subtract the *income company's deductions for the *deduction year for amounts of *film losses transferred to the income company (by the *loss company or any other company) by agreements made *before* the agreement by which the first amount is transferred.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) Subsections (2) and (3) do not apply if the transfer occurs because either or both of the conditions in subsections 170-42(2) and (4) are met. In that case, the amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1. Identify each *bundle of losses that, on the assumption in subsection 170-42(2) or (4) (as appropriate), would have included the *tax loss or *film loss (as appropriate).

Note 1: There will be 2 or more bundles of losses identified if both of the conditions in subsections 170-42(2) and (4) are met.

Note 2: There will be more than 1 bundle of losses identified on the basis of the assumption in paragraph 170-42(4) if the conditions in subsections 170-30(1) and (2) are met in relation to the loss company and the income company because of multiple applications of section 170-33 each involving a different first link company.

Step 2. For each *bundle identified, work out how much of the *tax loss or *film loss (as appropriate) the *income company would have been able to deduct in the *deduction year assuming that:

(a) the loss could have been deducted in that year only after the deduction in that year of any other losses of that *sort that would have been included in the bundle, other than losses (the ***transferable losses***) that could be transferred from the *loss company to the income company for that year; and

(b) if the bundle would have included 2 or more transferable losses of that sort—those losses could have been deducted only in the order in which the loss company incurred them.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

	Note 1:	If the assumption in subsection 170-42(2) is relevant to the bundle, it would have included losses incurred by the income company and transferred (or taken to be transferred) to the company (from itself) under Subdivision 707-A.
	Note 2:	If the assumption in paragraph 170-42(4) is relevant to the bundle, it would have included losses actually incurred by the first link company and transferred (by one or more transfers under Subdivision 707-A) to the income company.
Step 3.	Total every result of step 2 for the *tax loss or *film loss (as appropriate).	

170-50 Transfer by written agreement

(1) The transfer must be made by a written agreement between the *loss company and the *income company.

(2) The agreement must:

(a) specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and

(b) specify the amount of the *tax loss being transferred; and

(c) be signed by the public officer of each company; and

(d) be made on or before the day of lodgement of the *income company's *income tax return for the *deduction year, or within such further time as the Commissioner allows.

Note: The agreement will usually be made in the next income year *after* the one for which the income company will deduct the loss.

170-55 Losses must be transferred in order they are incurred

(1) If the *loss company has 2 or more *tax losses (other than *film losses) that it can transfer in the *deduction year, it can transfer them only in the order in which it incurred them.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) If the *loss company has 2 or more *film losses that it can transfer in the *deduction year, it can transfer them only in the order in which it incurred them.

(3) If:

(a) the *loss company has 2 or more *tax losses, or 2 or more *film losses, it can transfer for the *deduction year; and

(b) it incurred at least one of those losses apart from Subdivision 707-A and at least one of those losses because of a transfer under that Subdivision;

it can transfer under this Subdivision the losses it incurred because of a transfer under Subdivision 707-A only *after* transferring under this Subdivision the losses it incurred apart from that Subdivision.

(4) For the purposes of subsection (3), treat a loss incurred by the company both apart from that Subdivision and because of a transfer under that Subdivision as a loss incurred because of a transfer under that Subdivision.

(5) Subsections (1) and (2) have effect subject to subsection (3).

170-60 Income company cannot transfer transferred tax loss

The *income company cannot transfer an amount of a *tax loss transferred to it, or any part of the amount.

Effect of agreement to transfer more than can be transferred

170-65 Agreement transfers as much as can be transferred

(1) If the amount specified in an agreement exceeds the maximum amount that the *loss company can transfer to the *income company in the *deduction year, only that maximum amount is taken to have been transferred.

(2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

170-70 Amendment of assessments

The Commissioner may amend an assessment to disallow a deduction for a transferred amount of a *tax loss:

(a) if the agreement to transfer the tax loss is ineffective because the *loss company did not actually incur the loss; or

(b) to the extent that section 170-65 reduces the transferred amount of a tax loss because the loss company did not actually incur some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

Australian permanent establishments of foreign financial entities

170-75 Treatment like Australian branches of foreign banks

(1) The object of this section is to let *tax losses be transferred under this Subdivision to and from *Australian permanent establishments of *foreign entities that are *financial entities in the same way as tax losses can be transferred to and from Australian branches of *foreign banks.

(2) This Subdivision (except this section) applies to an *Australian permanent establishment of a *foreign entity that is a *financial entity in the same way as this Subdivision applies to an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 170-B—Transfer of net capital losses within certain wholly-owned groups of companies

Guide to Subdivision 170-B

170-101 What this Subdivision is about

A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in working out its net capital gain for the income year of the transfer. One of the companies must be an Australian branch of a foreign bank, and both companies must be members of the same wholly-owned group.

Table of sections

170-105 Basic principles for transferring a net capital loss

Effect of transferring a net capital loss

170-110 When a company can transfer a net capital loss
170-115 Who can apply transferred loss
170-120 Gain company is taken to have made transferred loss
170-125 Tax treatment of consideration for transferred tax loss

Conditions for transfer

170-130 Companies must be in existence and members of the same wholly-owned group etc.
170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A
170-133 Alternative test of relations between the loss company and other companies
170-135 The loss company
170-140 The gain company
170-142 If the gain company has become the head company of a consolidated group or MEC group
170-145 Maximum amount that can be transferred
170-150 Transfer by written agreement
170-155 Losses must be transferred in order they are made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

170-160 Gain company cannot transfer transferred net capital loss

Effect of agreement to transfer more than can be transferred

170-165 Agreement transfers as much as can be transferred
170-170 Amendment of assessments

Australian permanent establishments of foreign financial entities

170-174 Treatment like Australian branches of foreign banks

170-105 Basic principles for transferring a net capital loss

(1) A company can transfer a net capital loss (except a net capital loss from collectables) to another company so that the other company can apply it in working out its net capital gain for the income year of the transfer.

(2) Both companies must be members of the same wholly-owned group. There are other eligibility requirements that they must also satisfy.

(2A) One of the companies must be an Australian branch of a foreign bank. The other company must be:

(a) the head company of a consolidated group or MEC group; or

(b) *not* a member of a consolidatable group.

Note: This Subdivision applies to Australian permanent establishments of foreign entities that are financial entities in the same way as it applies to Australian branches of foreign banks. See section 170-174.

(3) The transferred loss must be "surplus" in the sense that, for the income year of the transfer, the transferring company does not have enough capital gains against which to apply it. The other company must have enough capital gains against which to apply it.

(5) Neither company must be prevented by Subdivision 165-CA or 175-CA from applying the loss in working out its net capital gain for the income year of the transfer.

Note: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(6) The net capital loss is transferred by an agreement between the 2 companies.

(7) The net capital loss can be transferred in the same year as it is made. In that case different rules apply.

(8) The provisions of Subdivision 170-C (so far as they relate to the transfer of net capital losses) are to be disregarded in applying the provisions of this Subdivision where the relevant agreement referred to in section 170-150 was made before 22 February 1999.

Effect of transferring a net capital loss

170-110 When a company can transfer a net capital loss

(1) A company (the ***loss company***) can transfer an amount of its *net capital loss for an income year (the ***capital loss year***) to another company (the ***gain company***) if the conditions in this Subdivision are met.

(2) The amount transferred can be the whole or part of the *net capital loss.

Note: A PDF cannot transfer a net capital loss, except one for a period before it became a PDF: see section 195-30 of the *Income Tax Assessment Act 1997*.

170-115 Who can apply transferred loss

(1) If an amount of a *net capital loss is transferred, the gain company can apply the amount in working out its *net capital gain, but only for the income year of the gain company for which the amount is transferred. That income year is called the ***application year***.

Note: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.

(2) The loss company can no longer *utilise the transferred amount and is taken not to have made the *net capital loss to the extent of that amount.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) Despite subsection (1), if the *net capital loss is transferred because the conditions in section 170-132 are met, the gain company is taken to have made the net capital loss for the income year for which the first prior transferor mentioned in that section made the net capital loss.

(4) Despite subsection (1), if the *net capital loss is transferred because the condition in subsection 170-142(4) is met, the gain company is taken to have made the net capital loss for the income year for which that subsection assumes the gain company made the net capital loss.

170-120 Gain company is taken to have made transferred loss

(1) If an amount of a *net capital loss is transferred, the amount is taken to be a *net capital loss of the gain company for the capital loss year.

(2) However, if the capital loss year is the same as the application year, the amount is taken to be a *capital loss of the gain company for the application year.

170-125 Tax treatment of consideration for transferred tax loss

(1) If the loss company receives consideration from the gain company for the transferred amount:

(a) the consideration is neither assessable income nor *exempt income of the loss company; and

(b) the loss company does not make a *capital gain because of receiving the consideration.

Note: However, the consideration may affect how section 170-220 modifies the cost base of direct and indirect interests in the loss company.

(2) If the gain company gives consideration to the loss company for the transferred amount:

(a) the gain company cannot deduct the consideration; and

(b) the gain company does not make a *capital loss because of giving the consideration.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: However, the consideration may affect how section 170-225 modifies the cost base of direct and indirect interests in the gain company.

Conditions for transfer

170-130 Companies must be in existence and members of the same wholly-owned group etc.

(1) Both companies must be in existence during at least part of each of the following income years:

(a) the capital loss year; and

(b) the application year; and

(c) any intervening income year.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-132 and 170-133.

(2) Also, both companies must be members of the same *wholly-owned group at all times during those income years when both companies were in existence.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-132 and 170-133.

(3) One of the companies must be an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank.

Note: The Australian branch can be taken to be a separate entity from the foreign bank for this Subdivision. See Part IIIB of the *Income Tax Assessment Act 1936*.

(4) The other company must be covered by an item of this table.

The other company		
Item	**The other company must:**	**At this time:**
1	Be the *head company of a *consolidated group	The end of the application year or, if the company ceases to be in existence during the application year, just before the cessation

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

The other company		
Item	**The other company must:**	**At this time:**
2	Be the *head company of a *MEC group	The end of the application year or, if the group ceases to exist during the application year because the company ceases to be in existence, just before the cessation
3	Not be a *member of a *consolidatable group	The end of the application year or, if the company ceases to be in existence during the application year, just before the cessation

170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A

When the conditions in this section apply

(1) The conditions in this section apply instead of the conditions in subsections 170-130(1) and (2) if:

(a) the gain company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the *loss company made the *net capital loss because of one or more transfers of the net capital loss under Subdivision 707-A.

Conditions

(2) Each transferor (***prior transferor***) of the *net capital loss under Subdivision 707-A must have been a company.

(3) It must have been possible to meet the conditions in subsections 170-130(1) and (2) in relation to the *loss company and the gain company assuming:

(a) the capital loss year were so much of the income year in which the *net capital loss was transferred to the loss

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

company under Subdivision 707-A as occurred after the transfer; and

(b) so much (if any) of the application year as occurred before the transfer were disregarded.

(4) The gain company and each prior transferor must both be in existence during at least part of each of these periods:

(a) the period consisting of:

(i) if the prior transferor made the *net capital loss apart from Subdivision 707-A—the capital loss year; or

(ii) if the prior transferor made the net capital loss because of a transfer under Subdivision 707-A (other than a transfer from the prior transferor to itself)—so much of the income year in which the transfer occurred as was after the transfer (but before any later transfer of the loss from the prior transferor under that Subdivision);

(b) so much of the income year during which the net capital loss was transferred under Subdivision 707-A from the prior transferor to another company as occurs before the transfer (but after the start of the period described in paragraph (a));

(c) any intervening income year.

(5) The gain company must be a member of the same *wholly-owned group as each prior transferor during the whole or part of the periods described in subsection (4) for the prior transferor when both were in existence.

170-133 Alternative test of relations between the loss company and other companies

(1) The conditions in subsections 170-130(1) and (2) are taken to be met in relation to the *loss company and the gain company if:

(a) the loss company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank; and

(b) the gain company is covered by item 1 or 2 of the table in subsection 170-130(4) (because the company is the *head

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

company of a *consolidated group or *MEC group at the time described in that item); and

(c) the relevant circumstances in this section exist.

Circumstances

(2) One circumstance is that there is another company (the ***first link company***) in relation to which all these conditions are met:

(a) the first link company became a *subsidiary member of a *consolidated group or *MEC group after the start of the capital loss year but before the time described in the item of the table in subsection 170-130(4) that covers the gain company;

(b) the *net capital loss could have been transferred from the *loss company to the first link company under this Subdivision (apart from subsection 170-130(4) and this section) for an application year consisting of the *trial year for the first link company becoming a subsidiary member of that group had:

(i) the first link company continued to be in existence as a separate entity (rather than being part of the head company of that group) when it was a subsidiary member of that group; and

(ii) the trial year not started before the start of the capital loss year; and

(iii) the first link company had enough *capital gains for the trial year;

(c) the net capital loss would have been made by the gain company because of one or more transfers under Subdivision 707-A assuming the net capital loss had been made by the first link company (apart from that Subdivision) for the capital loss year.

(3) If the condition in paragraph (2)(c) could be met only if there had been a transfer described in that paragraph involving a company other than the first link company and the gain company, another circumstance is that the other company and the *loss company

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

were in existence and members of the same *wholly-owned group for the period:

(a) starting when the *net capital loss would have been transferred under Subdivision 707-A *to* the other company as described in that paragraph; and

(b) ending when the net capital loss would have been transferred under Subdivision 707-A *from* the other company as described in that paragraph.

(4) It does not matter whether or not any of the transfers mentioned in subsection (3) would have involved the first link company or the gain company as well as the other company.

(5) Another circumstance is that the conditions in subsection 170-130(1) and (2) would have been met for the *loss company and the gain company assuming:

(a) the capital loss year consisted of the part of the income year in which the *net capital loss would have been transferred to the gain company under Subdivision 707-A as described in paragraph (2)(c) occurring after the time the transfer would have occurred; and

(b) so much (if any) of the application year as occurred before the time the transfer would have occurred were disregarded.

170-135 The loss company

(1) The loss company:

(a) must be an Australian resident (but not a *prescribed dual resident) throughout the capital loss year; and

(b) must not be a *dual resident investment company in either the capital loss year or the application year.

(2) It must be the case that the loss company was *not* required to calculate the *net capital loss:

(a) under section 165-114 (because of a change in ownership or control); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) under section 175-75 (because of an injected capital gain or loss).

(3) Also, it must be the case that neither Subdivision 165-CA nor Subdivision 175-CA would have prevented the loss company from applying the *net capital loss in working out its *net capital gain for the application year if it had made enough *capital gains in that year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: Division 707 affects the operation of Subdivision 165-CA if the loss company made the net capital loss because of a transfer under Subdivision 707-A.

Note 3: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.

170-140 The gain company

(1) The gain company must be an Australian resident throughout the application year.

(2) If the capital loss year and the application year are *not* the same, the gain company must not be prevented by Subdivision 165-CA or 175-CA from applying the transferred amount in working out its *net capital gain for the application year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.

Note 3: The condition in subsection (2) may not apply in some cases. See section 170-142.

(3) If the capital loss year and the application year *are* the same, it must be the case that the gain company was *not* required to calculate its own *net capital gain or *net capital loss for the application year:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) under Subdivision 165-CB (because of a change in ownership or control); or

(b) under section 175-75 (because of an injected capital gain or loss).

Note: In deciding whether paragraph (b) applies, remember that the transferred amount is taken to be a capital loss of the gain company for the application year (because of subsection 170-120(2)).

170-142 If the gain company has become the head company of a consolidated group or MEC group

(1) The condition in subsection (2) of this section applies to the gain company instead of the condition in subsection 170-140(2) if the conditions in subsections 170-130(1) and (2) are met in relation to the *loss company and the gain company apart from section 170-133 and either:

(a) both these circumstances exist:

(i) after the start of the capital loss year but before the relevant time described in subsection 170-130(4), the gain company became the *head company of a *consolidated group or of a *MEC group that came into existence after the start of the capital loss year;

(ii) the capital loss year and application year are not the same; or

(b) all these circumstances exist:

(i) the gain company is, at the relevant time described in subsection 170-130(4), the head company of a MEC group;

(ii) before that time but after the end of the capital loss year, the MEC group was involved in an application event described in section 719-300 (but not covered by subsection 719-300(4) or (5));

(iii) the gain company would be taken under section 719-305 to have transferred losses to itself under Subdivision 707-A, assuming it had made losses while

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

head company of the group or of a consolidated group involved in the event;

(iv) the MEC group or consolidated group came into existence before the start of the capital loss year.

Note: An application event involves either expanding an existing MEC group by including extra eligible tier-1 companies of the top company for the group or creating a MEC group because more companies become eligible tier-1 companies of the top company of which the head company of a consolidated group is an eligible tier-1 company.

(2) The gain company must have been able to apply the *net capital loss in working out its *net capital gain for the application year assuming that it had made the net capital loss for the capital loss year.

(3) The condition in subsection (4) of this section applies to the gain company instead of the condition in subsection 170-140(2) if the conditions in subsections 170-130(1) and (2) are met in relation to the *loss company and the gain company because of section 170-133.

(4) The gain company must have been able to apply the *net capital loss in working out its *net capital gain for the application year assuming that it had made the net capital loss, for the income year in which the loss would have been transferred to it as described in paragraph 170-133(2)(c), because of one or more transfers under Subdivision 707-A described in that paragraph.

170-145 Maximum amount that can be transferred

Loss company can only transfer what it cannot use itself

(1) The amount transferred cannot exceed what would be the amount of the *loss company's *unutilised *net capital loss at the end of the application year if the loss company utilised the net capital loss to the greatest extent possible.

Note: If the capital loss year and the application year are the same, the *whole* of the net capital loss would be unutilised, because section 102-5 does

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

not allow a net capital loss to be applied in the income year in which it was made.

Example: In the application year the loss company has:

- a net capital loss from an earlier income year of $25,000; and
- other capital losses totalling $10,000; and
- capital gains totalling $20,000;

Of the $25,000 loss, the loss company can transfer to the gain company no more than:

$$\$25{,}000 - \left(\$20{,}000 - \$10{,}000\right) = \$15{,}000$$

Transferred loss must not exceed what the gain company can use

(5) No amount can be transferred if, apart from the operation of this section, the gain company would *not* have a *net capital gain for the application year.

(6) The amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1. Work out what, apart from the operation of this section, would have been the gain company's *net capital gain for the application year.

Step 2. Subtract each amount that:

(a) the gain company can apply under section 170-115 in working out its *net capital gain for the application year; and

(b) was transferred to the gain company (by the loss company or any other company) by an agreement made *before* the agreement by which the first amount is transferred.

Example: In the application year:

- the gain company has capital gains totalling $60,000 and capital losses totalling $25,000; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

- another company, being a member of the same wholly-owned group as the gain company, transferred a net capital loss of $15,000 to the gain company; and
- the loss company incurred a net capital loss of $50,000.

Of the $50,000 loss, the loss company can transfer to the gain company no more than:

$$\$60{,}000 - \$25{,}000 - \$15{,}000 = \$20{,}000$$

(7) Subsection (6) does not apply if the transfer occurs because either or both of the conditions in subsections 170-142(2) and (4) are met. In that case, the amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1. Identify each *bundle of losses that, on the assumption in subsection 170-142(2) or (4) (as appropriate), would have included the *net capital loss.

Note 1: There will be 2 or more bundles of losses identified if both of the conditions in subsections 170-142(2) and (4) are met.

Note 2: There will be more than 1 bundle of losses identified on the basis of the assumption in paragraph 170-142(4) if the conditions in subsections 170-130(1) and (2) are met in relation to the loss company and the gain company because of multiple applications of section 170-133 each involving a different first link company.

Step 2. For each *bundle identified, work out how much of the *net capital loss the gain company would have been able to apply in working out its *net capital gain for the application year assuming that:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the loss could have been applied in that year only after the application in that year of any other losses of that *sort that would have been included in the bundle, other than losses (the ***transferable losses***) that could be transferred from the *loss company to the gain company for that year; and

(b) if the bundle would have included 2 or more transferable losses of that sort—those losses could have been applied only in the order in which the loss company made them.

Note 1: If the assumption in subsection 170-142(2) is relevant to the bundle, it would have included losses made by the gain company and transferred (or taken to be transferred) to the company (from itself) under Subdivision 707-A.

Note 2: If the assumption in paragraph 170-142(4) is relevant to the bundle, it would have included losses actually made by the first link company and transferred (by one or more transfers under Subdivision 707-A) to the gain company.

Step 3. Total every result of step 2 for the *net capital loss.

170-150 Transfer by written agreement

(1) The transfer must be made by a written agreement between the loss company and the gain company.

(2) The agreement must:
(a) specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and
(b) specify the amount of the *net capital loss being transferred; and
(c) be signed by the public officer of each company; and
(d) be made on or before the day of lodgment of the gain company's *income tax return for the application year, or within such further time as the Commissioner allows.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: The agreement will usually be made in the next income year *after* the one for which the gain company will apply the loss.

170-155 Losses must be transferred in order they are made

(1) If the loss company has 2 or more *net capital losses that it can transfer in the application year, it can transfer them only in the order in which it made them.

(2) If:

(a) the *loss company has 2 or more *net capital losses it can transfer for the application year; and

(b) it made at least one of those losses apart from Subdivision 707-A and at least one of those losses because of a transfer under that Subdivision;

it can transfer under this Subdivision the losses it made because of a transfer under Subdivision 707-A only *after* transferring under this Subdivision the losses it made apart from that Subdivision.

(3) For the purposes of subsection (2), treat a loss made by the company both apart from Subdivision 707-A and because of a transfer under that Subdivision as a loss made because of a transfer under that Subdivision.

(4) Subsection (1) has effect subject to subsection (2).

170-160 Gain company cannot transfer transferred net capital loss

The gain company cannot transfer an amount of a *net capital loss transferred to it, or any part of the amount.

Effect of agreement to transfer more than can be transferred

170-165 Agreement transfers as much as can be transferred

(1) If the amount specified in an agreement exceeds the maximum amount that the loss company can transfer to the gain company in the application year, only that maximum amount is taken to have been transferred.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

170-170 Amendment of assessments

The Commissioner may amend an assessment to *disallow a transferred amount of a *net capital loss:

(a) if the agreement to transfer the net capital loss is ineffective because the loss company did not actually make the loss; or

(b) to the extent that section 170-165 reduces the transferred amount because the loss company did not actually make some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

Note: This Subdivision is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

Australian permanent establishments of foreign financial entities

170-174 Treatment like Australian branches of foreign banks

(1) The object of this section is to let *net capital losses be transferred under this Subdivision to and from *Australian permanent establishments of *foreign entities that are *financial entities in the same way as net capital losses can be transferred to and from Australian branches of *foreign banks.

(2) This Subdivision (except this section) applies to an *Australian permanent establishment of a *foreign entity that is a *financial entity in the same way as this Subdivision applies to an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a *foreign bank.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 170-C—Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies

Guide to Subdivision 170-C

170-201 What this Subdivision is about

If a tax loss or a net capital loss is transferred between companies in the same wholly-owned group, this Subdivision provides for adjustments to:

(a) the cost base and reduced cost base of direct and indirect equity interests held by group companies in the loss company, or in the income company or gain company; and

(b) the reduced cost base of direct and indirect debt interest held by group companies in the loss company; and

(c) the cost base and reduced cost base of direct and indirect debt interests held by group companies in the income company or gain company.

Table of sections

Operative provisions

170-205 Object of Subdivision
170-210 Transfer of tax loss: direct and indirect interests in the loss company
170-215 Transfer of tax loss: direct and indirect interests in the income company
170-220 Transfer of net capital loss: direct and indirect interests in the loss company
170-225 Transfer of net capital loss: direct and indirect interests in the gain company

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

170-205 Object of Subdivision

Interests in the loss company

(1) The main object of this Subdivision is to ensure that, if an amount of a *tax loss or *net capital loss is transferred by a company to another company in the same *wholly-owned group, the loss transferred is not duplicated by a member of the group.

(2) Duplication could occur by the making of a *capital loss, or the reduction of a *capital gain, from a *CGT event that happens in relation to an equity interest held (directly or indirectly) in the loss company or by the making of a capital loss in relation to a debt interest held (directly or indirectly) in the loss company.

Interests in the income company or gain company

(3) This Subdivision may also require an adjustment to the cost base and reduced cost base of an equity or debt interest held (directly or indirectly) by a group company in the income company or gain company.

(4) This adjustment is to reflect an increase in the *market value of the interest because of the transfer of the loss if the increase is still reflected in the market value of the interest when a *CGT event happens in relation to the interest.

170-210 Transfer of tax loss: direct and indirect interests in the loss company

(1) If:
  (a) an amount of a *tax loss is transferred by a company to another company; and
  (b) Subdivision 170-A applies in respect of the transfer; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) a company (the ***group company***) holds a *share in the loss company or is owed a debt by the loss company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) throughout the deduction year, the group company is a member of the same *wholly-owned group as the loss company (disregarding a period when either was not in existence); and

(f) a *CGT event happens in relation to the share or debt on or after the commencement of this section; and

(g) the relevant agreement referred to in section 170-50 is made on or after that commencement;

the *cost base and *reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

(2) If:

(a) an amount of a *tax loss is transferred by a company to another company; and

(b) Subdivision 170-A applies in respect of the transfer; and

(c) a company (the ***group company***) holds a *share in another company or is owed a debt by another company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):

(i) in the other company or a third company acquiring shares in the loss company; or

(ii) in a *borrowing by the loss company from the other company or from a third company; and

(f) throughout the deduction year, the group company, the other company and the third company (if any) are all members of the same *wholly-owned group as the loss company

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(disregarding, for a particular company, a period when it was not in existence); and

(g) a *CGT event happens in relation to the share or debt on or after the commencement of this section; and

(h) the relevant agreement referred to in section 170-50 is made on or after that commencement;

the *cost base and *reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

(3) The *cost base and *reduced cost base of the share or the reduced cost base of the debt is reduced by an amount that is appropriate having regard to:

(aa) the main object of this Subdivision and other matters mentioned in subsections 170-205(1) and (2); and

(a) the group company's direct or indirect interest in the loss company; and

(ba) any reduction in the reduced cost base made under Subdivision 165-CD; and

(b) the amount of the loss transferred; and

(c) the extent to which the loss reduced the *market value of the share or debt; and

(d) any consideration received by the loss company for the loss transferred; and

(e) whether, because of a dividend or dividends paid by the loss company, the consideration is no longer reflected (wholly or partly) in the market value of the share or debt when a *CGT event happens in relation to it.

(3A) To avoid doubt in applying paragraph (3)(c) in relation to a *share or debt, if factors other than the loss altered the *market value of the share or debt, the extent to which the loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note: An example of a factor other than the loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3B) This section applies to a *tax loss only to the extent that the loss represents an outlay or loss of any of the economic resources of the *loss company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(4) Any reduction is to be made immediately before a *CGT event happens in relation to the share or debt and is to have effect from that time or the end of the deduction year, whichever is the earlier.

Note 1: For ***deduction year*** see subsection 170-20(1).

Note 2: Subsection (4) is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

170-215 Transfer of tax loss: direct and indirect interests in the income company

(1) If:

(a) an amount of a *tax loss is transferred by a company to another company; and

(b) Subdivision 170-A applies in respect of the transfer; and

(c) a company (the ***group company***) holds a *share in the income company or is owed a debt by the income company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) throughout the deduction year, the group company is a member of the same *wholly-owned group as the income company (disregarding a period when either was not in existence); and

(f) a *CGT event happens in relation to the share or debt on or after the commencement of this section; and

(g) the relevant agreement referred to in section 170-50 is made on or after that commencement; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(h) there are shares in, or debts owed by, the *loss company the *reduced cost base of at least one of which has been reduced by subsection 170-210(1) or (2);

the *cost base and *reduced cost base of the share or debt are increased in accordance with subsection (3).

(2) If:

(a) an amount of a *tax loss is transferred by a company to another company; and

(b) Subdivision 170-A applies in respect of the transfer; and

(c) a company (the ***group company***) holds a *share in another company or is owed a debt by another company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):

(i) in the other company or a third company acquiring shares in the income company; or

(ii) in a *borrowing by the income company from the other company or from a third company; and

(f) throughout the deduction year, the group company, the other company and the third company (if any) are all members of the same *wholly-owned group as the income company (disregarding, for a particular company, a period when it was not in existence); and

(g) a *CGT event happens in relation to the share or debt on or after the commencement of this section; and

(h) the relevant agreement referred to in section 170-50 is made on or after that commencement; and

(i) there are shares in, or debts owed by, the *loss company the *reduced cost base of at least one of which has been reduced by subsection 170-210(1) or (2);

the *cost base and *reduced cost base of the share or debt are increased in accordance with subsection (3).

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) The *cost base and *reduced cost base are increased by an amount that is appropriate having regard to:

(aa) the matters mentioned in subsections 170-205(3) and (4); and

(ab) the amounts of any reductions to the cost base and reduced cost base of *shares, and to the reduced cost base of debts, under subsection 170-210(3); and

(a) the group company's direct or indirect interest in the income company; and

(b) the amount of the loss transferred; and

(c) any consideration given by the income company for the loss transferred.

Note: This is because the consideration may be less than the commercial value of the loss transferred.

(4) However, the increase cannot exceed the increase in the *market value of the *share or debt that results from the transfer of the loss. (If no increase in that market value results, for example because the consideration paid for the transfer of the loss equals the commercial value of the loss transferred, then there is no increase in the *cost base and *reduced cost base.)

(4A) No increase is to be made to the extent that the *tax loss transferred does not represent an outlay or loss of any of the economic resources of the company that transferred the tax loss.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(5) Any increase is to be made immediately before a *CGT event happens in relation to the share or debt and is to have effect from that time or the end of the deduction year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

(6) No increase is to be made to the *cost base and *reduced cost base of a share or debt to the extent to which, because of a dividend or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

dividends paid by the income company, the increase in the *market value of the share or debt that resulted from the transfer of the loss is no longer in existence at the time when a *CGT event happens in relation to the share or debt.

Note: For ***deduction year*** see subsection 170-20(1).

170-220 Transfer of net capital loss: direct and indirect interests in the loss company

(1) If:

(a) an amount of a *net capital loss is transferred by a company to another company; and

(b) Subdivision 170-B applies in respect of the transfer; and

(c) a company (the ***group company***) holds a *share in the loss company or is owed a debt by the loss company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) throughout the application year, the group company is a member of the same *wholly-owned group as the loss company (disregarding a period when either was not in existence); and

(f) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;

the *cost base and *reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

(2) If:

(a) an amount of a *net capital loss is transferred by a company to another company; and

(b) Subdivision 170-B applies in respect of the transfer; and

(c) a company (the ***group company***) holds a *share in another company or is owed a debt by another company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):

(i) in the other company or a third company acquiring shares in the loss company; or

(ii) in a *borrowing by the loss company from the other company or from a third company; and

(f) throughout the application year, the group company, the other company and the third company (if any) are all members of the same *wholly-owned group as the loss company (disregarding, for a particular company, a period when it was not in existence); and

(g) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;

the *cost base and *reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

(3) The *cost base and *reduced cost base of the share or the reduced cost base of the debt is reduced by an amount that is appropriate having regard to:

(aa) the main object of this Subdivision and other matters mentioned in subsections 170-205(1) and (2); and

(a) the group company's direct or indirect interest in the loss company; and

(ba) any reduction in the reduced cost base made under Subdivision 165-CD; and

(b) the amount of the loss transferred; and

(c) the extent to which the loss reduced the *market value of the share or debt; and

(d) any consideration received by the loss company for the loss transferred; and

(e) whether, because of a dividend or dividends paid by the loss company, the consideration is no longer reflected (wholly or partly) in the market value of the share or debt when a *CGT event happens in relation to it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3A) To avoid doubt in applying paragraph (3)(c) in relation to a *share or debt, if factors other than the loss altered the *market value of the share or debt, the extent to which the loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note: An example of a factor other than the loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

(3B) This section applies to a *net capital loss only to the extent that the loss represents an outlay or loss of any of the economic resources of the *loss company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(4) Any reduction is to be made immediately before a *CGT event happens in relation to the share or debt and is to have effect from that time or the end of the application year, whichever is the earlier.

Note 1: Subsection (4) is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

Note 2: Reductions under former subsection 160ZP(13) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-220 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: For ***applicable year*** see subsection 170-115(1).

170-225 Transfer of net capital loss: direct and indirect interests in the gain company

(1) If:

(a) an amount of a *net capital loss is transferred by a company to another company; and

(b) Subdivision 170-B applies in respect of the transfer; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) a company (the ***group company***) holds a *share in the gain company or is owed a debt by the gain company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) throughout the application year, the group company is a member of the same *wholly-owned group as the gain company (disregarding a period when either was not in existence); and

(f) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section; and

(g) there are shares in, or debts owed by, the *loss company the *cost base and *reduced cost base of at least one of which have been reduced by subsection 170-220(1) or (2);

the *cost base and *reduced cost base of the share or debt are increased in accordance with subsection (3).

(2) If:

(a) an amount of a *net capital loss is transferred by a company to another company; and

(b) Subdivision 170-B applies in respect of the transfer; and

(c) a company (the ***group company***) holds a *share in another company or is owed a debt by another company in respect of a loan; and

(d) the group company *acquired the share or debt on or after 20 September 1985; and

(e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):

(i) in the other company or a third company acquiring shares in the gain company; or

(ii) in a *borrowing by the gain company from the other company or from a third company; and

(f) throughout the application year, the group company, the other company and the third company (if any) are all members of the same *wholly-owned group as the gain

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

company (disregarding, for a particular company, a period when it was not in existence); and

(g) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section; and

(h) there are shares in, or debts owed by, the *loss company the *cost base and *reduced cost base of at least one of which have been reduced by subsection 170-220(1) or (2);

the *cost base and *reduced cost base of the share or debt are increased in accordance with subsection (3).

(3) The *cost base and *reduced cost base are increased by an amount that is appropriate having regard to:

(aa) the matters mentioned in subsections 170-205(3) and (4); and

(ab) the amounts of any reductions to the cost base and reduced cost base of *shares, and to the reduced cost base of debts, under subsection 170-220(3); and

(a) the group company's direct or indirect interest in the gain company; and

(b) the amount of the loss transferred; and

(c) any consideration given by the gain company for the loss transferred.

Note: This is because the consideration may be less than the commercial value of the loss transferred.

(4) However, the increase cannot exceed the increase in the *market value of the *share or debt that results from the transfer of the loss. (If no increase in that market value results, for example because the consideration paid for the transfer of the loss equals the commercial value of the loss transferred, then there is no increase in the *cost base and *reduced cost base.)

(4A) No increase is to be made to the extent that the *net capital loss transferred does not represent an outlay or loss of any of the economic resources of the company that transferred the net capital loss.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(5) Any increase is to be made immediately before a *CGT event happens in relation to the share or debt and is to have effect from that time or the end of the application year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

(6) No increase is to be made to the *cost base and *reduced cost base of a share or debt to the extent to which, because of a dividend or dividends paid by the gain company, the increase in the *market value of the share or debt that resulted from the transfer of the loss is no longer in existence at the time when a *CGT event happens in relation to the share or debt.

Note: Increases under former subsections 160ZP(14) and (15) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-225 of the *Income Tax (Transitional Provisions) Act 1997*.

Subdivision 170-D—Transactions by a company that is a member of a linked group

Guide to Subdivision 170-D

170-250 What this Subdivision is about

This Subdivision provides that there is a deferral of a *capital loss or deduction if a company (the ***originating company***) that is a member of a *linked group disposes of a *CGT asset to, or creates a CGT asset in, another entity that:

(a) is a company that is also a member of the linked group; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) is a connected entity of the originating company or an *associate of such a connected entity;

and the disposal or creation of the asset would have resulted in the originating company making a capital loss or becoming entitled to a deduction.

Table of sections

Operative provisions

170-255 Application of Subdivision
170-260 Linked group
170-265 Connected entity
170-270 Immediate consequences for originating company
170-275 Subsequent consequences for originating company
170-280 What happens if certain events happen in respect of the asset

Operative provisions

170-255 Application of Subdivision

(1) This Subdivision applies if:

(a) an event (the ***deferral event***) happens involving a company (the ***originating company***) and another entity; and

(b) one or more of the following apply:

(i) the deferral event is a *CGT event that would have resulted in the originating company making a *capital loss (except a capital loss that would be disregarded under a provision of this Act other than this Subdivision);

(ii) the deferral event would have resulted in the originating company becoming entitled to a deduction in respect of the disposal of a CGT asset or of an interest in a CGT asset;

(iii) if the originating company is a partner in a partnership—the deferral event would have resulted in

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

the partnership becoming entitled to a deduction in respect of the disposal of a CGT asset or of an interest in a CGT asset; and

(c) if subparagraph (b)(i) applies—the CGT event is one of the following:
  (i) CGT events A1 and B1 (a ***disposal case***);
  (ii) CGT events D1, D2, D3 and F1 (a ***creation case***); and

Note: The full list of CGT events is in section 104-5.

(d) one of the following applies:
  (i) the originating company is an Australian resident at the time of the deferral event;
  (ii) if the deferral event is a CGT event D1—the *CGT asset that is the subject of the creation of the contractual or other rights is *taxable Australian property;
  (iii) if the deferral event is a CGT event A1, B1 or F1—the asset or the subject of the lease, as the case may be, was *taxable Australian property immediately before the deferral event;
  (iv) if the deferral event is a CGT event D2—the option was taxable Australian property immediately after the deferral event;
  (v) if subparagraph (b)(ii) or (iii) applies—the originating company is a foreign resident at the time of the deferral event; and

(e) at the time of the deferral event, the originating company is a member of a *linked group and one of the following applies:
  (i) the other entity is a company that is not a connected entity of the originating company and is a member of that linked group;
  (ii) the other entity is a connected entity of the originating company;
  (iii) the other entity is an *associate of such a connected entity.

(2) Despite subsection (1):

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) this Subdivision does not apply because of *CGT event B1 if title in the *CGT asset does not pass to the other entity when the agreement ends; and

(b) this Subdivision does not apply if the deferral event involves the *acquisition of a greater than 50% interest in a CGT asset by an entity other than an entity referred to in subparagraph (1)(e)(i), (ii) or (iii).

170-260 Linked group

(1) Companies that are linked to one another are a ***linked group***.

(2) Two companies are ***linked*** to each other if:

(a) one of them has a controlling stake in the other; or

(b) the same entity has a controlling stake in each of them.

(3) For the purposes of this section, an entity has a ***controlling stake in a company*** at a particular time if the entity, or the entity and the entity's *associates between them:

(a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or

(b) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or

(c) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(4) If:

(a) apart from this subsection, an interest that gives an entity and its *associates (if any):

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) the ability to exercise, or control the exercise of, any of the voting power in a company; or

(ii) the right to receive dividends that a company may pay; or

(iii) the right to receive a distribution of capital of a company;

would, in the application of paragraph (3)(a), (b) or (c), be counted more than once; and

(b) the interest is both direct and indirect;

only the direct interest is to be counted.

170-265 Connected entity

(1) An entity is a ***connected entity*** of the originating company at a particular time if, at that time:

(a) the entity is a trustee of a trust and either:

(i) if the trust is a *fixed trust—one or more companies that are members of the *linked group of which the originating company is a member, or one or more of those companies and their *associates, between them have the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution to beneficiaries of the trust of income or corpus of the trust; or

(ii) if the trust is not a fixed trust—any company that is a member of the linked group of which the originating company is a member or any associate of such a company benefits or is capable of benefiting under the trust; or

(b) the entity is an individual who has a controlling stake in the company.

(2) For the purposes of paragraph (1)(b), an individual has a controlling stake in a company at a particular time if the individual, or the individual and his or her *associates between them:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or

(b) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or

(c) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

(3) If:

(a) apart from this subsection, an interest that gives an entity and its *associates (if any):

(i) the ability to exercise, or control the exercise of, any of the voting power in a company; or

(ii) the right to receive dividends that a company may pay; or

(iii) the right to receive a distribution of capital of a company;

would, in the application of paragraph (2)(a), (b) or (c), be counted more than once; and

(b) the interest is both direct and indirect;

only the direct interest is to be counted.

170-270 Immediate consequences for originating company

(1) If, apart from this Subdivision:

(a) the originating company would have made a *capital loss (except a capital loss that would be disregarded under a provision of this Act other than this Subdivision) as a result of the deferral event; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the originating company would have become entitled to a deduction in respect of the deferral event; or

(c) where the originating company is a partner in a partnership—the partnership would have become entitled to a deduction in respect of the deferral event;

the capital loss, the deduction or the partner's share of the deduction, as the case may be, is disregarded.

(2) To avoid doubt, the amount of the *capital loss, deduction, or partnership deduction, referred to in this section is:

(a) the amount remaining after applying Division 723 or section 727-615; or

(b) nil, if none of the amount remains after applying that section or Division.

Note: Division 723 and section 727-615 reduce a loss realised for income tax purposes by a realisation event happening to a non-depreciating asset (in the case of Division 723) or an affected interest in a losing entity under an indirect value shift (in the case of section 727-615).

170-275 Subsequent consequences for originating company

(1) If, at a time after the deferral event, any one or more of the following events (the ***new events***) happens:

(a) the *CGT asset *acquired by the other entity referred to in paragraph 170-255(1)(a) (the ***relevant CGT asset***), or a greater than 50% interest in it, ceases to exist;

(b) the relevant CGT asset, or a greater than 50% interest in it, is acquired by an entity that is none of the following:

(i) a member of the *linked group of which the originating company is a member;

(ii) a connected entity of the originating company;

(iii) an *associate of such a connected entity;

(c) if the relevant CGT asset is acquired by a company that is a member of that linked group—that company ceases to be a member of that linked group;

(d) the originating company ceases to be a member of that linked group;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) if the relevant CGT asset is acquired by an entity that is a connected entity of the originating company or is an associate of such a connected entity—that entity ceases to be such a connected entity or ceases to be an associate of such a connected entity, as the case may be;

the originating company is taken, immediately before the time of the happening of the new event or the earliest of the new events, as the case may be, to have made a *capital loss equal to the amount of the capital loss referred to in section 170-270 or to have become entitled to a deduction equal to the deduction, or the share of the deduction, referred to in that section, as the case may be.

(2) If the *capital loss referred to in section 170-270 would have been made from a *personal use asset or from a *collectable, any corresponding capital loss that the originating company is taken by subsection (1) of this section to have made is taken to have been made from a personal use asset or from a collectable, as the case may be.

170-280 What happens if certain events happen in respect of the asset

(1) This section applies if, as a result of the occurrence of a new event in respect of a *CGT asset, the originating company is taken by subsection 170-275(1) to have made a *capital loss or to be entitled to a deduction and, within 4 years after the occurrence of the new event, one of the following events (***further events***) occurs:

(a) the asset or a greater than 50% interest in it is *acquired by the originating company or by an entity that, at the time of the acquisition, is:

(i) a company that is a member of the *linked group of which the originating company is a member; or

(ii) a connected entity of the originating company; or

(iii) an *associate of such a connected entity;

(b) a company that owns the asset or a greater than 50% interest in it becomes a member of the linked group of which the originating company is a member;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the originating company becomes a member of a linked group another member of which owns the asset or a greater than 50% interest in it;

(d) an entity that owns the asset or a greater than 50% interest in it becomes:

(i) a connected entity of the originating company; or

(ii) an associate of such a connected entity.

(1A) If the originating company has information from which it would be reasonable to conclude that, if the *CGT asset involved were owned by the originating company immediately after the further event, *majority underlying interests in the asset immediately after the further event would not have been had by *ultimate owners who had majority underlying interests in the asset immediately before the deferral event, the further event is taken not to have occurred.

(2) The company is taken not to have made the *capital loss or not to have been entitled to the deduction, as the case may be.

(3) If, at a time after the further event, any one or more of the following events (the ***realisation events***) happens:

(a) the *CGT asset referred to in subsection (1) (the ***relevant CGT asset***), or a greater than 50% interest in it, ceases to exist;

(b) the relevant CGT asset, or a greater than 50% interest in it, is *acquired by an entity that is none of the following:

(i) a member of the linked group of which the originating company is a member;

(ii) a connected entity of the originating company;

(iii) an *associate of such a connected entity;

(c) if the relevant CGT asset is acquired by a company that is a member of that linked group—that company ceases to be a member of that linked group;

(d) the originating company ceases to be a member of that linked group;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) if the relevant CGT asset is acquired by an entity that is a connected entity of the originating company or is an associate of such a connected entity—that entity ceases to be such a connected entity or ceases to be an associate of such a connected entity, as the case may be;

the originating company is taken, immediately before the time of the happening of the realisation event or the earliest of the realisation events, as the case may be , to have made a *capital loss equal to the amount of the capital loss referred to in subsection (2) or to have become entitled to a deduction equal to the deduction referred to in that subsection, as the case may be.

(4) If the *capital loss referred to in subsection (2) would have been made from a *personal use asset or from a *collectable, any corresponding capital loss that the originating company is taken by subsection (3) to have made is taken to have been made from a personal use asset or from a collectable, as the case may be.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 175—Use of a company's tax losses or deductions to avoid income tax

Table of Subdivisions

Guide to Division 175
175-A Tax benefits from unused tax losses
175-B Tax benefits from unused deductions
175-CA Tax benefits from unused net capital losses of earlier income years
175-CB Tax benefits from unused capital losses of the current year
175-C Tax benefits from unused bad debt deductions
175-D Common rules

Guide to Division 175

175-1 What this Division is about

The Commissioner can reverse the effect of schemes that, in order to avoid tax, bring together in the same company:

- assessable income; and
- tax losses, current year deductions, or deductions for bad debts, that apart from the scheme would not be fully used.

Subdivision 175-A—Tax benefits from unused tax losses

Table of sections

175-5 When Commissioner can disallow deduction for tax loss
175-10 First case: income or capital gain injected into company because of available tax loss
175-15 Second case: someone else obtains a tax benefit because of tax loss available to company

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

175-5 When Commissioner can disallow deduction for tax loss

(1) This Subdivision sets out cases where the Commissioner may disallow some or all of a *tax loss (or of part of a tax loss) (the ***excluded loss***) as a deduction in calculating a company's taxable income of an income year after the *loss year.

(2) However, the Commissioner cannot disallow the *excluded loss if the company:

(a) fails to meet a condition in section 165-12 (which is about the company maintaining the same owners) in respect of the *loss year or the income year; but

(b) meets the condition in section 165-13 (which is about the company satisfying the same business test) in respect of the income year.

175-10 First case: income or capital gain injected into company because of available tax loss

(1) The Commissioner may disallow the *excluded loss if, during the income year, the company *derived assessable income, or a *capital gain accrued to the company, some or all of which (the ***injected amount***) would not have been derived, or would not have accrued, if the excluded loss had not been available to be taken into account for the purposes of:

- Division 36 (which is about tax losses of earlier years);
- Division 165 (which is about the income tax consequences of changing ownership or control of a company);
- former Subdivision 375-G (which is about film losses).

(2) However, the Commissioner cannot disallow the *excluded loss if the *continuing shareholders will benefit from the derivation or accrual of the *injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

(3) The ***continuing shareholders*** are:

(a) all of the persons who had *more than 50% of the voting power in the company during the whole (or the relevant part) of the *loss year and during the whole of the income year; and

(b) all of the persons who had rights to *more than 50% of the company's dividends during the whole (or the relevant part) of the loss year and during the whole of the income year; and

(c) all of the persons who had rights to *more than 50% of the company's capital distributions during the whole (or the relevant part) of the loss year and during the whole of the income year.

To find out who they were, apply whichever tests are applied in order to determine whether the company can deduct the *tax loss (or the part of the tax loss) in the first place.

Note 1: See section 165-12 (which is about the company maintaining the same owners).

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

175-15 Second case: someone else obtains a tax benefit because of tax loss available to company

(1) The Commissioner may disallow the *excluded loss if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the excluded loss had not been available to be taken into account for the purposes of:

- Division 36 (which is about tax losses of earlier years);
- Division 165 (which is about the income tax consequences of changing ownership or control of a company);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

- former Subdivision 375-G (which is about film losses).

(2) However, the Commissioner cannot disallow the *excluded loss if:

(a) the person had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

Subdivision 175-B—Tax benefits from unused deductions

Table of sections

175-20 Income or capital gain injected into company because of available deductions
175-25 Deduction injected into company because of available income or capital gain
175-30 Someone else obtains a tax benefit because of a deduction, income or capital gain available to company
175-35 Tax loss resulting from disallowed deductions

175-20 Income or capital gain injected into company because of available deductions

(1) The Commissioner may disallow deductions of a company (or parts of them) for an income year if:

(a) the company has *derived assessable income, or a *capital gain accrued to the company, some or all of which (the ***injected amount***) would not have been derived, or would not have accrued, if the company did not have those deductions; and

(b) the income was derived, or the capital gain accrued, in that income year.

The disallowed deductions and parts of deductions may exceed the *injected amount.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

(2) The Commissioner cannot disallow the deductions or parts of the deductions if the *continuing shareholders will benefit from the derivation of the *injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective *shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow the whole or part of any deductions of an insolvent company.

(3) The ***continuing shareholders*** are the individuals who had *shareholding interests in the company both immediately before the *injected amount was *derived, and immediately afterwards.

175-25 Deduction injected into company because of available income or capital gain

(1) The Commissioner may disallow a deduction of a company for an income year to the extent that the company would not have incurred the loss, outgoing or expenditure that the deduction is for if it had not *derived some or all of the assessable income it derived in that income year, or had not made some or all of a *capital gain it made in that income year.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

(2) The Commissioner cannot disallow any of the deduction if:

(a) the *continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the loss, outgoing or expenditure being incurred; and

(b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective *shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow a deduction of an insolvent company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) The ***continuing shareholders*** are the individuals who had *shareholding interests in the company both immediately before the loss, outgoing or expenditure was incurred, and immediately afterwards.

175-30 Someone else obtains a tax benefit because of a deduction, income or capital gain available to company

(1) The Commissioner may disallow a deduction of a company if:

(a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the company had not incurred some or all (the ***available expense***) of the loss, outgoing or expenditure that the deduction is for.

However, the deduction may be disallowed only to the extent of the available expense.

(2) The Commissioner may disallow deductions of a company (or parts of them) if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if some or all (the ***available amount***) of the assessable income that the company *derived or of a *capital gain that accrued to the company:

(i) before it incurred the losses, outgoings or expenditure that the deductions were for; and

(ii) in the same income year as it incurred them;

had not been derived or had not accrued, as the case may be.

The disallowed deductions and parts of deductions may exceed the available amount.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) The Commissioner cannot disallow under this section if:

(a) the person who has obtained or will obtain the tax benefit had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow the whole or part of any deductions of an insolvent company.

175-35 Tax loss resulting from disallowed deductions

(1) If a company has a taxable income for an income year because the Commissioner disallows under this Subdivision deductions of the company for the income year (or parts of them), the company may also have a *tax loss for the income year.

(2) The company's ***tax loss*** for the income year is calculated as follows.

(3) Total what the Commissioner has disallowed under this Subdivision.

(4) If the company has *exempt income for the income year, subtract its *net exempt income.

(5) Any amount remaining is the company's ***tax loss*** for the income year, which is called a ***loss year***.

Note: The meanings of ***tax loss*** and ***loss year*** are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

To find out *how much* of the tax loss can be deducted in later income years: see Subdivision 165-A.
To find out *how* to deduct it: see section 36-17.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 175-CA—Tax benefits from unused net capital losses of earlier income years

Table of sections

175-40 When Commissioner can disallow net capital loss of earlier income year
175-45 First case: capital gain injected into company because of available net capital loss
175-50 Second case: someone else obtains a tax benefit because of net capital loss available to company

175-40 When Commissioner can disallow net capital loss of earlier income year

(1) This Subdivision sets out cases where the Commissioner may prevent a company, in working out its *net capital gain for an income year, from applying some or all of a *net capital loss it has for an earlier income year (or of part of one) (the ***excluded loss***). This is called ***disallowing*** the excluded loss.

Note: A company's net capital gain for an income year is usually worked out under section 102-5.

(2) However, the Commissioner cannot *disallow the *excluded loss if, in determining (under section 165-96) whether Subdivision 165-A would prevent the company from deducting the loss (or the part of the loss) for the income year if the loss were a *tax loss of the company for that earlier income year, the company:

(a) would fail to meet a condition in section 165-12 (which is about the company maintaining the same owners) in respect of the income year; but

(b) would meet the condition in section 165-13 (which is about the company satisfying the same business test) in respect of the income year.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the period from the start of the loss year to the end of the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

175-45 First case: capital gain injected into company because of available net capital loss

(1) The Commissioner may *disallow the *excluded loss if, during the income year, the company made a *capital gain some or all of which (the ***injected capital gain***) it would not have made if the excluded loss had not been available to be applied in working out the company's *net capital gain for the income year (or for some other income year).

(2) However, the Commissioner cannot *disallow the *excluded loss if the *continuing shareholders will benefit from the making of the injected capital gain to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

(3) The ***continuing shareholders*** are:

(a) all of the persons who had *more than 50% of the voting power in the company during the whole (or the relevant part) of the earlier income year and during the whole of the income year; and

(b) all of the persons who had rights to *more than 50% of the company's dividends during the whole (or the relevant part) of the earlier income year and during the whole of the income year; and

(c) all of the persons who had rights to *more than 50% of the company's capital distributions during the whole (or the relevant part) of the earlier income year and during the whole of the income year.

To find out who they were, apply whichever tests are applied in order to determine (under section 165-96) whether Subdivision 165-A would prevent the company from deducting the loss for the current year if it were a *tax loss of the company for that earlier income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: See section 165-12 (which is about the company maintaining the same owners).

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

175-50 Second case: someone else obtains a tax benefit because of net capital loss available to company

(1) The Commissioner may *disallow the *excluded loss if:
  (a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and
  (b) the scheme would not have been entered into or carried out if the excluded loss had not been available to be applied in working out the company's *net capital gain for the income year (or for some other income year).

(2) However, the Commissioner cannot *disallow the *excluded loss if:
  (a) the person had a *shareholding interest in the company at some time during the income year; and
  (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

Subdivision 175-CB—Tax benefits from unused capital losses of the current year

Table of sections

175-55 When Commissioner can disallow capital loss of current year
175-60 Capital gain injected into company because of available capital loss
175-65 Capital loss injected into company because of available capital gain
175-70 Someone else obtains a tax benefit because of capital loss or gain available to company
175-75 Net capital loss resulting from disallowed capital losses

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

175-55 When Commissioner can disallow capital loss of current year

This Subdivision sets out cases where the Commissioner may prevent a company, in working out its *net capital gain or *net capital loss for an income year, from applying all or part of a *capital loss it made during the income year. This is called ***disallowing*** the capital loss or part.

175-60 Capital gain injected into company because of available capital loss

(1) The Commissioner may *disallow *capital losses of a company (or parts of them) for an income year if:

(a) the company has made a *capital gain some or all of which (the ***injected capital gain***) it would not have made if it did not have those capital losses; and

(b) the injected capital gain was made in that income year.

The disallowed capital losses and parts of capital losses may exceed the amount of the injected capital gain.

Note: The disallowance may result in a net capital loss for the income year: see section 175-75.

(2) The Commissioner cannot *disallow the *capital losses or parts of the capital losses if the *continuing shareholders will benefit from the making of the injected capital gain to an extent that the Commissioner thinks fair and reasonable having regard to their respective *shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow capital losses or parts of capital losses of an insolvent company.

(3) The ***continuing shareholders*** are the individuals who had *shareholding interests in the company both immediately before the *injected capital gain was made, and immediately afterwards.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

175-65 Capital loss injected into company because of available capital gain

(1) The Commissioner may *disallow a *capital loss of a company for an income year to the extent that the company would not have made the loss if it had not also made some or all of a *capital gain it made in that income year.

Note: The disallowance may result in a tax loss for the income year: see section 175-75.

(2) The Commissioner cannot *disallow any of the *capital loss if:

(a) the *continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the loss being made; and

(b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective *shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow a capital loss of an insolvent company.

(3) The ***continuing shareholders*** are the individuals who had *shareholding interests in the company both immediately before the *capital loss was made, and immediately afterwards.

175-70 Someone else obtains a tax benefit because of capital loss or gain available to company

(1) The Commissioner may *disallow a *capital loss of a company if:

(a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the company had not made some or all (the ***available capital loss***) of the capital loss.

However, the capital loss may be disallowed only to the extent of the available capital loss.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The Commissioner may *disallow *capital losses of a company (or parts of them) if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the company had not made some or all (the ***available capital gains***) of the *capital gains it made:

(i) before it made the capital losses; and

(ii) in the same income year as it made them.

The disallowed capital losses and parts of capital losses may exceed the amount of the available capital gains.

Note: The disallowance may result in a tax loss for the income year: see section 175-75.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

(4) The Commissioner cannot *disallow under this section if:

(a) the person who has obtained or will obtain the tax benefit had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow the whole or part of any capital losses of an insolvent company.

175-75 Net capital loss resulting from disallowed capital losses

If a company has a *net capital gain for an income year because the Commissioner *disallows under this Subdivision *capital losses of the company for the income year (or parts of them), the company also has a ***net capital loss*** for the income year equal to the total of those losses and parts of losses.

To find out *how much* of the net capital loss can be applied in later income years: see Subdivision 165-CA.

To find out *how* to apply it: see sections 102-5 and 102-15.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 175-C—Tax benefits from unused bad debt deductions

Table of sections

175-80 When Commissioner can disallow deduction for bad debt
175-85 First case: income or capital gain injected into company because of available bad debt
175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company

175-80 When Commissioner can disallow deduction for bad debt

(1) This Subdivision sets out cases where the Commissioner may disallow some or all of a deduction for a debt (or part of a debt) that is owed to a company and is written off as bad in the income year.

(2) However, the Commissioner cannot disallow any of the deduction if:

(a) the company fails to meet a condition in section 165-123 (about the company maintaining the same owners) in respect of the *first continuity period or the *second continuity period; but

(b) meets the condition in section 165-126 (about the company satisfying the same business test).

175-85 First case: income or capital gain injected into company because of available bad debt

(1) The Commissioner may disallow some or all of the deduction if the company would not have had some or all (the ***injected amount***) of its assessable income or *capital gains for the income year if:

(a) the debt had not been incurred; and

(b) the debt (or the relevant part of the debt) had not been written off (or able to be written off) as bad.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) However, the Commissioner cannot disallow any of the deduction if the *continuing shareholders will benefit from the company having the injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

Note: Section 175-100 allows the Commissioner to disallow some or all of a deduction of an insolvent company.

(3) The ***continuing shareholders*** are:

(a) all of the persons who had *more than 50% of the voting power in the company throughout the *first continuity period and the *second continuity period; and

(b) all of the persons who had rights to *more than 50% of the company's dividends throughout the *first continuity period and the *second continuity period; and

(c) all of the persons who had rights to *more than 50% of the company's capital distributions throughout the *first continuity period and the *second continuity period.

To find out who they were, apply whichever tests are applied in order to determine whether the company can deduct the debt (or the relevant part of the debt) in the first place.

Note 1: See section 165-123 (about the company maintaining the same owners).

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company

(1) The Commissioner may disallow some or all of the deduction if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the debt had not been incurred and the debt (or the relevant part of the debt) had not been written off (or able to be written off) as bad.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) However, the Commissioner cannot disallow any of the deduction if:

(a) the person had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow some or all of a deduction of an insolvent company.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

Subdivision 175-D—Common rules

Table of sections

175-95 When a person has a shareholding interest in the company
175-100 Commissioner may disallow excluded losses etc. of insolvent companies

175-95 When a person has a shareholding interest in the company

(1) A person has a ***shareholding interest*** in the company if the person is:

(a) the beneficial owner; or

(b) the trustee of a *family trust who is the owner;

of:

(c) *shares in the company; or

(d) an interest in *shares in the company.

(2) A person also has a ***shareholding interest*** in the company if:

(a) the person has a shareholding interest in another company; and

(b) the other company has a shareholding interest in the company (including one resulting from any other application or applications of this subsection).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

175-100 Commissioner may disallow excluded losses etc. of insolvent companies

Despite a subsection listed in column 1, the Commissioner may, under a subsection listed in column 2, disallow some or all of an *excluded loss, deduction, or *capital loss, of a company (as the case requires) if:

(a) the company is or becomes:

(i) a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*; or

(ii) an entity with a similar status under a *foreign law to a Chapter 5 body corporate; and

(b) the company is insolvent (within the meaning of section 9 of the *Corporations Act 2001*) when the administration begins.

Commissioner may disallow excluded losses etc. for insolvent companies

Item	Column 1 Despite this subsection...	Column 2 the Commissioner may disallow under this subsection:
1	Subsection 175-10(2)	Subsection 175-10(1)
2	Subsection 175-15(2)	Subsection 175-15(1)
3	Subsection 175-20(2)	Subsection 175-20(1)
4	Subsection 175-25(2)	Subsection 175-25(1)
5	Subsection 175-30(4)	Subsection 175-30(1) or (2)
6	Subsection 175-45(2)	Subsection 175-45(1)
7	Subsection 175-50(2)	Subsection 175-50(1)
8	Subsection 175-60(2)	Subsection 175-60(1)
9	Subsection 175-65(2)	Subsection 175-65(1)
10	Subsection 175-70(4)	Subsection 175-70(1) or (2)
11	Subsection 175-85(2)	Subsection 175-85(1)
11	Subsection 175-90(2)	Subsection 175-90(1)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 180—Information about family trusts with interests in companies

Table of Subdivisions

Guide to Division 180
180-A Information relevant to Division 165
180-B Information relevant to Division 175

Guide to Division 180

180-1 What this Division is about

If a company would only avoid the tax consequences of Division 165 or 175 because of interests held by a foreign resident family trust, the Commissioner may require the company to give certain information about the family trust. If it is not given, the company does not avoid the tax consequences of that Division.

Subdivision 180-A—Information relevant to Division 165

Table of sections

180-5 Information about family trusts with interests in companies
180-10 Notice where requirements of section 180-5 are met

180-5 Information about family trusts with interests in companies

Notice about company

(1) The Commissioner may give a company a notice in accordance with section 180-10 if the requirements of this section are met.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Tax detriment under Division 165

(2) In its *income tax return for an income year:

(a) the company must have deducted a *tax loss from a *loss year where it would not be allowed to deduct the tax loss if it did not meet the conditions in section 165-12; or

(b) the company must not have calculated:

(i) its taxable income and tax loss under Subdivision 165-B; and

(ii) its *net capital gain and *net capital loss under Subdivision 165-CB;

where it would have been required to calculate them under that Subdivision if it did not satisfy the requirements of paragraph 165-35(a); or

(c) the company must have applied a *net capital loss from an earlier income year in working out its net capital gain where it would not have been allowed to apply the loss if it did not meet the condition in section 165-12 as applied on the assumption mentioned in subsection 165-96(1); or

(d) the company must have deducted a debt that it wrote off as bad in the income year where it would not be allowed to deduct the debt if it did not satisfy the requirements of paragraph 165-120(1)(a) or (b).

Role of family trust

(3) The Commissioner must be satisfied that the company:

(a) if paragraph (2)(a) applies—meets the conditions in section 165-12; or

(b) if paragraph (2)(b) applies—satisfies the requirements of paragraph 165-35(a); or

(c) if paragraph (2)(c) applies—meets the conditions in section 165-12 as applied on the assumption mentioned in subsection 165-96(1); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) if paragraph (2)(d) applies—satisfies the requirements of paragraph 165-120(1)(a) or (b);

but it would not do so unless one or more trusts were *family trusts.

Foreign resident trust

(4) When the Commissioner gives the notice, for at least one of the *family trusts:

(a) a trustee of the trust must be a foreign resident; or

(b) the central management and control of the trust must be outside Australia.

When notice must be given

(5) The Commissioner must give the notice before the later of:

(a) 5 years after the income year to which the return relates; and

(b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

180-10 Notice where requirements of section 180-5 are met

Information required

(1) The notice that the Commissioner may give if the requirements of section 180-5 are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B in Schedule 2F to the *Income Tax Assessment Act 1936*) of, income and capital, since the start of:

(a) if paragraph 180-5(2)(a) applies—the *loss year mentioned in that paragraph; or

(b) if paragraph 180-5(2)(b) applies—the income year for which that paragraph is being applied; or

(c) if paragraph 180-5(2)(c) applies—the earlier income year mentioned in that paragraph; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) if paragraph 180-5(2)(d) applies:
(i) where the debt mentioned in that paragraph was incurred in an earlier income year—the day on which the debt was incurred; or
(ii) where the debt mentioned in that paragraph was incurred in the income year mentioned in that paragraph—that income year;

by all of the *family trusts meeting the requirements of paragraph 180-5(4)(a) or (b).

Company knowledge

(2) The information need not be within the knowledge of the company at the time the notice is given.

Period for giving information

(3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

(4) If the company does not give the information within the period or within such further period as the Commissioner allows:
(a) if paragraph 180-5(2)(a) applies—the company is not entitled, and is taken never to have been entitled, to deduct the *tax loss; or
(b) if paragraph 180-5(2)(b) applies—the company is required, and taken always to have been required:
(i) to calculate its taxable income and tax loss for the income year under Subdivision 165-B; and
(ii) to calculate its *net capital gain and *net capital loss for the income year under Subdivision 165-CB; or
(c) if paragraph 180-5(2)(c) applies—the company is not entitled, and is taken never to have been entitled, to apply the net capital loss; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) if paragraph 180-5(2)(d) applies—the company is not entitled, and is taken never to have been entitled, to deduct the debt.

(5) If, because of paragraph (4)(b), the company is required to calculate under Subdivision 165-B its taxable income and *tax loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest possible taxable income for the income year.

(6) If, because of paragraph (4)(b), the company is required to calculate under Subdivision 165-CB its *net capital gain and *net capital loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest net capital gain for the income year.

No offences or penalties

(7) To avoid doubt, subsections (4) to (6) do not cause the company to commit any offence or be liable to any penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* for:

(a) deducting the *tax loss; or

(b) not calculating its taxable income and tax loss under Subdivision 165-B as it applies in accordance with subsection (5) of this section; or

(c) not calculating its *net capital gain and *net capital loss under Subdivision 165-CB as it applies in accordance with subsection (6) of this section; or

(d) applying the net capital loss; or

(e) deducting the debt;

in the company's *income tax return.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 180-B—Information relevant to Division 175

Table of sections

180-15 Information about family trusts with interests in companies
180-20 Notice where requirements of section 180-15 are met

180-15 Information about family trusts with interests in companies

Notice about company

(1) The Commissioner may give a company a notice in accordance with section 180-20 if the requirements of this section are met.

Tax detriment under Division 175

(2) The Commissioner:

(a) must have been prevented by subsection 175-10(2) or 175-15(2) from disallowing, as a deduction for an income year, the whole or part of a *tax loss from a *loss year; or

(b) must have been prevented by subsection 175-20(2), 175-25(2) or 175-30(4) from disallowing the whole or part of a deduction for an income year; or

(c) must have been prevented by subsection 175-45(2) or 175-50(2) from disallowing, in working out the *net capital gain or *net capital loss for an income year, the whole or part of a *net capital loss for an earlier income year (or a part of one); or

(d) must have been prevented by subsection 175-60(2), 175-65(2) or 175-70(4) from disallowing, in working out its net capital gain or net capital loss for an income year, the whole or part of a *capital loss made during the income year; or

(e) must have been prevented by subsection 175-85(2) or 175-90(2) from disallowing, as a deduction for an income year, the whole or part of a debt.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Role of family trust

(3) A *family trust must have been:

(a) one of the *continuing shareholders mentioned in subsection 175-10(2), 175-20(2), 175-25(2), 175-45(2), 175-60(2), 175-65(2) or 175-85(2); or

(b) the person who had the *shareholding interest mentioned in subsection 175-15(2), 175-30(4), 175-50(2), 175-70(4) or 175-90(2);

as the case requires.

Foreign resident trust

(4) When the Commissioner gives the notice:

(a) a trustee of the *family trust must be a foreign resident; or

(b) the central management and control of the *family trust must be outside Australia.

When notice must be given

(5) The Commissioner must give the notice before the later of:

(a) 5 years after the income year mentioned in subsection (2); and

(b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

180-20 Notice where requirements of section 180-15 are met

Information required

(1) The notice that the Commissioner may give if the requirements of section 180-15 are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B in Schedule 2F to the *Income Tax Assessment Act 1936*) of, income and capital by the *family trust since the start of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the *loss year mentioned in paragraph 180-15(2)(a); or
(b) the income year mentioned in paragraph 180-15(2)(b) or (d); or
(c) the earlier income year mentioned in paragraph 180-15(2)(c); or
(d) if the debt mentioned in paragraph 180-15(2)(e) was incurred in the income year mentioned in that paragraph—that income year; or
(e) if the debt mentioned in paragraph 180-15(2)(e) was incurred in an earlier income year than the one mentioned in that paragraph—the day on which the debt was incurred.

Company knowledge

(2) The information need not be within the knowledge of the company at the time the notice is given.

Period for giving information

(3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

(4) If the company does not give the information within the period or within such further period as the Commissioner allows:
(a) subsection 175-10(2), 175-15(2), 175-20(2), 175-25(2), 175-30(4), 175-85(2) or 175-90(2) does not prevent the Commissioner from disallowing the deduction; or
(b) subsection 175-45(2) or 175-50(2) does not prevent the Commissioner from *disallowing the *net capital loss; or
(c) subsection 175-60(2), 175-65(2) or 175-70(4) does not prevent the Commissioner from *disallowing the *capital loss;

as the case requires.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

No offences or penalties

(5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* for claiming the deduction, or applying the *net capital loss or *capital loss, in the company's *income tax return.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 195—Special types of company

Table of Subdivisions

195-A Pooled development funds (PDFs)
195-B Limited partnerships

Subdivision 195-A—Pooled development funds (PDFs)

Guide to Subdivision 195-A

195-1 What this Subdivision is about

This Subdivision contains rules about the income tax treatment of:

- pooled development funds (PDFs)
- shares in PDFs.

Table of sections

Working out a PDF's taxable income and tax loss

195-5 Deductibility of PDF tax losses
195-10 PDF cannot transfer tax loss
195-15 Tax loss for year in which company becomes a PDF

Working out a PDF's net capital gain and net capital loss

195-25 Applying a PDF's net capital losses
195-30 PDF cannot transfer net capital loss
195-35 Net capital loss for year in which company becomes a PDF

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Working out a PDF's taxable income and tax loss

195-5 Deductibility of PDF tax losses

If a company is a *PDF at the end of an income year for which it has a *tax loss, it can deduct the tax loss in a later income year only if it is a PDF throughout the later income year.

195-10 PDF cannot transfer tax loss

If a company is a *PDF at the end of an income year for which it has a *tax loss, it cannot transfer any amount of the tax loss under Subdivision 170-A (which is about the transfer of tax losses within certain wholly-owned groups of companies).

195-15 Tax loss for year in which company becomes a PDF

(1) This section applies if a company becomes a *PDF during an income year and is still a PDF at the end of it.

(2) Divide the income year into periods as follows:
   (a) the ***non-PDF period*** is the period beginning at the start of the income year and ending when the company becomes a *PDF;
   (b) the ***PDF period*** is the rest of the income year.

(3) For each period, work out whether the company has a taxable income or a *tax loss (or both), treating each period as if it were an income year.

(4) If the company has:
   (a) a taxable income for the non-PDF period; and
   (b) a *tax loss for the PDF period;

that tax loss is a tax loss of the company for the income year.

Note: The company can only deduct the tax loss while it is a PDF: see section 195-5.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(5) If the company has a *tax loss for the non-PDF period:

(a) section 195-5 does *not* prevent the company from deducting its tax loss for the income year in a later income year; and

(b) section 195-10 does *not* prevent the company from transferring an amount of the tax loss under Subdivision 170-A (which is about the transfer of tax losses within certain wholly-owned groups of companies);

to the extent that the tax loss does not exceed the tax loss for the non-PDF period.

(6) These rules apply in addition to the other rules about how *tax losses are applied or transferred.

The other rules start in Division 36 (which is about tax losses of earlier income years).

Working out a PDF's net capital gain and net capital loss

195-25 Applying a PDF's net capital losses

If a company is a *PDF at the end of an income year for which it has a *net capital loss, it can apply the loss in working out its *net capital gain for a later income year only if it is a PDF throughout the last day of the later income year.

195-30 PDF cannot transfer net capital loss

If a company is a *PDF at the end of an income year for which it has a *net capital loss, it cannot transfer any amount of the loss under Subdivision 170-B (which is about the transfer of net capital losses within certain wholly-owned groups of companies).

195-35 Net capital loss for year in which company becomes a PDF

(1) This section applies if a company becomes a *PDF during an income year and is still a PDF at the end of it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) Divide the income year into periods according to subsection 195-15(2) (about working out the company's tax loss for the income year).

(3) For each period, work out whether the company has a *net capital gain or a *net capital loss (or both), treating each period as if it were an income year.

(4) If the company has:

(a) a *net capital gain for the non-PDF period; and

(b) a *net capital loss for the PDF period;

that loss is a net capital loss of the company for the income year.

Note: The company can only apply the loss while it is a PDF: see section 195-25.

(5) If the company has a *net capital loss for the non-PDF period:

(a) section 195-25 does *not* prevent the company from applying its *net capital loss for the income year in working out its *net capital gain for a later income year; and

(b) section 195-30 does *not* prevent the company from transferring an amount of its net capital loss for the income year under Subdivision 170-B (which is about the transfer of net capital losses within certain wholly-owned groups of companies);

to the extent that its net capital loss for the income year does not exceed its net capital loss for the non-PDF period.

(6) These rules apply in addition to the other rules about how *net capital losses are applied or transferred.

The other rules start in Division 102 (about net capital gains and losses).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 195-B—Limited partnerships

Guide to Subdivision 195-B

195-60 What this Subdivision is about

This Subdivision contains rules about the income tax treatment of limited partnerships that become, or cease to be, venture capital limited partnerships, early stage venture capital limited partnerships, Australian venture capital funds of funds or venture capital management partnerships.

It also allows the Commissioner to determine how to take account of limited partnerships having income years of less than 12 months when they become, or cease to be, venture capital limited partnerships, early stage venture capital limited partnerships, Australian venture capital funds of funds or venture capital management partnerships.

Table of sections

Operative provisions

195-65 Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP
195-70 Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP
195-75 Determinations to take account of income years of less than 12 months

Operative provisions

195-65 Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP

A *limited partnership's *tax loss for a *loss year cannot be deducted in a later income year during which the partnership is a *VCLP, an *ESVCLP, an *AFOF or a *VCMP.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

195-70 Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP

This Subdivision does not prevent a *limited partnership that has ceased to be a *VCLP, an *ESVCLP, an *AFOF or a *VCMP from deducting, in an income year, a *tax loss for a *loss year that occurred before the partnership was a VCLP, ESVCLP, AFOF or VCMP.

195-75 Determinations to take account of income years of less than 12 months

(1) The Commissioner may, by legislative instrument, make a determination modifying the operation of one or more provisions of this Act in relation to limited partnerships whose accounting periods commence or end under section 18A of the *Income Tax Assessment Act 1936*.

(2) A determination can only be made in order to take account of the fact that such accounting periods are of less than 12 months' duration.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 197—Tainted share capital accounts

Table of Subdivisions

Guide to Division 197

197-A What transfers into a company's share capital account does this Division apply to?

197-B Consequence of transfer: franking debit arises

197-C Consequence of transfer: tainting of share capital account

Guide to Division 197

197-1 What this Division is about

This Division:

(a) applies to certain amounts transferred to a company's share capital account (see Subdivision 197-A); and

(b) provides for a franking debit to arise if such an amount is transferred to the share capital account (see Subdivision 197-B); and

(c) provides for the tainting of the share capital account if such an amount is transferred, for how the account may be untainted, and for consequences that flow from untainting the account (see Subdivision 197-C).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 197-A—What transfers into a company's share capital account does this Division apply to?

Table of sections

197-5 Division generally applies to an amount transferred to share capital account from another account
197-10 Exclusion for amounts that could be identified as share capital
197-15 Exclusion for amounts transferred under debt/equity swaps
197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies
197-25 Exclusion for transfers from option premium reserves
197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies
197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies
197-37 Exclusion for transfers made in connection with demutualisations of private health insurers
197-38 Exclusion for transfers connected with demutualisations of friendly society health or life insurers
197-40 Exclusion for post-demutualisation transfers relating to life insurance companies
197-42 Exclusion for exploration credits

197-5 Division generally applies to an amount transferred to share capital account from another account

(1) Subject to subsection (2), this Division applies to an amount (the ***transferred amount***) that is transferred to a company's *share capital account from another of the company's accounts, if the company was an Australian resident immediately before the time of the transfer.

Note: If a company has 2 or more share capital accounts, those accounts are taken to be a single account (see subsection 975-300(2)).

(2) The other provisions of this Subdivision may stop this Division from applying to some or all of the transferred amount. If those other provisions stop this Division from applying to only some of the transferred amount, this Division (other than this Subdivision) applies to the balance of the transferred amount as if only that

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

balance of the amount had been transferred to the company's *share capital account.

197-10 Exclusion for amounts that could be identified as share capital

This Division does not apply to the transferred amount if it could, at all times before the transfer, be identified in the books of the company as an amount of share capital.

197-15 Exclusion for amounts transferred under debt/equity swaps

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the transfer is under an *arrangement under which:

(i) a person discharges, releases or otherwise extinguishes the whole or a part of a debt that the company owes to the person; and

(ii) the discharge, release or extinguishment is in return for the company issuing *shares (other than redeemable preference shares) in the company to the person; and

(b) the transfer is a credit to the *share capital account that is made because of the issue of the shares in return for the discharge, release or extinguishment of the debt.

(2) If the transferred amount exceeds the lesser of:

(a) the *market value of the *shares issued by the company; and

(b) so much of the debt as is discharged, released or extinguished in return for the shares;

subsection (1) does not stop this Division from applying to the amount of the excess.

197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies

This Division does not apply to the transferred amount if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) immediately before the transfer of the amount, the company was not incorporated under the *Corporations Act 2001*; and

(b) the transfer is under, or in accordance with, an *Australian law that requires or allows either or both of the following to become part of the company's *share capital account:

(i) the company's share premium account;

(ii) the company's capital redemption reserve; and

(c) the transfer is made as part of a process that leads to there being no *shares in the company that have a par value; and

(d) the amount is transferred from the company's share premium account or capital redemption reserve.

197-25 Exclusion for transfers from option premium reserves

This Division does not apply to the transferred amount if:

(a) it is transferred from an option premium reserve of the company; and

(b) the transfer is because of the exercise of options to acquire *shares in the company; and

(c) premiums in respect of those options were credited to the option premium reserve.

197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the amount is transferred in connection with a demutualisation of the company; and

(b) Division 326 in Schedule 2H to the *Income Tax Assessment Act 1936* applies to the demutualisation; and

(c) the transfer occurs within the limitation period in relation to the demutualisation (see subsection 326-20(3) in that Schedule).

(2) If the sum of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the transferred amount; and

(b) any other amounts that were previously transferred to the company's *share capital account, from another account of the company, in connection with the demutualisation;

exceeds the total capital contributions amount described in whichever of subsections (3) and (4) applies, subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the company's share capital account in connection with the demutualisation, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) If the company was not formed by the merger of 2 or more mutual entities, the ***total capital contributions amount*** referred to in subsection (2) is the sum of all the capital amounts:

(a) that were contributed to the company by *members of the company before its demutualisation; and

(b) in respect of which deductions are not allowable to the members; and

(c) that were not payments for goods or services provided by the company.

(4) If the company was formed by the merger of 2 or more mutual entities, the ***total capital contributions amount*** referred to in subsection (2) is the sum of:

(a) all the capital amounts:

(i) that were contributed to the company, before its demutualisation, by persons who became *members of the company at or after the time when the merger took place; and

(ii) in respect of which deductions are not allowable to those members; and

(iii) that were not payments for goods or services provided by the company; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the *market values, at the time of the merger, of the entities that merged to form the company, as determined by a qualified valuer.

197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the amount is transferred in connection with the demutualisation of a company; and

(b) the demutualisation is implemented in accordance with a demutualisation method specified in Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and

(c) the transfer occurs within the listing period in relation to the demutualisation (see subsection 121AE(6) of that Act); and

(d) the company (the ***issuing company***) to whose *share capital account the amount is transferred is:

(i) if the demutualisation method is the method specified in section 121AF or 121AG of the *Income Tax Assessment Act 1936*—the demutualising company; or

(ii) if the demutualisation method is the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—the company issuing the ordinary shares referred to in that section.

(2) If the sum of:

(a) the transferred amount; and

(b) all amounts that were previously transferred to the issuing company's *share capital account, from another account of the company, in connection with the demutualisation; and

(c) all amounts that were previously transferred to the issuing company's retained profit account in connection with the demutualisation;

exceeds the listing day company valuation amount (see subsection (3)), subsection (1) does not stop this Division from

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the issuing company's share capital account, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) The ***listing day company valuation amount*** has the same meaning as it has for the purposes of table 1 in section 121AS of the *Income Tax Assessment Act 1936*, as that table applies in relation to the demutualising company (see note 3 to that table).

197-37 Exclusion for transfers made in connection with demutualisations of private health insurers

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) the amount is transferred in connection with a demutualisation of a company; and

(b) Division 315 (about demutualisations of private health insurers) applies to the demutualisation; and

(c) the company (the ***issuing company***) to whose *share capital account the amount is transferred is either:

(i) the demutualising health insurer; or

(ii) the company mentioned in subparagraph 315-85(1)(a)(iii) issuing shares that are assets covered by section 315-85 (***demutualisation assets***).

(2) Subsection (1) does not stop this Division from applying to so much, if any, of the transferred amount as exceeds the sum of the amounts worked out under subsection (3) for each demutualisation asset that is a share issued:

(a) by the issuing company under the demutualisation; and

(b) to an entity that is either:

(i) covered by section 315-90 (about participating policy holders); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(ii) the trustee of a trust covered by Subdivision 315-C (about the lost policy holders trust).

(3) The amount worked out under this subsection for a share is:
(a) the *market value of the share on the day it is issued; or
(b) if the share is in a company covered by subparagraph 315-85(1)(a)(iii) that owns other assets in addition to the shares in the demutualising health insurer—worked out using the method statement in subsection 315-210(2).

197-38 Exclusion for transfers connected with demutualisations of friendly society health or life insurers

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:
(a) the amount is transferred in connection with a demutualisation of a company; and
(b) Division 316 (about demutualisations of friendly society health and life insurers) applies in relation to the demutualisation; and
(c) the company (the ***issuing company***) to whose *share capital account the amount is transferred is either:
(i) the *friendly society described in that Division; or
(ii) the company that owns all the shares in the friendly society.

(2) Subsection (1) does not stop this Division from applying to so much, if any, of the transferred amount as exceeds the sum of the *cost bases of *shares in the issuing company that:
(a) are demutualisation assets (see section 316-110); and
(b) are issued to an entity covered by section 316-115.

Note: Section 316-115 identifies entities connected directly or indirectly with the friendly society and affected by the special cost base rules in section 316-105.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) For the purposes of subsection (2), work out the *cost base of a *share on the day on which it is issued, taking account of section 316-105.

197-40 Exclusion for post-demutualisation transfers relating to life insurance companies

(1) Subject to subsection (2), this Division does not apply to the transferred amount if:

(a) a *life insurance company (the ***demutualised company***) has demutualised; and

(b) the demutualisation was implemented in accordance with a demutualisation method specified in Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and

(c) the amount is transferred after the end of the listing period in relation to the demutualisation (see subsection 121AE(6) of that Act); and

(d) the company transferring the amount to its *share capital account is either:

(i) the demutualised company (whichever demutualisation method was used); or

(ii) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—the company (the ***issuing company***) that issued the ordinary shares referred to in that section; and

(e) if subparagraph (d)(i) applies—the following conditions are satisfied in relation to the transferred amount:

(i) the amount is transferred from an account of the demutualised company consisting of shareholders' capital (within the meaning of the *Life Insurance Act 1995*) in relation to a statutory fund (within the meaning of that Act);

(ii) the amount was part of such an account at the time of the demutualisation; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(f) if subparagraph (d)(ii) applies—the amount is transferred from a capital reserve created at the time of or in connection with the demutualisation.

(2) If the sum of:

(a) the transferred amount; and

(b) all amounts that were previously transferred to the demutualised company's *share capital account, from another account of the demutualised company, as described in subsection (1); and

(c) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—all amounts that were previously transferred to the issuing company's share capital account, from another account of the issuing company, as described in subsection (1); and

(d) all amounts that were previously transferred, in connection with the demutualisation, to the share capital account of the issuing company (within the meaning of section 197-35) as described in subsection 197-35(1), or to its retained profit account as described in paragraph 197-35(2)(c);

exceeds the listing day company valuation amount (see subsection (3)), subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the share capital account of the demutualised company or the issuing company, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) The ***listing day company valuation amount*** has the same meaning as it has for the purposes of table 1 in section 121AS of the *Income Tax Assessment Act 1936*, as that table applies in relation to the demutualised company (see note 3 to that table).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

197-42 Exclusion for exploration credits

This Division does not apply to the transferred amount if:

(a) the company transferring the amount is a *greenfields minerals explorer; and

(b) the amount is transferred in connection with the creation of *exploration credits.

Subdivision 197-B—Consequence of transfer: franking debit arises

Table of sections

197-45 A franking debit arises in relation to the transfer

197-45 A franking debit arises in relation to the transfer

(1) A *franking debit arises in a company's *franking account if an amount (the ***transferred amount***) to which this Division applies is transferred to the company's *share capital account. The debit arises immediately before the end of the *franking period in which the transfer of the amount occurs.

(2) The amount of the *franking debit is calculated in accordance with the formula:

$$\text{Transferred amount} \times \frac{\text{Applicable franking percentage}}{\text{Applicable gross-up rate}}$$

where:

applicable franking percentage means:

(a) if, before the debit arises, the *benchmark franking percentage for the *franking period in which the transfer of the amount occurs has already been set by section 203-30—that percentage; or

(b) otherwise—100%.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

applicable gross-up rate means the company's *corporate tax gross-up rate for the income year in which the franking debit arises.

Subdivision 197-C—Consequence of transfer: tainting of share capital account

Table of sections

197-50 The share capital account becomes tainted (if it is not already tainted)
197-55 Choosing to untaint a tainted share capital account
197-60 Choosing to untaint—liability to untainting tax
197-65 Choosing to untaint—further franking debits may arise
197-70 Due date for payment of untainting tax
197-75 General interest charge for late payment of untainting tax
197-80 Notice of liability to pay untainting tax
197-85 Evidentiary effect of notice of liability to pay untainting tax

197-50 The share capital account becomes tainted (if it is not already tainted)

(1) A company's *share capital account becomes ***tainted*** when an amount to which this Division applies is transferred to the account, if, at the time of the transfer, the account is not already tainted (because of the application of this section in relation to a previous transfer).

Note: If a company's share capital account is tainted, then a distribution from the account is taxed as a dividend in the hands of the shareholder. This is because a tainted share capital account does not count as a share capital account for the purposes of paragraph (d) of the definition of ***dividend*** in subsection 6(1) of the *Income Tax Assessment Act 1936* (see subsection 975-300(3) of this Act). However, although the distribution is taxed as a dividend, the company cannot pass on to the shareholder the benefit of the tax it has paid, because a distribution from a share capital account (whether or not tainted) is unfrankable (see paragraphs 202-45(e) and 975-300(3)(ba) of this Act).

(2) The *share capital account remains ***tainted*** until the company chooses to untaint the account (see section 197-55).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: If, after a choice to untaint is made, the company's share capital account becomes tainted again, the account remains tainted until a fresh choice to untaint is made.

(3) The ***tainting amount***, for a company's *share capital account that is *tainted at a particular time, means the sum of:

(a) the amount transferred to the company's share capital account that most recently caused the account to become tainted; and

(b) any other amounts to which this Division applies that have been transferred to the company's share capital account since the transfer referred to in paragraph (a) and before the particular time.

197-55 Choosing to untaint a tainted share capital account

(1) A company with a *share capital account that is *tainted may make a choice in the *approved form given to the Commissioner to untaint the account.

(2) The choice can be made at any time, but cannot be revoked.

Note: The choice has no effect in relation to a subsequent tainting of the share capital account that occurs after the choice is made.

197-60 Choosing to untaint—liability to untainting tax

Definitions

(1) For the purpose of this section:

(a) a company whose *share capital account is *tainted is a ***company with only lower tax members in relation to the tainting period*** if, throughout the tainting period, all *members of the company were covered by one, or a combination of 2 or more, of the following subparagraphs:

(i) other companies;

(ii) *complying superannuation entities;

(iii) foreign residents; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) a company whose share capital account is tainted is a ***company with higher tax members in relation to the tainting period*** if it is not a company with only lower tax members in relation to the tainting period.

For this purpose, the ***tainting period*** is the period beginning when the share capital account most recently became tainted and ending when the company chooses to untaint the account.

Liability to untainting tax

(2) A company that chooses to untaint its *share capital account is liable to pay tax, known as ***untainting tax***, equal to the amount calculated in accordance with the formula:

$$\text{Applicable tax amount} - \left(\text{Section 197-45 franking debits} + \text{Section 197-65 franking debits} \right)$$

where:

applicable tax amount has the meaning given by subsection (3).

section 197-45 franking debits means the total *franking debits arising under section 197-45 because of the transfer of the amounts that made up the *tainting amount at the time of the choice.

section 197-65 franking debits means the total (if any) *franking debits arising under section 197-65 because of the choice to untaint.

Note: The payment of untainting tax does not give rise to a franking credit.

(3) In subsection (2), the ***applicable tax amount*** is the amount calculated in accordance with the formula:

$$\left(\text{*Tainting amount at time of choice to untaint} + \text{Notional franking amount} \right) \times \text{Applicable tax rate}$$

where:

applicable tax rate means:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) for a company with only lower tax members in relation to the tainting period—the company's *corporate tax rate for imputation purposes for the income year in which the choice is made; or

(b) for a company with higher tax members in relation to the tainting period—the sum of:

(i) the maximum rate specified in column 2 of the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* that applies for the income year in which the choice is made; and

(ii) 3%.

Note: The 3% referred to in subparagraph (b)(ii) relates to rates of Medicare levy and surcharge.

notional franking amount has the meaning given by subsection (4).

(4) In subsection (3), the ***notional franking amount*** is the amount calculated in accordance with the formula:

$$\text{*Tainting amount at time of choice to untaint} \times \frac{1}{\text{Applicable gross-up rate}}$$

where:

applicable gross-up rate means the company's *corporate tax gross-up rate for the income year in which the choice is made.

Temporary budget repair levy

(5) If the income year in which the choice is made corresponds to a temporary budget repair levy year (within the meaning of section 4-11 of the *Income Tax (Transitional Provisions) Act 1997*), increase the applicable tax rate calculated under subsection (3) by 2 percentage points.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

197-65 Choosing to untaint—further franking debits may arise

When this section applies

(1) This section applies if:

(a) a company chooses to untaint its *share capital account; and

(b) the applicable franking percentage (within the meaning of subsection (3)) is higher than the percentage that was the *benchmark franking percentage in relation to the *franking period in which the transfer of an amount (the ***transferred amount***) that is, or is part of, the *tainting amount occurred.

Note: If paragraph (b) is satisfied in relation to 2 or more amounts, this section is to be applied separately in relation to each of those amounts (so a separate franking debit will arise in relation to each of those amounts).

Franking debit arises in relation to making the choice

(2) A *franking debit arises in the company's *franking account in relation to the transferred amount. The debit arises immediately before the end of the *franking period in which the choice to untaint is made.

(3) The amount of the *franking debit is the amount by which the amount calculated in accordance with the following formula exceeds the amount of the franking debit that arose under section 197-45 in relation to the transferred amount:

$$\text{Transferred amount} \times \frac{\text{Applicable franking percentage}}{\text{Applicable gross-up rate}}$$

where:

applicable franking percentage means:

(a) if, before the debit arises, the *benchmark franking percentage for the *franking period in which the choice to untaint is made has already been set by section 203-30—that percentage; or

(b) otherwise—100%.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

applicable gross-up rate means the company's *corporate tax gross-up rate for the income year in which the franking debit arises.

197-70 Due date for payment of untainting tax

*Untainting tax is due and payable at the end of 21 days after the end of the *franking period in which the choice to untaint was made.

Note: For provisions about collection and recovery of untainting tax, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

197-75 General interest charge for late payment of untainting tax

If any of the *untainting tax that a company is liable to pay remains unpaid 60 days after the day by which it is due to be paid, the company is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(a) started at the beginning of the 60th day after the day by which the untainting tax was due to be paid; and

(b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the untainting tax;

(ii) general interest charge on any of the untainting tax.

197-80 Notice of liability to pay untainting tax

(1) The Commissioner may give a company, by post or otherwise, a notice specifying:

(a) the amount of any *untainting tax that the Commissioner has ascertained is payable by the company; and

(b) the day on which that tax became or will become due and payable.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Effect of notice on liability etc.

(2) Subject to section 197-85, the amount of the liability of a company to *untainting tax, and the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice.

Amendment of notice

(3) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

Inconsistency between notices

(4) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

Objections

(5) A company that is dissatisfied with a notice made in relation to the company may object against the notice in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

197-85 Evidentiary effect of notice of liability to pay untainting tax

(1) The production of:

(a) a notice given under section 197-80; or

(b) a document that is signed by the Commissioner and appears to be a copy of such a notice;

is conclusive evidence that:

(c) the notice was duly given; and

(d) the amount of *untainting tax specified in the notice became due and payable by the company to which it was given on the day specified in the notice.

(2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Part 3-6—The imputation system

Division 200—Guide to Part 3-6

Guide to Division 200

200-1 What this Division is about

This Division provides an overview of the imputation system.

Table of sections

200-5 The imputation system
200-10 Franking a distribution
200-15 The franking account
200-20 How a distribution is franked
200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid
200-30 Benchmark rule
200-35 Effect of receiving a franked distribution
200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members
200-45 Special rules for franking by some entities

200-5 The imputation system

The *imputation system partially integrates the income tax liabilities of an Australian corporate tax entity and its members by:

(a) allowing the entity, when distributing profits to its members, to pass to those members credit for income tax paid by the entity on those profits; and

(b) allowing the entity's Australian members to claim a tax offset for that credit; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) allowing the entity's Australian members to claim a refund if they are unable to fully utilise the tax offset in reducing their income tax.

200-10 Franking a distribution

When an Australian corporate tax entity distributes profits to its members, the entity has the option of passing to those members credit for income tax paid by the entity on the profits. This is done by franking the distribution.

200-15 The franking account

(1) A franking account is used to keep track of income tax paid by the entity, so that the entity can pass to its members the benefit of having paid that tax when a distribution is made.

(2) Each corporate tax entity has a franking account.

(3) Typically, a corporate tax entity receives a credit in the account if the entity pays income tax or receives a franked distribution. A credit in the franking account is called a franking credit.

(4) Typically, a corporate tax entity receives a debit in the account if the entity receives a refund of tax or franks a distribution to its members. A debit in the franking account is called a franking debit.

200-20 How a distribution is franked

(1) A corporate tax entity franks a distribution by allocating a franking credit to it.

(2) The amount of the franking credit on the distribution is the amount specified in a statement that accompanies the distribution.

(3) Only some kinds of distribution can be franked. These are called frankable distributions.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid

(1) A corporate tax entity must not frank a distribution from profits with a franking credit that exceeds the maximum amount of income tax that could have been paid, at the entity's corporate tax rate for imputation purposes for the income year in which the distribution is made, on the profits distributed.

(2) If a distribution is franked in excess of this limit, the entity will be taken to have franked the distribution with the maximum franking credit for the distribution.

200-30 Benchmark rule

(1) All frankable distributions made within a particular period must be franked to the same extent. This is the benchmark rule.

(2) It is designed to ensure that one member of a corporate tax entity is not preferred over another by the manner in which distributions are franked.

200-35 Effect of receiving a franked distribution

(1) Under Division 207, if an Australian member of a corporate tax entity receives a franked distribution, the member can usually offset, against the member's own income tax liability, income tax paid by the entity on the profits underlying the distribution.

(2) The tax offset to which the member is entitled is equal to the franking credit on the distribution.

Note 1: A member may be entitled to a refund under Division 67 if the sum of the tax offset and certain other tax offsets exceeds the amount of income tax that the member would have to pay if the member had not got those tax offsets.

Note 2: If the member is not a resident, the tax effects of receiving a distribution will be dealt with under Division 11A of Part III of the *Income Tax Assessment Act 1936*, and Subdivision 207-D of this Part.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members

If an Australian corporate tax entity receives a franked distribution, it can pass the benefit of having received a franking credit on the distribution to its own members by franking distributions to those members.

200-45 Special rules for franking by some entities

There are special rules to deal with:

(a) venture capital franking by a pooled development fund; and
(b) franking by life insurance companies; and
(c) franking by exempting companies and former exempting companies; and
(d) franking by co-operative companies; and
(e) franking by companies that are NZ residents or members of the same wholly-owned group as one or more companies that are NZ residents.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 201—Objects and application of Part 3-6

Table of sections

201-1 Objects
201-5 Application of this Part

201-1 Objects

(1) The main object of this Part is to allow certain *corporate tax entities to pass to their *members the benefit of having paid income tax on the profits underlying certain *distributions.

(2) The other objects of this Part are to ensure that:

(a) the imputation system is not used to give the benefit of income tax paid by a *corporate tax entity to *members who do not have a sufficient economic interest in the entity; and

(b) the imputation system is not used to prefer some members over others when passing on the benefits of having paid income tax; and

(c) the *membership of a corporate tax entity is not manipulated to create either of the outcomes mentioned in paragraphs (a) and (b).

201-5 Application of this Part

Subject to the rules on the application of this Part set out in the *Income Tax (Transitional Provisions) Act 1997*, this Part applies to events that occur on or after 1 July 2002.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 202—Franking a distribution

Table of Subdivisions

202-A Franking a distribution
202-B Who can frank a distribution?
202-C Which distributions can be franked?
202-D Amount of the franking credit on a distribution
202-E Distribution statements

Subdivision 202-A—Franking a distribution

Guide to Subdivision 202-A

202-1 What this Subdivision is about

An entity can only frank a distribution if certain conditions are met. These conditions are set out in this Subdivision.

Table of sections

Operative provisions

202-5 Franking a distribution

Operative provisions

202-5 Franking a distribution

An entity ***franks*** a *distribution if:

(a) the entity is a *franking entity that satisfies the *residency requirement when the distribution is made; and

(b) the distribution is a *frankable distribution; and

(c) the entity allocates a *franking credit to the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: Division 205 deals with a corporate tax entity's franking account and sets out when credits, known as franking credits, and debits, known as franking debits, arise in that account.

Note 2: The mechanism by which an entity allocates a franking credit to a distribution (for example, whether it is done by resolution or some other means) is determined by the entity.

Subdivision 202-B—Who can frank a distribution?

Guide to Subdivision 202-B

202-10 What this Subdivision is about

Generally, a corporate tax entity that is an Australian resident at the time a distribution is made, can frank the distribution.

There are some exceptions.

Table of sections

Operative provisions

202-15 Franking entities
202-20 Residency requirement when making a distribution

Operative provisions

202-15 Franking entities

An entity is a ***franking entity*** at a particular time if:

(a) it is a *corporate tax entity at that time; and

(b) it is not a *life insurance company that is a *mutual insurance company at that time; and

(c) in a case where the entity is a company that is a trustee of a trust—it is not acting in its capacity as trustee of the trust at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

202-20 Residency requirement when making a distribution

An entity satisfies the ***residency requirement*** when making a *distribution if:

(a) in the case of a company—the company is an Australian resident at that time; and

(b) in the case of a *corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and

(d) in the case of a *public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

Subdivision 202-C—Which distributions can be franked?

Guide to Subdivision 202-C

202-25 What this Subdivision is about

Generally, distributions that are made out of realised profits can be franked.

Those distributions that are not frankable are identified.

Table of sections

202-30 Frankable distributions

Operative provisions

202-35 Object
202-40 Frankable distributions
202-45 Unfrankable distributions
202-47 Distributions of certain ADI profits following restructure

202-30 Frankable distributions

Distributions and non-share dividends are frankable unless it is specified that they are unfrankable.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

202-35 Object

The object of this Subdivision is to ensure that only distributions equivalent to realised taxed profits can be franked.

202-40 Frankable distributions

(1) A *distribution is a ***frankable distribution***, to the extent that it is not unfrankable under section 202-45.

(2) A *non-share dividend is a ***frankable distribution***, to the extent that it is not unfrankable under section 202-45.

202-45 Unfrankable distributions

The following are ***unfrankable***:

(c) where the purchase price on the buy-back of a *share by a *company from one of its *members is taken to be a dividend under section 159GZZZP of that Act—so much of that purchase price as exceeds what would be the market value (as normally understood) of the share at the time of the buy-back if the buy-back did not take place and were never proposed to take place;

(d) a distribution in respect of a *non-equity share;

(e) a distribution that is sourced, directly or indirectly, from a company's *share capital account;

(f) an amount that is taken to be an unfrankable distribution under section 215-10 or 215-15;

(g) an amount that is taken to be a dividend for any purpose under any of the following provisions:

(i) unless subsection 109RB(6) or 109RC(2) applies in relation to the amount—Division 7A of Part III of that Act (distributions to entities connected with a *private company);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(iii) section 109 of that Act (excessive payments to shareholders, directors and associates);

(iv) section 47A of that Act (distribution benefits—CFCs);

(h) an amount that is taken to be an unfranked dividend for any purpose:

(i) under section 45 of that Act (streaming bonus shares and unfranked dividends);

(ii) because of a determination of the Commissioner under section 45C of that Act (streaming dividends and capital benefits);

(i) a *demerger dividend;

(j) a distribution that section 152-125 or 220-105 says is unfrankable.

202-47 Distributions of certain ADI profits following restructure

(1) This section applies to an amount paid by a body corporate if:

(a) the body corporate is a non-operating holding company within the meaning of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*; and

(b) a restructure instrument under Part 4A of that Act is in force in relation to the body; and

(c) because of the restructure to which the instrument relates, an *ADI becomes a subsidiary (within the meaning of that Act) of the body; and

(d) the amount is sourced, directly or indirectly, from the profits of the ADI before the restructure instrument came into force; and

(e) the amount would have been a *frankable distribution if it had been distributed by the ADI before the restructure instrument came into force.

(2) The amount:

(a) is taken to be a ***dividend*** paid by the body, for the purposes of this Act (and so is a *distribution by the body); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) is not taken to be an *unfrankable distribution by the body just because of paragraph 202-45(e) (which makes distributions from *share capital accounts unfrankable).

Subdivision 202-D—Amount of the franking credit on a distribution

Guide to Subdivision 202-D

202-50 What this Subdivision is about

The amount of the franking credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution.

In that case, the amount of the franking credit on the distribution is taken to be the maximum franking credit for the distribution, worked out under this Subdivision.

Table of sections

202-55 What is the maximum franking credit for a frankable distribution?

Operative provisions

202-60 Amount of the franking credit on a distribution
202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution

202-55 What is the maximum franking credit for a frankable distribution?

The maximum franking credit for a distribution is equivalent to the maximum amount of income tax that the entity making the distribution could have paid, at the entity's corporate tax rate for imputation purposes for the income year in which the distribution is made, on the profits underlying the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

202-60 Amount of the franking credit on a distribution

(1) The amount of the *franking credit on a *distribution is that stated in the *distribution statement for the distribution, unless that amount exceeds the *maximum franking credit for the distribution.

(2) The ***maximum franking credit*** for a *distribution is worked out using the formula:

$$\text{Amount of the *frankable distribution} \times \frac{1}{\text{Applicable gross-up rate}}$$

where:

applicable gross-up rate means the *corporate tax gross-up rate of the entity making the distribution for the income year in which the distribution is made.

202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution

If the amount of a *franking credit stated in a *distribution statement for a *distribution exceeds the *maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to be the amount of the maximum franking credit for the distribution, and not the amount stated in the distribution statement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 202-E—Distribution statements

Guide to Subdivision 202-E

202-70 What this Subdivision is about

An entity that makes a frankable distribution must give the recipient a statement setting out details of the distribution.

Table of sections

Operative provisions

202-75 Obligation to give a distribution statement
202-80 Distribution statement
202-85 Changing the franking credit on a distribution by amending the distribution statement

Operative provisions

202-75 Obligation to give a distribution statement

(1) An entity that makes a *frankable distribution must give the recipient a *distribution statement.

(2) The statement must be given on or before the day on which the *distribution is made, unless the entity is allowed to give the statement at a later time under subsection (3).

(3) If the entity is a *private company for the income year in which the *distribution is made, the statement must be given:

(a) before the end of 4 months after the end of the income year in which the distribution is made; or

(b) before the time determined by the Commissioner under subsection (5);

whichever is later.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) However, the entity is not allowed to give the statement at a later time under subsection (3) if the statement indicates that a *franking credit has been allocated to the *distribution and the franking credit would, either alone or when added to other franking credits allocated to other distributions made by the entity during the income year, result in the entity having a liability for *franking deficit tax, or an increased liability for franking deficit tax, at the end of the income year.

Note: The combined effect of subsections (3) and (4) is that a private company can retrospectively frank a distribution, but not so as to create or increase a liability for franking deficit tax.

(5) The Commissioner may determine in writing that a *private company may give the statement before a time specified in the determination.

202-80 Distribution statement

(1) A ***distribution statement*** is a statement made in accordance with this section.

(2) The statement must be in the *approved form.

(3) The statement must:
(a) identify the entity making the distribution; and
(b) state the date on which the distribution is made; and
(c) state the amount of the distribution; and
(d) state that there is a *franking credit of an amount specified on the distribution; and
(e) state the *franking percentage for the distribution; and
(f) state the amount of any *withholding tax that has been deducted from the distribution by the entity; and
(g) include any other information required by the *approved form that is relevant to imputation generally or the distribution.

Note: Under the *Taxation Administration Act 1953* it is an offence to fail to give a statement required under this Subdivision, or make a

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

misleading statement in connection with a distribution (whether franked or not).

202-85 Changing the franking credit on a distribution by amending the distribution statement

Changing the franking credit on a specified distribution

(1) The Commissioner may, on application by an entity, determine in writing that the entity may change the *franking credit on a specified *distribution by amending the *distribution statement for the distribution.

(2) In deciding whether to make a determination under subsection (1), the Commissioner must have regard to:

(a) whether the date for lodgment of an *income tax return by the recipient of the specified *distribution for the income year in which the distribution was made has passed; and

(b) whether, if the *franking credit on the specified distribution were changed in accordance with the entity's application, there would be any difference in the *withholding tax liability of the recipient; and

(c) whether amending the distribution statement as requested by the entity would lead to a breach of the *benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and

(d) whether amending the distribution statement as requested by the entity would lead to a new *benchmark franking percentage being set for the entity for the *franking period in which the distribution was made; and

(e) any other matters that the Commissioner considers relevant.

Changing the franking credits on a specified class of distributions

(3) The Commissioner may, on application by an entity, determine in writing that the entity may change the *franking credits on *distributions of a specified class by amending the *distribution statements for the distributions.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) In deciding whether to make a determination under subsection (3), the Commissioner must have regard to:

(a) the number of recipients to whom an amended *distribution statement would be made; and

(b) whether the date for lodgment of *income tax returns by recipients of *distributions of the specified class for the income year in which the distributions were made has passed; and

(c) whether, if the *franking credit on the specified distributions were changed in accordance with the entity's application, there would be any difference in the *withholding tax liability of the recipients; and

(d) whether amending the distribution statements as requested by the entity would lead to a breach of the *benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and

(e) whether amending the distribution statements as requested by the entity would lead to a new *benchmark franking percentage being set for the entity for the *franking period in which the distributions were made; and

(f) any other matters that the Commissioner considers relevant.

Applying to the Commissioner

(5) The entity must:

(a) make its application under this section in writing; and

(b) include in the application all information relevant to the matters to which the Commissioner must have regard under:

(i) subsection (2), if the application relates to a *distribution; or

(ii) subsection (4), if the application relates to a class of distributions.

Review

(6) If the entity or a *member of the entity is dissatisfied with a determination under subsection (3), the entity or member may

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 203—Benchmark rule

Guide to Division 203

203-1 What this Division is about

> Distributions within a particular period must all be franked to the same extent.

Table of sections

203-5 Benchmark rule
203-10 Benchmark franking percentage

Operative provisions

203-15 Object
203-20 Application of the benchmark rule
203-25 Benchmark rule
203-30 Setting a benchmark franking percentage
203-35 Franking percentage
203-40 Franking periods—where the entity is not a private company
203-45 Franking period—private companies
203-50 Consequences of breaching the benchmark rule
203-55 Commissioner's powers to permit a departure from the benchmark rule

203-5 Benchmark rule

(1) A corporate tax entity must frank all frankable distributions made within a particular period at a franking percentage set as the benchmark for that period. This is the benchmark rule.

(2) The benchmark rule does not apply to some corporate tax entities. Those entities are identified in section 203-20.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

203-10 Benchmark franking percentage

(1) The benchmark franking percentage for an entity is set by reference to the franking percentage for the first frankable distribution made by the entity during the relevant period.

(2) An entity has a benchmark franking percentage, even if it is not subject to the benchmark rule.

Operative provisions

203-15 Object

The object of this Subdivision is to ensure that one *member of a *corporate tax entity is not preferred over another when the entity *franks *distributions.

203-20 Application of the benchmark rule

(1) The *benchmark rule does not apply to a company in a *franking period if either:

(a) the company satisfies each of the following criteria:

(i) at all times during the franking period, the company is a *listed public company;

(ii) the company cannot make a *distribution on one *membership interest during the franking period without making a distribution under the same resolution on all other membership interests;

(iii) the company cannot *frank a distribution made on one membership interest during the franking period without franking distributions made on all other membership interests under the same resolution with a *franking credit worked out using the same *franking percentage; or

(b) the entity is a *100% subsidiary of a company that satisfies the criteria set out in paragraph (a).

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The following are examples of cases in which a company satisfies the criteria set out in paragraph (1)(a):

(a) the company is a *listed public company with a single *class of *membership interest at all times during the relevant *franking period;

(b) the company is a listed public company that, under its constituent documents, must not:

(i) make a *distribution on one membership interest during the relevant franking period without making a distribution under the same resolution on all other membership interests; or

(ii) *frank a distribution made on one membership interest during the relevant franking period without franking distributions made on all other membership interests under the same resolution with a *franking credit worked out using the same *franking percentage;

(c) the company is a listed public company with more than one class of membership interest, but the rights in relation to distributions and the franking of distributions are the same for each class of membership interest.

This is not an exhaustive list.

(3) For the purposes of subsection (1), ignore *membership interests that do not carry a right to receive *distributions (other than distributions on the winding up of the company).

203-25 Benchmark rule

An entity must not make a *frankable distribution whose *franking percentage differs from the entity's *benchmark franking percentage for the *franking period in which the distribution is made. This is the ***benchmark rule***.

Note: If a corporate tax entity franks a distribution in breach of this rule, the distribution will still be a franked distribution, although consequences will flow under section 203-50.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

203-30 Setting a benchmark franking percentage

The ***benchmark franking percentage*** for an entity for a *franking period is the same as the *franking percentage for the first *frankable distribution made by the entity within the period.

Note: If no frankable distribution is made during the period, there is no benchmark franking percentage for the period.

203-35 Franking percentage

(1) Subject to subsection (2), the ***franking percentage*** for a *frankable distribution is worked out using the formula:

$$\frac{\text{*Franking credit allocated to the *frankable distribution}}{\text{*Maximum franking credit for the distribution}} \times 100$$

(2) If the *franking percentage for a *frankable distribution would exceed 100% if it were worked out under subsection (1), it is taken to be 100%.

203-40 Franking periods—where the entity is not a private company

(1) Use this section to work out the franking periods for an entity in an income year where the entity is not a *private company for the income year.

(2) If the entity's income year is a period of 12 months, each of the following is a ***franking period*** for the entity in that year:
   (a) the period of 6 months beginning at the start of the entity's income year;
   (b) the remainder of the income year.

(3) If the entity's income year is a period of 6 months or less, the ***franking period*** for the entity in that year is the same as the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) If the entity's income year is a period of more than 6 months and less than 12 months, each of the following is a ***franking period*** for the entity in that year:
   (a) the period of 6 months beginning at the start of the entity's income year;
   (b) the remainder of the income year.

(5) If the entity's income year is a period of more than 12 months, each of the following is a ***franking period*** for the entity in that year:
   (a) the period of 6 months beginning at the start of the entity's income year (the ***first franking period***);
   (b) the period of 6 months beginning immediately after the end of the first franking period;
   (c) the remainder of the income year.

203-45 Franking period—private companies

The ***franking period*** for an entity that is a *private company for an income year is the same as the income year.

203-50 Consequences of breaching the benchmark rule

(1) If an entity makes a *frankable distribution in breach of the *benchmark rule:
   (a) the entity is liable to pay over-franking tax imposed by the *New Business Tax System (Over-franking Tax) Act 2002* if the *franking percentage for the *distribution exceeds the entity's *benchmark franking percentage for the *franking period in which the distribution is made; and
   (b) a *franking debit arises in the entity's *franking account if the franking percentage for the distribution is less than the entity's benchmark franking percentage for the franking period in which the distribution is made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) Use the following formula to work out:

(a) in a case dealt with under paragraph (1)(a)—the amount of the *over-franking tax; and

(b) in a case dealt with under paragraph (1)(b)—the amount of the *franking debit:

$$\text{Amount of the *frankable distribution} \times \frac{\text{Franking \% differential}}{\text{Applicable gross-up rate}}$$

where:

applicable gross-up rate means the *corporate tax gross-up rate of the entity making the distribution for the income year in which the distribution is made.

franking % differential is the difference between:

(a) the *franking percentage for the *frankable distribution; and

(b) either:

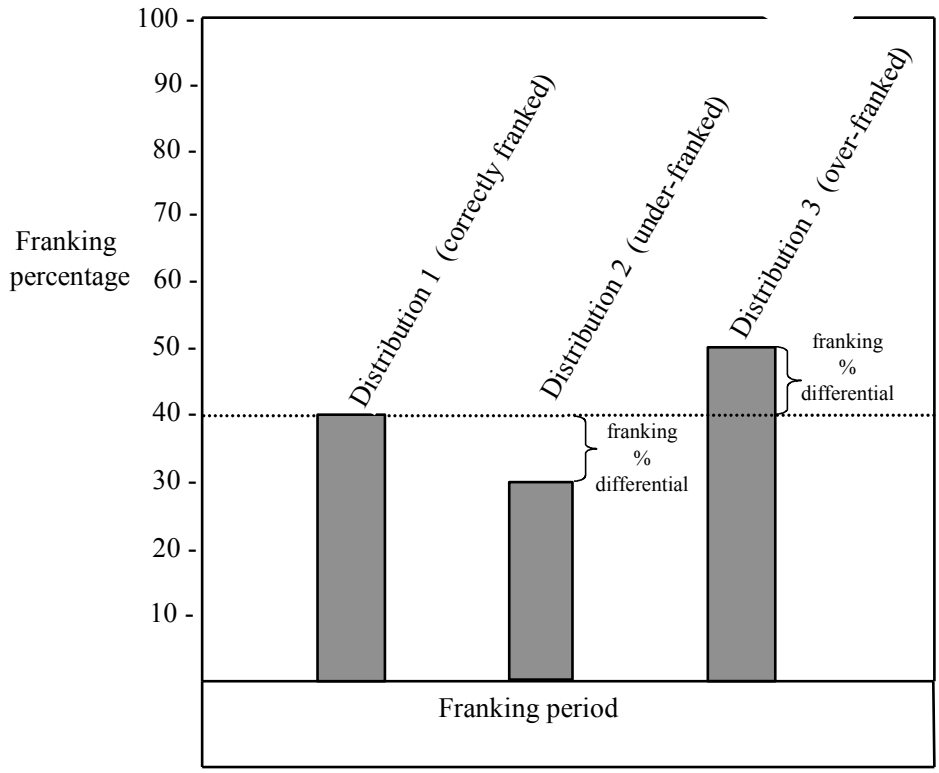
(i) if subparagraph (ii) does not apply—the entity's *benchmark franking percentage for the *franking period in which the *distribution is made; or

(ii) if the Commissioner in the exercise of the Commissioner's powers under subsection 203-55(1), permits the entity to frank the distribution at a different franking percentage—that percentage.

Example: An entity makes 3 successive frankable distributions in a franking period. Each of those distributions is represented in the following diagram. The franking percentage for the first distribution is 40%, and so the entity's benchmark franking percentage for the period is 40%.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017



Note: Distribution 2 is under-franked to the extent of the franking % differential. This is used to work out the amount of the under-franking debit under subsection (2).

Distribution 3 is over-franked to the extent of the franking % differential. This is used to work out the amount of over-franking tax on the distribution under the *New Business Tax System (Over-franking Tax) Act 2002*. The amount of the tax is calculated using the same formula as that set out in subsection (2).

(3) A *franking debit arising under paragraph (1)(b) is in addition to any franking debit that would otherwise arise for the entity because of the *distribution.

(4) The *franking debit arises on the day on which the *frankable distribution is made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

203-55 Commissioner's powers to permit a departure from the benchmark rule

Powers of the Commissioner

(1) The Commissioner may, on application by an entity, make a determination in writing permitting the entity to *frank a *distribution at a *franking percentage that differs from the entity's *benchmark franking percentage for the *franking period in which the distribution is made.

(2) Because the *benchmark rule is an integral part of the imputation system, the Commissioner's powers under this section may only be exercised in extraordinary circumstances.

Matters to which the Commissioner must have regard in exercising the power

(3) In deciding whether there are extraordinary circumstances justifying the exercise of the Commissioner's power to make a determination under subsection (1), the Commissioner must have regard to:

(a) the entity's reasons for departing, or proposing to depart, from the *benchmark rule; and

(b) the extent of the departure, or proposed departure, from the benchmark rule; and

(c) if the circumstances that give rise to the entity's application are within the entity's control, the extent to which the entity has sought the exercise of the Commissioner's powers under this section in the past; and

(d) whether a *member of the entity has been or will be disadvantaged as a result of the departure, or proposed departure, from the benchmark rule; and

(e) whether a *member of the entity will receive greater *imputation benefits than another member of the entity because a distribution *franked at a *franking percentage that differs from the *benchmark franking percentage for the *franking period is made to one of them; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(f) any other matters that the Commissioner considers relevant.

When may the powers be exercised?

(4) The Commissioner may make a determination under subsection (1) either before or after the *frankable distribution is made.

Consequence of the Commissioner exercising the power under this section

(5) An allocation of a *franking credit at a percentage specified by the Commissioner in a determination under subsection (1) is taken to comply with the *benchmark rule.

Applying to the Commissioner

(6) The entity must:
(a) make its application under this section in writing; and
(b) include in the application all information relevant to the matters to which the Commissioner must have regard under subsection (3).

Review

(7) If the entity or a *member of the entity is dissatisfied with the determination under subsection (1), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 204—Anti-streaming rules

Table of Subdivisions

204-A Objects and application
204-B Linked distributions
204-C Substituting tax-exempt bonus share for franked distributions
204-D Streaming distributions
204-E Disclosure requirements

Subdivision 204-A—Objects and application

Table of sections

204-1 Objects
204-5 Application to non-share dividends

204-1 Objects

The objects of this Division are to ensure that:

(a) an entity and its *members cannot avoid the effect of the *benchmark rule by exploiting the *benchmark franking percentage of another entity; and

(b) an entity does not stream *franked distributions and *tax-exempt bonus shares; and

(c) an entity does not stream *distributions to members of the entity who *derive a *greater benefit from franking credits than other members.

204-5 Application

(1) The rules in this Division will apply to an entity even if it is not subject to the benchmark rule.

(2) This Division applies to non-share dividends in the same way as it applies to distributions.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 204-B—Linked distributions

Guide to Subdivision 204-B

204-10 What this Subdivision is about

This Subdivision prevents the exploitation of a corporate tax entity's benchmark franking percentage by another corporate tax entity, or that other entity's members, by imposing a franking debit where there is exploitation.

Table of sections

Operative provisions

204-15 Linked distributions

Operative provisions

204-15 Linked distributions

Franking debit arises where a distribution by one entity is substituted for a distribution by another

(1) This section gives rise to a *franking debit if:

(a) the exercise of a choice or selection by a *member of an entity (the ***first entity***); or

(b) the member's failure to exercise a choice or selection;

has the effect of determining (to any extent) that another entity makes to one of its members a *distribution (the ***linked distribution***) that is:

(c) in substitution (in whole or in part) for a distribution by the first entity to that member or any other member of the first entity; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) unfranked, or *franked at a *franking percentage that differs from the first entity's *benchmark franking percentage for the *franking period in which the linked distribution is made.

Note: Division 205 deals with a corporate tax entity's franking account and sets out when a debit, known as a franking debit, arises in that account.

Franking account in which the debit arises

(2) The debit arises in the *franking account of the entity with the higher *benchmark franking percentage for the *franking period in which the linked distribution is made.

Amount of the debit

(3) The debit is equal to the one that would arise in that *franking account if the entity had made a *franked distribution, equal to the linked distribution, with a *franking percentage equal to the *benchmark franking percentage for that entity.

When does the debit arise

(4) The debit arises on the day on which the linked distribution is made.

Debit is in addition to any other franking debit arising because of the linked distribution

(5) The debit is in addition to any other debit that arises in an entity's *franking account because of the linked distribution.

Where an entity has no benchmark franking percentage

(6) If an entity has no *benchmark franking percentage for the *franking period in which the linked distribution is made, this section applies as if:

(a) in a case where the linked distribution has a *franking percentage of less than 50%—the entity had a benchmark franking percentage of 100% for that period; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) in a case where the linked distribution has a franking percentage equal to or greater than 50%—the entity had a benchmark franking percentage of 0% for that period.

Subdivision 204-C—Substituting tax-exempt bonus share for franked distributions

Guide to Subdivision 204-C

204-20 What this Subdivision is about

This Subdivision prevents the substitution of a tax-exempt bonus share for a franked distribution by imposing a franking debit on the issue of the share as if it were a franked distribution.

Table of sections

Operative provisions

204-25 Substituting tax-exempt bonus shares for franked distributions

Operative provisions

204-25 Substituting tax-exempt bonus shares for franked distributions

Franking debit arises if tax-exempt bonus shares are issued in substitution for a franked distribution

(1) This section gives rise to a *franking debit in an entity's *franking account if:

(a) the exercise of a choice or selection by a *member of the entity; or

(b) the member's failure to exercise a choice or selection;

has the effect of determining (to any extent) that the entity issues one or more *tax-exempt bonus shares, to that member or another member of the entity, in substitution (in whole or in part) for one or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

more *franked distributions by the entity to that member or another member.

Amount of the debit

(2) The debit is equal to the one that would arise in the entity's *franking account if the entity made a *distribution, equal to the *franked distributions referred to in subsection (1), franked at the entity's *benchmark franking percentage for the *franking period in which the shares are issued.

When does the debit arise

(3) The debit arises on the day when the shares are issued.

*Meaning of **tax-exempt bonus share***

(4) For a company whose *shares have no par value, ***tax-exempt bonus share*** means a share issued by the company in the circumstances mentioned in subsection 6BA(6) of the *Income Tax Assessment Act 1936*.

(5) For any other company, ***tax-exempt bonus share*** means a *share issued by the company to a *shareholder in the company where:

(a) the amount or value of the share is debited against an amount standing to the credit of a share premium account of the company; and

(b) no part of the paid-up value of the share is a dividend; and

(c) the share is issued:

(i) as a bonus share; or

(ii) in the circumstances mentioned in subsection 6BA(1) of the *Income Tax Assessment Act 1936*, as in force immediately before 1 July 1998.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Where a company has no benchmark franking percentage for the franking period

(6) If a company has no *benchmark franking percentage for the *franking period in which the *tax-exempt bonus share is issued, this section applies as if the entity had a benchmark franking percentage of 100% for that period.

Subdivision 204-D—Streaming distributions

Guide to Subdivision 204-D

204-26 What this Subdivision is about

This Subdivision prevents the streaming of imputation benefits to one member of a corporate tax entity in preference to another by either imposing a franking debit or denying an imputation benefit where there is streaming.

Table of sections

Operative provisions

204-30 Streaming distributions
204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)
204-40 Amount of the franking debit
204-41 Amount of the exempting debit
204-45 Effect of a determination about distributions to favoured members
204-50 Assessment and notice of determination
204-55 Right to review where a determination made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

204-30 Streaming distributions

Commissioner's power to make a determination when distributions or distributions and other benefits are streamed

(1) This section empowers the Commissioner to make determinations if an entity streams one or more *distributions (or one or more distributions and the giving of other benefits), whether in a single *franking period or in a number of franking periods, in such a way that:

(a) an *imputation benefit is, or apart from this section would be, received by a *member of the entity as a result of the distribution or distributions; and

(b) the member would *derive a *greater benefit from franking credits than another member of the entity; and

(c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits.

The member that derives the greater benefit from franking credits is the ***favoured member***. The member that receives the lesser imputation benefits is the ***disadvantaged member***.

Examples of other benefits

(2) These are examples of the giving of other benefits:

(a) issuing bonus *shares;

(b) returning *paid-up share capital;

(c) *forgiving a debt;

(d) the entity or another entity making a payment of any kind, or giving any property, to a *member or to another person on a member's behalf.

Nature of the determination that the Commissioner may make

(3) The Commissioner may make one or more of these determinations:

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) that a specified *franking debit arises in the *franking account of the entity, for a specified *distribution or other benefit to a disadvantaged member;

(b) that a specified *exempting debit arises in the *exempting account of the entity, for a specified *distribution or other benefit to a disadvantaged member;

(c) that no *imputation benefit is to arise in respect of a distribution that is made to a favoured member and specified in the determination.

A determination must be in writing.

(4) The Commissioner may:

(a) specify the *franking debit under paragraph (3)(a) by specifying the *franking percentage to be used in working out the amount of the debit; and

(b) specify the *exempting debit under paragraph (3)(b) by specifying the *exempting percentage to be used in working out the amount of the debit.

(5) The Commissioner may specify the *distribution under paragraph (3)(a), (b) or (c) by specifying:

(a) the date on which the distribution was made, or the period during which the distribution was made; and

(b) the member, or class of members, to whom the distribution was made.

What is an imputation benefit?

(6) A *member of an entity receives an ***imputation benefit*** as a result of a distribution if:

(a) the member is entitled to a *tax offset under Division 207 as a result of the distribution; or

(b) an amount would be included in the member's assessable income as a result of the distribution because of the operation of section 207-35; or

(c) a *franking credit would arise in the *franking account of the member as a result of the distribution; or

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) an *exempting credit would arise in the *exempting account of the member as a result of the distribution; or

(e) the member would not be liable to pay *withholding tax on the distribution, because of the operation of paragraph 128B(3)(ga) of the *Income Tax Assessment Act 1936*; or

(f) the member is entitled to a *tax offset under section 210-170 as a result of the distribution.

When does a favoured member derive greater benefit from franking credits?

(7) The following subsection lists some of the cases in which a *member of an entity *derives a ***greater benefit from franking credits*** than another member of the entity. It is not an exhaustive list.

(8) A *member of an entity *derives a ***greater benefit from franking credits*** than another member of the entity if any of the following circumstances exist in relation to the other member in the income year in which the distribution giving rise to the benefit is made, and not in relation to the first member:

(a) the other member is a foreign resident;

(b) the other member would not be entitled to any *tax offset under Division 207 because of the distribution;

(c) the amount of income tax that, apart from this Division, would be payable by the other member because of the distribution is less than the tax offset to which the other member would be entitled;

(d) the other member is a *corporate tax entity at the time the distribution is made, but no *franking credit arises for the entity as a result of the distribution;

(e) the other member is a *corporate tax entity at the time the distribution is made, but cannot use *franking credits received on the distribution to *frank distributions to its own members because:

(i) it is not a *franking entity; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(ii) it is unable to make *frankable distributions;

(f) the other member is an *exempting entity.

(9) A *member of an entity *derives a ***greater benefit from franking credits*** than another member of the entity if any of the following circumstances exist in relation to the first member in the income year in which the *distribution giving rise to the benefit is made, and not in relation to the other member:

(a) a *franking credit arises for the first member under item 5, 6 or 7 of the table in section 208-130 (distributions by *exempting entities to exempting entities);

(b) a franking credit or *exempting credit arises for the first member because the distribution is *franked with an exempting credit;

(c) the first member is entitled to a *tax offset because:

(i) the distribution is a *franked distribution made by an exempting entity; or

(ii) the distribution is *franked with an exempting credit.

(10) A *member of an entity *derives a ***greater benefit from franking credits*** than another member if the first member is entitled to a *tax offset under section 210-170 as a result of the *distribution, and the other member is not.

204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)

(1) If the Commissioner makes a determination giving rise to a *franking debit in the *franking account of an entity under paragraph 204-30(3)(a), the debit arises in the franking account of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.

(2) If the Commissioner makes a determination giving rise to an *exempting debit in the *exempting account of an entity under paragraph 204-30(3)(b), the debit arises in the exempting account

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.

204-40 Amount of the franking debit

(1) The amount of the *franking debit arising because of a determination by the Commissioner under paragraph 204-30(3)(a) must not exceed:

(a) if the specified *distribution has been *franked—the difference between the amount of the *franking credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest *franking percentage at which a distribution to a favoured member is franked; or

(b) if the specified distribution, although *frankable, has not been franked—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or

(c) if the specified distribution is *unfrankable—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or

(d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest franking percentage at which a distribution to a favoured member is franked; or

(e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest franking percentage at which a distribution to a favoured member is franked.

(2) In specifying the *franking debit, the Commissioner must have regard to:

(a) any *franking debit already arising in the *franking account of the entity under paragraph 203-50(1)(b) because the entity

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

franked the specified *distribution in breach of the *benchmark rule; and

(b) any franking debit already arising in the franking account of the entity, because of the specified distribution or benefit, under section 204-15 (about linked distributions) or section 204-25 (about substituting *tax-exempt bonus shares for *franked distributions).

204-41 Amount of the exempting debit

The amount of the *exempting debit arising because of a determination by the Commissioner under paragraph 204-30(3)(b) must not exceed:

(a) if the specified *distribution has been *franked with an exempting credit—the difference between the amount of the *exempting credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest *exempting percentage at which a distribution to a favoured member is franked; or

(b) if the specified distribution, although *frankable, has not been franked with an exempting credit—an amount worked out by multiplying the amount of the distribution by the highest exempting percentage at which a distribution to a favoured member is franked; or

(c) if the specified distribution is *unfrankable—an amount worked out by multiplying the amount of the distribution by the highest exempting percentage at which a distribution to a favoured member is franked; or

(d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest exempting percentage at which a distribution to a favoured member is franked; or

(e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest exempting

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

percentage at which a distribution to a favoured member is franked.

204-45 Effect of a determination about distributions to favoured members

If the Commissioner makes a determination denying an *imputation benefit under paragraph 204-30(3)(c) (about distributions to favoured members), the determination has effect according to its terms.

204-50 Assessment and notice of determination

(1) A determination under subsection 204-30(3) does not form part of an assessment.

(2) The Commissioner must give notice in writing of the determination:

(a) in a case where the Commissioner determines that a *franking debit is to arise in the *franking account of an entity under paragraph 204-30(3)(a)—to the entity; and

(b) in a case where the Commissioner determines that an *exempting debit is to arise in the *exempting account of an entity under paragraph 204-30(3)(b)—to the entity; and

(c) in a case where a favoured member is denied an *imputation benefit under paragraph 204-30(3)(c)—to the favoured member.

(3) If the Commissioner makes a determination denying an *imputation benefit under paragraph 204-30(3)(c) on a *distribution made by a *listed public company, the Commissioner is taken to have served notice in writing of the determination on the favoured member if the Commissioner causes a notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

204-55 Right to review where a determination made

If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Subdivision 204-E—Disclosure requirements

Guide to Subdivision 204-E

204-65 What this Subdivision is about

This Subdivision requires an entity to notify the Commissioner where there is a significant difference in its benchmark franking percentage over time, so that the Commissioner can assess whether there is streaming.

Table of sections

Operative provisions

204-70 Application of this Subdivision
204-75 Notice to the Commissioner
204-80 Commissioner may require information where the Commissioner suspects streaming

Operative provisions

204-70 Application of this Subdivision

(1) This Subdivision applies to an entity if the difference between:
  (a) the *benchmark franking percentage for the entity for a *franking period (the ***current franking period***); and
  (b) the benchmark franking percentage for the entity for the last franking period in which a *frankable distribution was made (the ***last relevant franking period***);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

is more than the amount worked out using the following formula (whether the percentage for the current franking period is more than or less than the percentage for the last relevant franking period):

$$\text{Number of } {}^{*}\text{franking periods starting immediately after the last relevant franking period and ending at the end of the current franking period} \times 20 \text{ percentage points}$$

(2) However, this Subdivision does not apply to an entity to which the benchmark rule does not apply.

Note: Section 203-20 identifies the entities to which the benchmark rule does not apply.

204-75 Notice to the Commissioner

(1) The entity must notify the Commissioner in writing of the difference.

(3) The notice must also state:

(a) the *benchmark franking percentage for the current franking period; and

(b) the benchmark franking percentage for the last relevant franking period.

(4) The notice must be in the *approved form and must be given to the Commissioner:

(a) if the entity is required to give the Commissioner a *franking return for the income year in which the current franking period occurs—with that return; or

(b) otherwise—within one month after the end of the income year in which the current franking period occurs.

Note: See Subdivision 214-A for requirements to give the Commissioner franking returns.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

204-80 Commissioner may require information where the Commissioner suspects streaming

(1) The Commissioner may request the entity to give the Commissioner the following information:

(a) the entity's reasons for setting a benchmark franking percentage for the current franking period that differs significantly from the benchmark franking percentage for the last relevant franking period; and

(b) the *franking percentages for all *frankable distributions made in the current franking period and the last relevant franking period; and

(c) details of any other benefits given to the entity's *members, either by the entity or an *associate of the entity, during the period beginning at the beginning of the last relevant franking period and ending at the end of the current franking period; and

(d) whether any member of the entity has *derived, or will derive, a *greater benefit from franking credits than another member of the entity as a result of the variation in the benchmark franking percentage between the current franking period and the last relevant franking period; and

(e) any other information required by the *approved form that is relevant in determining whether the entity is streaming *distributions.

(2) The entity must comply with the Commissioner's request.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 205—Franking accounts, franking deficit tax liabilities and the related tax offset

Guide to Division 205

205-1 What this Division is about

This Division:

- creates a franking account for each entity that is, or has been, a corporate tax entity; and
- identifies when franking credits and debits arise in those accounts and the amount of those credits and debits; and
- identifies when there is a franking surplus or deficit in the account; and
- creates a liability to pay franking deficit tax if the account is in deficit at certain times; and
- creates a tax offset for that liability.

Table of sections

205-5 Franking accounts, franking deficit tax liabilities and the related tax offset

Operative provisions

205-10 Each entity that is or has been a corporate tax entity has a franking account
205-15 Franking credits
205-20 Paying a PAYG instalment, income tax or diverted profits tax
205-25 Residency requirement for an event giving rise to a franking credit or franking debit
205-30 Franking debits
205-35 Refund of income tax or diverted profits tax
205-40 Franking surplus and deficit

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

205-45 Franking deficit tax
205-50 Deferring franking deficit
205-70 Tax offset arising from franking deficit tax liabilities

205-5 Franking accounts, franking deficit tax liabilities and the related tax offset

(1) Each entity that is, or has ever been, a corporate tax entity has a franking account.

(2) The payment of a PAYG instalment or income tax will generate a franking credit in that account. The amount of the credit is equal to the amount of tax paid. The receipt of a franked distribution by an entity from another corporate tax entity will also generate a franking credit. There are other circumstances in which a franking credit arises.

(3) The receipt of a refund of income tax or the payment of a franked distribution by a corporate tax entity will generate a franking debit. There are, however, other cases where a franking debit arises. For example, a franking debit might arise under a determination by the Commissioner because distributions have been streamed.

(4) An entity must be a franking entity at certain times and satisfy certain residency requirements before a franking credit or debit arises in its account.

(5) Franking deficit tax is payable if the franking account of an entity is in deficit at the end of the entity's income year, or when the entity ceases to be a franking entity.

(6) A tax offset is available to an entity that has incurred a liability to pay franking deficit tax.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

205-10 Each entity that is or has been a corporate tax entity has a franking account

There is a ***franking account*** for each entity that is, or has at any time been, a *corporate tax entity.

Note: The balance in the franking account on 1 July 2002 will either be nil or, if the entity had a franking surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

205-15 Franking credits

(1) The following table sets out when a credit arises in the *franking account of an entity and the amount of the credit. The credit is called a ***franking credit***.

Credits in the franking account

Item	If:	A credit of:	Arises:
1	the entity *pays a PAYG instalment; and the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the entity is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that is attributable to the period during which the entity was a franking entity, less any reduction under subsection (4)	on the day on which the payment is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
2	the entity *pays income tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to the period during which the entity was a franking entity, less any reduction under subsection (4)	on the day on which the payment is made
3	a *franked distribution is made to the entity; and the entity satisfies the *residency requirement for the income year in which the distribution is made; and the entity is a *franking entity when it receives the distribution; and the entity is entitled to a *tax offset because of the distribution under Division 207	the *franking credit on the distribution	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
4	a *franked distribution *flows indirectly to the entity through a partnership or the trustee of a trust; and the entity is a *franking entity when the franked distribution is made; and the entity is entitled to a *tax offset because of the distribution under Division 207	the entity's share of the *franking credit on the distribution	at the time specified in subsection (2)
5	the entity incurs a liability to pay *franking deficit tax under section 205-45 or 205-50	the amount of the liability	immediately after the liability is incurred
6	a *franking credit arises under section 316-275 for the *friendly society or one of its *wholly-owned subsidiaries because the society or subsidiary *receives a refund of income tax	the amount of the debit specified in subsection 316-275(3)	at the time provided by subsection 316-275(4)
7	a *franking credit arises under subsection 418-50(1) in relation to an *exploration credit	the amount of the *franking credit specified in subsection 418-50(2)	at the time provided by subsection 418-50(3)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
8	the entity *pays diverted profits tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to the period during which the entity was a franking entity, multiplied by the proportion worked out under subsection (5)	on the day on which the payment is made

(2) A *franking credit covered by item 4 of the table arises at the end of the income year:

(a) that is an income year of the last partnership or trust interposed between:

(i) the entity; and

(ii) the *corporate tax entity that made the distribution; and

(b) during which the *franked distribution *flows indirectly to the entity.

(3) Despite item 1 or 2 of the table in subsection (1), no credit arises on that part of the payment that is attributable to a payment of income tax in relation to an *RSA component.

(4) An entity's *franking credit for a payment mentioned in item 1 or 2 of the table in subsection (1) is reduced by the amount (if any) worked out as follows, but not below zero.

Method statement

Step 1. Identify any income years ending before the payment was made for which the entity has *received a refund of income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Step 2.	Add up the part (if any) of each of those refunds that is attributable to a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).
Step 3.	Subtract any reduction under this subsection of a *franking credit for any earlier payment by the entity. (For this purpose, assume a credit reduced to zero is still a franking credit.)

(5) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

205-20 Paying a PAYG instalment, income tax or diverted profits tax

(1) An entity ***pays a PAYG instalment*** if and only if:

(a) the entity has a liability to pay the instalment; and

(b) either:

(i) the entity makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an *RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the entity cannot generate franking credits by making a "voluntary" payment of income tax (that is, paying an amount on account of income tax for which the entity is not liable at the time when the payment is made).

(2) If an entity:

(a) is liable to pay a *PAYG instalment; and

(b) has a *PAYG instalment variation credit;

the PAYG instalment variation credit must be fully applied to reduce the liability for the PAYG instalment before any other credit or payment can be applied to reduce that liability.

(3) An entity ***pays income tax*** if and only if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the entity has a liability to pay the income tax; and

(b) either:

(i) the entity makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an *RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the entity cannot generate franking credits by making a "voluntary" payment of income tax (that is, paying an amount on account of income tax for which the entity is not liable at the time when the payment is made).

(3A) An entity ***pays diverted profits tax*** if and only if:

(a) the entity has a liability to pay the *diverted profits tax; and

(b) either:

(i) the entity makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an *RBA surplus, is applied to discharge or reduce the liability.

(4) Subparagraphs (1)(b)(ii), (3)(b)(ii) and (3A)(b)(ii) do not apply to the application of a credit allowable under or by virtue of section 45-30 or 45-215 in Schedule 1 to the *Taxation Administration Act 1953* (these sections deal with credits for *PAYG instalments payable and credit on using a varied rate in certain cases).

(5) The amount of the *PAYG instalment or income tax paid is equal to:

(a) the amount of the liability, if it is satisfied in full; or

(b) the amount by which the liability is reduced, if it is not satisfied in full.

(6) If:

(a) a surplus in an *RBA of an entity is applied to satisfy a liability of the entity to *pay a PAYG instalment in respect of an income year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) a credit allowable under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of that income year is included in the RBA; and

(c) the RBA does not include the liability to pay the *PAYG instalment; and

(d) the amount of the credit exceeds the income tax assessed to the entity in respect of that income year;

the amount of the PAYG instalment paid by virtue of the application of the surplus is reduced by the amount of the excess mentioned in paragraph (d).

205-25 Residency requirement for an event giving rise to a franking credit or franking debit

(1) An entity satisfies the ***residency requirement*** for an income year in which, or in relation to which, an event specified in a relevant table occurs if:

(a) the entity is a company, or a *corporate limited partnership, to which at least one of the following subparagraphs applies:

(i) the entity is an Australian resident for more than one half of the 12 months immediately preceding the event if the event occurs before the end of the income year;

(ii) the entity is an Australian resident at all times during the income year when the entity exists if the event occurs at or after the end of the income year;

(iii) the entity is an Australian resident for more than one half of the income year (whether or not the event occurs before the end of the income year); or

(c) the entity is a *public trading trust for the income year.

(2) The tables in sections 205-15 and 205-30 are relevant for the purposes of subsection (1).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

205-30 Franking debits

(1) The following table sets out when a debit arises in the *franking account of an entity and the amount of the debit. The debit is called a ***franking debit***.

Debits in the franking account

Item	If:	A debit of:	Arises:
1	the entity *franks a *distribution	the amount of the *franking credit on the distribution	on the day on which the distribution is made
2	the entity *receives a refund of income tax; and the entity satisfies the *residency requirement for the income year to which the refund relates; and the entity was a *franking entity during the whole or part of the income year to which the refund relates	that part of the refund that is attributable to the period during which the entity was a franking entity	on the day on which the refund is received

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Debits in the franking account

Item	If:	A debit of:	Arises:
2A	the entity *receives a *tax offset refund; and the entity does not satisfy the *residency requirement for the income year to which the refund relates; and the entity was a *franking entity during the whole or part of the income year to which the refund relates; and the entity's *franking account is in *surplus on the day on which the refund is received	the lesser of: (a) that part of the refund that is attributable to the period during which the entity was a franking entity; and (b) the amount of the *franking surplus	on the day on which the refund is received
3	a *franking debit arises for the entity under paragraph 203-50(1)(b) (the entity *franks a *distribution in contravention of the *benchmark rule)	the franking debit worked out under paragraph 203-50(2)(b)	on the day specified in subsection 203-50(4)
4	the entity ceases to be a *franking entity; and the entity's *franking account is in *surplus immediately before ceasing to be a franking entity	the amount of the *franking surplus	on the day on which the entity ceases to be a franking entity
5	a *franking debit arises for the entity under section 204-15 (linked distributions)	the franking debit specified in subsection 204-15(3)	on the day specified in subsection 204-15(4)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Debits in the franking account			
Item	**If:**	**A debit of:**	**Arises:**
6	a *franking debit arises under section 204-25 (debit for substituting *tax-exempt bonus shares for *franked distributions)	the amount of the debit specified in subsection 204-25(2)	on the day specified in subsection 204-25(3)
7	the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the entity (streaming distributions)	the amount of the debit specified in the determination	on the day specified in section 204-35
7A	a *franking debit arises under subsection 197-45(1) because an amount to which Division 197 applies is transferred to a company's *share capital account	the amount of the debit specified in subsection 197-45(2)	at the time provided by subsection 197-45(1)
7B	a *franking debit arises under subsection 197-65(2) because a company chooses to untaint its *share capital account	the amount of the debit specified in subsection 197-65(3)	at the time provided by subsection 197-65(2)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Debits in the franking account			
Item	**If:**	**A debit of:**	**Arises:**
9	an *on-market buy-back by a company of a *membership interest in the company	an amount equal to the debit that would have arisen if: (a) the purchase of the interest were a *frankable distribution equal to the one that would have arisen if the company had purchased the interest *off-market; and (b) the distribution were *franked at the entity's *benchmark franking percentage for the *franking period in which the purchase was made or, if the entity does not have a benchmark franking percentage for the period, at a *franking percentage of 100%	on the day on which the interest is purchased
10	a *franking debit arises under section 316-260 for the *friendly society or one of its *wholly-owned subsidiaries because the *franking account of the society or subsidiary is in *surplus	the amount of the debit specified in subsection 316-260(2)	at the time provided by subsection 316-260(3)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Section 205-30

Debits in the franking account			
Item	**If:**	**A debit of:**	**Arises:**
11	a *franking debit arises under section 316-265 for the *friendly society or one of its *wholly-owned subsidiaries because a *franking credit arises for the society or subsidiary	the amount of the debit specified in subsection 316-265(3)	at the time provided by subsection 316-265(4)
12	a *franking debit arises under section 316-270 for the *friendly society or one of its *wholly-owned subsidiaries because a *franking credit arises for the society or subsidiary	the amount of the debit specified in subsection 316-270(3)	at the time provided by subsection 316-270(4)
13	the entity *receives a refund of diverted profits tax; and the entity satisfies the *residency requirement for the income year to which the refund relates; and the entity was a *franking entity during the whole or part of the income year to which the refund relates	that part of the refund that is attributable to the period during which the entity was a franking entity, multiplied by the proportion worked out under subsection (3)	on the day on which the refund is received

Note: For completeness, the table refers to some franking debits that arise under other sections of the Act. This does not mean that separate franking debits arise both under the relevant section and this table.

(2) Despite item 2 of the table in subsection (1), no debit arises on that part of the refund that is attributable to any of the following:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) a payment of income tax in relation to an *RSA component;
(b) a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).

(3) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

205-35 Refund of income tax or diverted profits tax

(1) An entity ***receives a refund of income tax*** if and only if:
(a) either:
(i) the entity receives an amount as a refund; or
(ii) the Commissioner applies a credit, or an *RBA surplus, against a liability or liabilities of the entity; and
(b) the refund of the amount, or the application of the credit, represents in whole or in part:
(i) a return to the entity of an amount paid or applied to satisfy the entity's liability to pay income tax; or
(ii) the amount remaining after applying a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D) against the entity's basic income tax liability.

(1A) An entity ***receives a refund of diverted profits tax*** if and only if:
(a) either:
(i) the entity receives an amount as a refund; or
(ii) the Commissioner applies a credit, or an *RBA surplus, against a liability or liabilities of the entity; and
(b) the refund of the amount, or the application of the credit, represents in whole or in part a return to the entity of an amount paid or applied to satisfy the entity's liability to pay *diverted profits tax.

(2) The amount of the refund is so much of the amount refunded or applied as represents the return, or amount remaining, referred to in paragraph (1)(b) or (1A)(b).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

205-40 Franking surplus and deficit

(1) An entity's *franking account is in ***surplus*** at a particular time if, at that time, the sum of the *franking credits in the account exceeds the sum of the *franking debits in the account. The amount of the ***franking surplus*** is the amount of the excess.

(2) An entity's *franking account is in ***deficit*** at a particular time if, at that time, the sum of the *franking debits in the account exceeds the sum of the *franking credits in the account. The amount of the ***franking deficit*** is the amount of the excess.

205-45 Franking deficit tax

Object

(1) While recognising that an entity may anticipate *franking credits when *franking *distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its *franking account at certain times and levying tax if the account is in *deficit.

Franking deficit at end of income year

(2) An entity is liable to pay franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if its *franking account is in *deficit at the end of an income year.

Corporate tax entity ceases to be a franking entity

(3) An entity is liable to pay *franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if:

(a) it ceases to be a *franking entity; and

(b) immediately before it ceases to be a franking entity, its *franking account is in *deficit.

Note: The tax is imposed in the *New Business Tax System (Franking Deficit Tax) Act 2002* and the amount of the tax is set out in that Act.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

205-50 Deferring franking deficit

Object

(1) The object of this section is to ensure that an entity does not avoid *franking deficit tax by deferring the time at which a *franking debit occurs in its *franking account.

End of year deficit deferred

(2) An entity is taken to have *received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 205-45(2) if:

(a) the refund is paid within 3 months after the end of that year; and

(b) the *franking account of the entity would have been in *deficit, or in deficit to a greater extent, at the end of that year if the refund had been received in that year.

Deficit on ceasing to be a franking entity deferred

(3) If an entity ceases to be a *franking entity during an income year, the entity is taken to have *received a refund of income tax immediately before it ceased to be a franking entity for the purposes of subsection 205-45(3) if:

(a) the refund is attributable to a period in the year during which the entity was a franking entity; and

(b) the refund is paid within 3 months after the entity ceases to be a franking entity; and

(c) the *franking account of the entity would have been in *deficit, or in deficit to a greater extent, immediately before it ceased to be a franking entity if the refund had been received before it ceased to be a franking entity.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

205-70 Tax offset arising from franking deficit tax liabilities

When does the tax offset arise?

(1) A *corporate tax entity is entitled to a *tax offset for an income year for which it satisfies the *residency requirement (the ***relevant year***) if at least one of the following applies:

(a) the entity has incurred a liability to pay *franking deficit tax in the relevant year;

(b) the entity incurred such a liability in a previous income year for which it did not satisfy the residency requirement, and that liability has not been taken into account in working out a tax offset under this section;

(c) when the entity was last entitled to a tax offset under this section for a previous income year, some of the offset remained after applying section 63-10 (tax offset priority rules).

The amount of the tax offset

(2) Work out the amount of the *tax offset for the relevant year as follows:

Method statement

Step 1. Work out the total amount of *franking deficit tax that is covered by paragraph (1)(a).

Then, subject to subsections (5) and (6), reduce so much of it as is attributable to *franking debits to which subsection (8) applies by 30% if that part exceeds 10% of the total amount of *franking credits that arose in the entity's *franking account for the relevant year.

Step 2. Work out the total amount of *franking deficit tax that is covered by paragraph (1)(b) for a previous income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

	Then, subject to subsections (5) and (6), reduce so much of it as is attributable to *franking debits to which subsection (8) applies by 30% if that part exceeds 10% of the total amount of *franking credits that arose in the entity's *franking account for that previous income year.
Step 3.	Add up the results of step 2 for all the previous income years covered by paragraph (1)(b).
Step 4.	Work out the remaining amount of a *tax offset covered by paragraph (1)(c).
Step 5.	Add up the results of steps 1, 3 and 4. The result is the *tax offset to which the entity is entitled under this section for the relevant year.

Note: This method statement is modified for certain late balancing entities: see section 205-70 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: The following apply to a corporate tax entity that satisfies the residency requirement for an income year:

- the entity's income tax liability for that year would be $100,000 if its tax offsets were disregarded;
- for that year, the entity has a tax offset of $60,000 under this section (the ***franking deficit offset***) and a tax offset of $80,000 in respect of foreign income tax paid by the entity (the ***foreign income tax offset***).

Under section 63-10 (about tax offset priority rules), the foreign income tax offset must be applied before the franking deficit offset is applied. As a result, that offset and $20,000 of the franking deficit offset combine to reduce the entity's income tax liability to nil. The remaining $40,000 of the franking deficit offset will be included in a franking deficit offset for the next income year for which the entity satisfies the residency requirement.

Residency requirement

(4) To determine whether the entity satisfies the *residency requirement for the relevant year, section 205-25 has effect as if

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

each of the following were an event specified in a relevant table for the purposes of that section:

(a) the entity incurring a liability to pay *franking deficit tax in the relevant year;

(b) the assessment of the entity's income tax liability for the relevant year that is made on the *assessment day for that year.

30% reduction will generally not apply to private company's first year of tax liability

(5) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the *tax offset to which the entity is entitled for the relevant year if:

(a) the entity is a *private company for the relevant year; and

(b) if the company did not have the tax offset (but had all its other tax offsets) it would have had an income tax liability for the relevant year; and

(c) the company has not had an income tax liability for any income year before the relevant year; and

(d) the amount of the liability referred to in paragraph (b) is at least 90% of the amount of the *deficit in the company's *franking account at the end of the relevant year.

Commissioner's discretion

(6) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the *tax offset to which the entity is entitled for the relevant year if the Commissioner determines in writing, on application by the entity in the *approved form, that the excess referred to in those steps was due to events outside the control of the entity.

(7) A determination under subsection (6) is not a legislative instrument.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Applicable franking debits

(8) This subsection applies to *franking debits in the *franking account of an entity:

(a) that arise under table item 1, 3, 5 or 6 in section 205-30 for an income year; and

(b) if the entity has franking debits covered by paragraph (a) for that income year—that arise under table item 2 in that section for that income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 207—Effect of receiving a franked distribution

Table of Subdivisions

Guide to Division 207
207-A Effect of receiving a franked distribution generally
207-B Franked distribution received through certain partnerships and trustees
207-C Residency requirements for the general rule
207-D No gross-up or tax offset where distribution would not be taxed
207-E Exceptions to the rules in Subdivision 207-D
207-F No gross-up or tax offset where the imputation system has been manipulated

Guide to Division 207

Table of sections

207-5 Overview

207-5 Overview

(1) If a corporate tax entity makes a franked distribution to one of its members, then, as a general rule:

(a) an amount equal to the franking credit on the distribution is included in the member's assessable income; and

(b) the member is entitled to a tax offset equal to the same amount.

(2) In some cases a residency requirement must be satisfied for the general rule to apply.

(3) If a franked distribution is made to a member that is a partnership or the trustee of a trust, an amount equal to the franking credit on

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

the distribution is also included in the member's assessable income as mentioned in paragraph (1)(a).

(4) However, a tax offset in relation to that distribution is only available to an entity (who may be a partner, beneficiary or a trustee) if the distribution flows indirectly to it and does not flow indirectly through it to another entity. The tax offset is equal to its share of the franking credit on the distribution.

Note: That share is a notional amount and the entity can have that share without actually receiving any of that franking credit or distribution.

(5) There are exceptions to both the general rule mentioned in subsection (1) and the special rule mentioned in subsection (4). Basically, these exceptions are created:

(a) where the relevant entity would not have paid tax on the distribution or a share of the distribution (see Subdivisions 207-D and 207-E); and

(b) where there is a manipulation of the imputation system in a manner that is not permitted under the income tax law (see Subdivision 207-F).

Subdivision 207-A—Effect of receiving a franked distribution generally

Guide to Subdivision 207-A

207-10 What this Subdivision is about

As a general rule, if a member of an entity receives a franked distribution:

- an amount equal to the franking credit on the distribution is included in the member's assessable income; and
- the member is entitled to a tax offset equal to the franking credit on the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

207-15 Applying the general rule
207-20 General rule—gross-up and tax offset

Operative provisions

207-15 Applying the general rule

(1) This Subdivision sets out, as a general rule, the tax effect of receiving a *franked distribution.

(2) This Subdivision does not apply to:

(a) a partnership or trustee to whom a *franked distribution is made (except a partnership or trustee that is a *corporate tax entity, or a trustee of a trust that is a *complying superannuation entity, when the distribution is made); or

(b) an entity to whom a franked distribution *flows indirectly.

Note: Subject to the other provisions in this Division, Subdivision 207-B applies to an entity excluded from the application of this Subdivision because of this subsection.

(3) This Subdivision applies subject to Subdivisions 207-C, 207-D, 207-E and 207-F.

Note 1: Subdivision 207-C sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a franked distribution.

Note 2: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 3: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 4: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

207-20 General rule—gross-up and tax offset

(1) If an entity makes a *franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the *franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.

(2) The receiving entity is entitled to a *tax offset for the income year in which the distribution is made. The tax offset is equal to the *franking credit on the distribution.

Subdivision 207-B—Franked distribution received through certain partnerships and trustees

Guide to Subdivision 207-B

207-25 What this Subdivision is about

This Subdivision deals with an entity that receives a benefit of a franked distribution where:

(a) the distribution is made to a partnership or the trustee of a trust; and

(b) the benefit is received either directly or through other interposed partnerships or trusts.

The distribution is regarded as flowing indirectly to the entity under this Subdivision.

On the basis of a notional amount of the entity's share of the distribution, the entity may be entitled to have an amount included in its assessable income and/or a tax offset under this Subdivision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Gross-up and tax offset

207-30 Applying this Subdivision
207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee
207-37 Attributable franked distribution—trusts
207-45 Tax offset—distribution flows indirectly to an entity

Key concepts

207-50 When a franked distribution flows indirectly to or through an entity
207-55 Share of a franked distribution
207-57 Share of the franking credit on a franked distribution
207-58 *Specifically entitled* to an amount of a franked distribution
207-59 Franked distributions within class treated as single franked distribution

Gross-up and tax offset

207-30 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-D, 207-E and 207-F.

Note 1: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 2: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 3: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee

Additional amount of assessable income

(1) If:

(a) a *franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and

(b) the entity is not a *corporate tax entity when the distribution is made; and

(c) if the entity is the trustee of a trust—the trust is not a *complying superannuation entity when the distribution is made;

the assessable income of the partnership or trust for that income year includes the amount of the *franking credit on the distribution.

(2) The amount is in addition to any other amount included in that assessable income in relation to the distribution under any other provision of this Act.

Note: The amount will affect the income tax liability of a partner in the partnership, or a beneficiary or the trustee of the trust: see Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

(3) Subsection (4) applies if:

(a) a *franked distribution is made, or *flows indirectly, to a partnership or the trustee of a trust in an income year; and

(b) the assessable income of the partnership or trust for that year includes an amount (the ***franking credit amount***) that is all or a part of the additional amount of assessable income included under subsection (1) in relation to the distribution; and

(c) the distribution flows indirectly to an entity that is a partner in the partnership, or a beneficiary or the trustee of the trust; and

(d) disregarding Division 6E of Part III of the *Income Tax Assessment Act 1936*, the entity has an amount of assessable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

income for that year that is attributable to all or a part of the distribution.

(4) Despite any provisions in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*, the entity's assessable income for that year also includes:

(a) in the case of an entity that is a partner in a partnership—so much of the franking credit amount as is equal to the entity's *share of the *franking credit on the distribution; and

(b) in the case of an entity that is a beneficiary of a trust:

(i) so much of the franking credit amount as is equal to the entity's share of the franking credit on the distribution; and

(ii) the amount mentioned in section 207-37.

Example: A franked distribution of $70 is made to the trustee of a trust in an income year. The trust also has $100 of assessable income from other sources. Under subsection (1), the trust's assessable income includes an additional amount of $30 (which is the franking credit on the distribution). The trust has a net income of $200 for that income year.

There are 2 beneficiaries of the trust, P and Q, who are presently entitled to the trust's income. Under the trust deed, P is entitled to all of the franked distribution and Q is entitled to all other income.

The distribution flows indirectly to P (as P has a share of the trust's net income that is covered by paragraph 97(1)(a) and has a share of the distribution under section 207-55 equal to 100% of the distribution).

Under this subsection, P's assessable income includes $70 (the amount mentioned in section 207-37 (attributable franked distribution)) and also includes the full amount of the franking credit (as P's share of the franking credit on the distribution is $30 under section 207-57). Q's assessable income does not include any of the amount of the franked distribution or the franking credit.

(5) Subsection (6) applies if:

(a) a *franked distribution is made, or *flows indirectly, to the trustee of a trust in an income year; and

(b) the assessable income of the trust for that year includes an amount (the ***franking credit amount***) that is all or a part of

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

the additional amount of assessable income included under subsection (1) in relation to the distribution; and

(c) disregarding Division 6E of Part III of the *Income Tax Assessment Act 1936*, the trustee of the trust is liable to be assessed (and pay tax) in respect of an amount (the ***assessable amount***) under section 98, 99 or 99A of that Act in relation to the trust.

(6) Despite any provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936*, for the purposes of that Division, increase the assessable amount by so much of the franking credit amount as is equal to:

(a) if the trustee of the trust is liable to be assessed (and pay tax) under section 98 of that Act—the sum of:

(i) the trustee's *share of the *franking credit on the distribution in respect of the beneficiary; and

(ii) the amount mentioned in section 207-37; or

(b) if the trustee of the trust is liable to be assessed (and pay tax) under section 99 or 99A of that Act—the sum of:

(i) the trustee's share of the franking credit on the distribution; and

(ii) the amount mentioned in section 207-37.

207-37 Attributable franked distribution—trusts

(1) The amount is the product of:

(a) the amount of the *franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it); and

(b) the beneficiary's or the trustee's (as the case requires) *share of the franked distribution (see section 207-55), divided by the amount of the franked distribution.

(2) Subsection (3) applies if the net income of the trust estate (disregarding the amount of any *franking credits) for the relevant income year falls short of the sum of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the *net capital gain (if any) of the trust estate for the income year; and

(b) the total of all *franked distributions (if any) included in the assessable income of the trust estate for the income year (to the extent that an amount of the franked distributions remained after reducing them by deductions that were directly relevant to them).

(3) For the purposes of subsection (1), replace paragraph (a) of that subsection with the following paragraph:

(a) the product of:

(i) the amount of the *franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it); and

(ii) the *net income of the trust estate for that income year (disregarding the amount of any *franking credits), divided by the sum mentioned in subsection (2); and

207-45 Tax offset—distribution flows indirectly to an entity

An entity to whom a *franked distribution *flows indirectly in an income year is entitled to a *tax offset for that income year that is equal to its *share of the *franking credit on the distribution, if it is:

(a) an individual; or

(b) a *corporate tax entity when the distribution flows indirectly to it; or

(c) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year; or

(d) the trustee of a *complying superannuation fund, a *non-complying superannuation fund, a *complying approved deposit fund, a *non-complying approved deposit fund or a *pooled superannuation trust in relation to that income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: The entities covered by this section are the ultimate recipients of the distribution because the distribution does not flow indirectly through them to other entities. As a result they are also the ultimate taxpayers in respect of the distribution and are given the tax offset to acknowledge the income tax that has already been paid on the profits underlying the distribution.

Key concepts

207-50 When a franked distribution flows indirectly to or through an entity

(1) For the purposes of this Subdivision, this section sets out the only circumstances in which a *franked distribution:

(a) ***flows indirectly*** to an entity (subsection (2), (3) or (4)); or

(b) ***flows indirectly*** through an entity (subsection (5)).

Partners

(2) A *franked distribution ***flows indirectly*** to a partner in a partnership in an income year if, and only if:

(a) during that income year, the distribution is made to the partnership, or *flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and

(b) the partner has an individual interest:

(i) in the partnership's *net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or

(ii) in a *partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;

(whether or not that individual interest becomes assessable income in the hands of the partner); and

(c) the partner's *share of the distribution under section 207-55 is a positive amount (whether or not the partner actually receives any of that share).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Beneficiaries

(3) A *franked distribution ***flows indirectly*** to a beneficiary of a trust in an income year if, and only if:

(a) during that income year, the distribution is made to the trustee of the trust, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and

(b) the beneficiary has this amount for that income year (the ***share amount***):

(i) a share of the trust's *net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or

(ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;

(whether or not the share amount becomes assessable income in the hands of the beneficiary); and

(c) the beneficiary's *share of the distribution under section 207-55 is a positive amount (whether or not the beneficiary actually receives any of that share).

Trustees

(4) A *franked distribution ***flows indirectly*** to the trustee of a trust in an income year if, and only if:

(a) during that income year, the distribution is made to the trustee, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and

(b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the ***share amount***) that is:

(i) a share of the trust's *net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;

(whether or not the share amount becomes assessable income in the hands of the trustee); and

(c) the trustee's *share of the distribution under section 207-55 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom a franked distribution flows indirectly under this subsection is entitled to a tax offset under section 207-45 and the distribution does not flow indirectly through the trustee to another entity.

(5) A *franked distribution ***flows indirectly*** through an entity (the ***first entity***) to another entity if, and only if:

(a) the other entity is the focal entity in an item of the table in section 207-55 in relation to the distribution; and

(b) that focal entity's *share of the distribution is based on the first entity's share of the distribution as an intermediary entity in that or another item of the table.

Example: A franked distribution of $140 is made to a partnership. An amount equal to the franking credit on the distribution ($60) is included in the partnership's assessable income under section 207-35. Because the partnership has losses of $300 from other sources, it has a partnership loss of $100 for the income year.

The partnership has 2 equal partners. One partner is the trustee of a trust and the other partner is an individual. The distribution flows indirectly to each partner under subsection (2). Each partner has a share of the partnership loss ($50), a share of the distribution under sections 207-55 ($70) and a share of the franking credit under section 207-57 ($30).

The individual partner is allowed a tax offset of $30 under section 207-45.

Because the trust has $100 of income from other sources, it has a net income of $50 for that income year ($100 minus the share of the partnership loss of $50).

The trust has one individual as a beneficiary, to whom the distribution flows indirectly under subsection (3). The beneficiary's share of the franked distribution is therefore $70 under sections 207-55 and its

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

share of the franking credit is $30 under section 207-57. The beneficiary is also allowed a tax offset of $30 under section 207-45.

207-55 Share of a franked distribution

Object of section

(1) The object of this section is to ensure that:

(a) the amount of a *franked distribution made to a partnership or the trustee of a trust is allocated notionally amongst entities who *derive benefits from that distribution; and

(b) that allocation corresponds with the way in which those benefits were derived.

Note: An entity can derive a benefit from the distribution (and therefore has a share of the distribution) without actually receiving any of the distribution: see subsection (2) of this section and the example at the end of section 207-50.

(2) An entity's ***share*** of a *franked distribution is an amount notionally allocated to the entity as its share of the distribution, whether or not the entity actually receives any of that distribution.

(3) That amount is equal to the entity's ***share*** of the distribution as the focal entity in column 3 of an item of the table.

Note: An entity's share of the distribution is based on the share of the distribution of each preceding intermediary entity through which the distribution flows, starting from the intermediary entity to whom the distribution is made.

This means that in some cases (see items 2 and 4), more than one item of the table will need to be applied to work out the share of the distribution of an ultimate recipient of the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

***Share* of a franked distribution**			
Item	**Column 1** **For this intermediary entity and this focal entity**:	**Column 2** **The intermediary entity's share of the franked distribution is:**	**Column 3** **The focal entity's share of the franked distribution is:**
1	a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** if: (a) a *franked distribution is made to the partnership; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2)	the amount of the franked distribution	so much of the franked distribution as is taken into account in working out the amount of that individual interest
2	a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** if: (a) a *franked distribution *flows indirectly to the partnership as a beneficiary of a trust; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

***Share* of a franked distribution**

Item	Column 1 **For this intermediary entity and this focal entity**:	Column 2 **The intermediary entity's share of the franked distribution is:**	Column 3 **The focal entity's share of the franked distribution is:**
3	the trustee of a trust is the ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** if: (a) a *franked distribution is made to the trustee; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4)	(a) if the trust has a positive amount of *net income for that year—the amount of the franked distribution; or (b) otherwise—nil	the amount mentioned in subsection (4)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

***Share* of a franked distribution**			
Item	**Column 1** **For this intermediary entity and this focal entity**:	**Column 2** **The intermediary entity's share of the franked distribution is:**	**Column 3** **The focal entity's share of the franked distribution is:**
4	the trustee of a trust is the ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** if: (a) a *franked distribution *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4)	the amount worked out under column 3 of: (a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or (b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances

Note: In item 3 or 4, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

(4) For the purposes of column 3 of item 3 of the table in subsection (3), the amount is the sum of:

(a) so much of the amount worked out under column 2 of item 3 of the table in subsection (3) to which:

(i) unless subparagraph (ii) applies—the focal entity is *specifically entitled; or

(ii) if the focal entity is the trustee and has the share amount because of the operation of section 98 of the *Income Tax Assessment Act 1936* in respect of a beneficiary (see

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

subparagraph 207-50(4)(b)(i))—the beneficiary is specifically entitled; and

(b) if there is an amount of the *franked distribution to which no beneficiary is specifically entitled—that amount multiplied by:

(i) unless subparagraph (ii) applies—the focal entity's *adjusted Division 6 percentage of the income of the trust for the relevant income year; or

(ii) if the focal entity is the trustee and has the share amount because of the operation of section 98 of the *Income Tax Assessment Act 1936* in respect of a beneficiary (see subparagraph 207-50(4)(b)(i))—the beneficiary's adjusted Division 6 percentage of the income of the trust for the relevant income year.

207-57 Share of the franking credit on a franked distribution

(1) An entity's ***share*** of a *franking credit on a *franked distribution is an amount notionally allocated to the entity as its share of that credit, whether or not the entity actually receives any of that credit or distribution.

(2) Work out that amount as follows:

$$\text{Amount of the *franking credit on the *franked distribution} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

207-58 *Specifically entitled* to an amount of a franked distribution

(1) A beneficiary of a trust estate is ***specifically entitled*** to an amount of a *franked distribution made to the trust estate in an income year equal to the amount calculated under the following formula:

$$\text{*Franked distribution} \times \frac{\text{Share of net financial benefit}}{\text{Net financial benefit}}$$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

where:

net financial benefit means an amount equal to the *financial benefit that is referable to the *franked distribution (after any application by the trustee of expenses that are directly relevant to the franked distribution).

share of net financial benefit means an amount equal to the *financial benefit that, in accordance with the terms of the trust:

(a) the beneficiary has received, or can be reasonably expected to receive; and

(b) is referable to the *franked distribution (after application by the trustee of any expenses that are directly relevant to the franked distribution); and

(c) is recorded, in its character as referable to the franked distribution, in the accounts or records of the trust no later than the end of the income year.

(2) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

207-59 Franked distributions within class treated as single franked distribution

(1) Subsection (2) applies if:

(a) a trust receives 2 or more *franked distributions in an income year; and

(b) all of the franked distributions that the trust receives in the income year are, in accordance with the terms of the trust, to the extent that they are distributed in that income year, distributed within a single class.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) For the purposes of this Subdivision and Division 6E of Part III of the *Income Tax Assessment Act 1936*, treat all of the *franked distributions that the trust receives in the income year as one single franked distribution.

(3) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

Subdivision 207-C—Residency requirements for the general rule

Guide to Subdivision 207-C

207-60 What this Subdivision is about

Some recipients of a franked distribution must satisfy a residency requirement if their assessable income is to include the franking credit on the distribution, and they are to be entitled to a tax offset, under the general rule.

Table of sections

207-65 Satisfying the residency requirement

Operative provisions

207-70 Gross-up and tax offset under section 207-20
207-75 Residency requirement

207-65 Satisfying the residency requirement

(1) This Subdivision sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

franked distribution, if the franking credit on the distribution is to be included in that entity's assessable income, or the entity is to be entitled to a tax offset, under the general rule.

(2) It does not impose a residency requirement on other entities, because the significance of residency for those entities is dealt with elsewhere in this Act.

(3) It does not impose a residency requirement where a distribution flows indirectly to an entity. This is also because the significance of residency is dealt with elsewhere, for the most part in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

Operative provisions

207-70 Gross-up and tax offset under section 207-20

If an entity makes a *franked distribution to an individual or a *corporate tax entity:

(a) no amount is included in the receiving entity's assessable income under subsection 207-20(1); and

(b) the receiving entity is not entitled to a *tax offset under subsection 207-20(2);

unless the receiving entity satisfies the *residency requirement at the time the distribution is made.

207-75 Residency requirement

(1) An entity that receives a *distribution satisfies the ***residency requirement*** at the time the distribution is made if:

(a) in the case of an individual—the individual is an Australian resident at that time; and

(b) in the case of a company—the company is an Australian resident at that time; and

(c) in the case of a *corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) in the case of a *public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

(2) An entity that receives a *distribution also satisfies the ***residency requirement*** at the time the distribution is made if the entity at that time:

(a) is a company or an individual; and

(b) is a foreign resident; and

(c) carries on business in Australia at or through a permanent establishment of the entity in Australia, being a permanent establishment within the meaning of:

(i) a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) that relates to a foreign country and affects the entity; or

(ii) subsection 6(1) of that Act, if there is no such agreement;

and the distribution is attributable to the permanent establishment.

Subdivision 207-D—No gross-up or tax offset where distribution would not be taxed

Guide to Subdivision 207-D

207-80 What this Subdivision is about

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where a franked distribution (or a share of it) is, or would be, exempt income or *non-assessable non-exempt income in the relevant entity's hands (and therefore would not be taxed in any case).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

207-85 Applying this Subdivision
207-90 Distribution that is made to an entity
207-95 Distribution that flows indirectly to an entity

Operative provisions

207-85 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-E and 207-F.

Note 1: Subdivision 207-E sets out exceptions to the rules in this Subdivision.

Note 2: Where both this Subdivision and Subdivision 207-F apply to an entity, the application of this Subdivision is subject to the rules in Subdivision 207-F: see subsections 207-145(3) and 207-150(7) and (8).

207-90 Distribution that is made to an entity

Whole of distribution not assessable

(1) If:

(a) a *franked distribution is made to an entity; and

(b) the distribution does not *flow indirectly through the entity to another entity; and

(c) the distribution is *exempt income or *non-assessable non-exempt income in the hands of the entity;

then, for the purposes of this Act:

(d) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20; and

(e) the entity is not entitled to a *tax offset under this Division because of the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Part of distribution not assessable

(2) If:

(a) a *franked distribution is made to an entity; and

(b) the distribution does not *flow indirectly through the entity to another entity; and

(c) a part of the distribution (the ***relevant part***) is *exempt income or *non-assessable non-exempt income in the hands of the entity;

then, for the purposes of this Act:

(d) the amount of the distribution is taken to have been reduced by the relevant part; and

(e) the amount of the *franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Relevant part}}{\text{*Franked distribution apart from this section}} \times \text{*Franking credit on the *franked distribution apart from this section}$$

207-95 Distribution that flows indirectly to an entity

Whole of share of distribution not assessable

(1) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) the entity's *share of the distribution would, in its hands, be *exempt income or *non-assessable non-exempt income (whether or not it had actually received that share);

then, for the purposes of this Act:

(c) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and

(d) the entity is not entitled to a *tax offset under this Division because of the distribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: This section can therefore apply, for example, where the entity is a partner in a partnership that has a partnership loss and the entity does not actually receive any of the distribution.

Partner

(2) If the *franked distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its *share of the *franking credit on the distribution.

Beneficiary

(3) If the *franked distribution *flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:

(a) its share amount in relation to the distribution that is mentioned in that subsection; and

(b) its *share of the *franking credit on the distribution.

Trustee

(4) If the *franked distribution *flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:

(a) that share amount; and

(b) its *share of the *franking credit on the distribution.

Example: A franked distribution of $70 is made to a partnership.

Under section 207-35, an additional amount of $30 is included in the partnership's assessable income because of the distribution.

The partnership has 2 equal partners, X and Y. X is a foreign resident individual whose share of partnership's net income for the income year is $50 (share of distribution of $35 and share of franking credit of $15). That share of distribution is not assessable income and not

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

exempt income under section 128D of the *Income Tax Assessment Act 1936*.

X's assessable income of $15 (share of franking credit) is reduced to nil because of the deduction of $15 under subsection (2). Because of subsection (1), X is not entitled to a tax offset under section 207-45.

Part of share of distribution not assessable

(5) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) a part of the entity's *share of the distribution (the ***relevant part***) would, in its hands, be *exempt income or *non-assessable non-exempt income(whether or not it had actually received that part);

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its *share of the *franking credit on the distribution is worked out as follows:

$$\frac{\text{Relevant part}}{\text{Entity's *share of the *franked distribution}} \times \text{Entity's *share of the *franking credit on the *franked distribution apart from this section}$$

(6) In addition, the following apply to an entity covered by subsection (5):

(a) if the distribution would otherwise *flow indirectly through the entity—the entity's *share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the relevant part mentioned in subsection (5);

(b) if the entity would otherwise be entitled to a *tax offset under this Division because of the distribution—the amount of the tax offset is to be worked out as follows:

$$\text{Entity's *share of the *franking credit on the *franked distribution apart from this section} - \text{Amount worked out under subsection (5)}$$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 207-E—Exceptions to the rules in Subdivision 207-D

Guide to Subdivision 207-E

207-105 What this Subdivision is about

Subdivision 207-D does not apply to certain exempt institutions, trusts and life insurance companies as set out in this Subdivision. Such an entity may be entitled to a tax offset under this Subdivision in relation to a franked distribution.

Table of sections

Operative provisions

207-110 Effect of non-assessable income on gross up and tax offset

Exempt institutions

207-115 Which exempt institutions are eligible for a refund?
207-117 Residency requirement
207-119 Entity not treated as exempt institution eligible for refund in certain circumstances
207-120 Entity may be ineligible because of a distribution event
207-122 Entity may be ineligible if distribution is in the form of property other than money
207-124 Entity may be ineligible if other money or property also acquired
207-126 Entity may be ineligible if distributions do not match trust share amounts
207-128 Reinvestment choice
207-130 Controller's liability
207-132 Treatment of benefits provided by an entity to a controller
207-134 Entity's present entitlement disregarded in certain circumstances
207-136 Review of certain decisions

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

207-110 Effect of non-assessable income on gross up and tax offset

(1) This section applies to an entity to whom a *franked distribution is made, or *flows indirectly, in any of the following circumstances:

(a) the entity is an *exempt institution that is eligible for a refund and the distribution does not flow indirectly to the entity as a partner in a partnership under subsection 207-50(2);

(b) the distribution is, or the entity's *share of the distribution would have been, this kind of income in its hands:

(i) *exempt income under section 295-385 (about income from assets set aside to meet current pension liabilities), section 295-390 (about income from other assets used to meet current pension liabilities) or section 295-400 (about income of a PST attributable to current pension liabilities); or

(ii) *non-assessable non-exempt income under paragraph 320-37(1)(a) (segregated exempt assets of a life insurance company) or paragraph 320-37(1)(d) (certain amounts received by a friendly society) of this Act.

(2) The following have effect in relation to the entity:

(a) section 207-90 or 207-95 (as appropriate) does not apply to the entity;

(b) if the entity would, apart from section 207-90 or 207-95, be entitled to a *tax offset under section 207-20 or 207-45 in relation to the distribution—the entity is entitled to that tax offset;

(c) if the entity would not be entitled to such a tax offset, the entity is entitled to a tax offset under this section that is equal to:

(i) if the distribution is made to the entity—the *franking credit on the distribution; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(ii) if the distribution *flows indirectly to the entity—the entity's *share of the franking credit on the distribution;

(d) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: Paragraph (2)(c) only applies to an exempt institution that is eligible for a refund and that is not entitled to a tax offset under section 207-20 or 207-45. An entity covered by paragraph (1)(b) will, in all cases, be entitled to a tax offset under section 207-20 or 207-45.

Exempt institutions

207-115 Which exempt institutions are eligible for a refund?

(1) This section sets out the only circumstances in which an entity is an ***exempt institution that is eligible for a refund***.

Income tax exempt charities

(2) An entity is an ***exempt institution that is eligible for a refund*** if it:
(a) is covered by item 1.1 of the table in section 50-5; and
(b) is endorsed as exempt from income tax under Subdivision 50-B; and
(c) satisfies the *residency requirement.

Income tax exempt deductible gift recipients

(3) An entity is an ***exempt institution that is eligible for a refund*** if it:
(a) is endorsed under paragraph 30-120(a); and
(b) satisfies the *residency requirement.

Income tax exempt specified deductible gift recipients

(4) An entity is an ***exempt institution that is eligible for a refund*** if:
(a) the entity's name is specified in a table in a section in Subdivision 30-B; and
(b) it has an ABN; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) it satisfies the *residency requirement.

Income tax exempt relief funds

(5) An entity is an ***exempt institution that is eligible for a refund*** if:
(a) a declaration by the Minister is in force in relation to the institution under subsection 30-85(2); and
(b) the regulations do not provide that the entity is not an exempt institution that is eligible for a refund.

Prescribed income tax exempt entities

(6) An entity is an ***exempt institution that is eligible for a refund*** if the entity is prescribed as an exempt institution that is eligible for a refund by the regulations.

(7) This section has effect subject to sections 207-119 to 207-136.

207-117 Residency requirement

An entity satisfies the ***residency requirement*** for the purposes of determining whether, at the time a *franked distribution is made, the entity is an *exempt institution that is eligible for a refund if:
(a) the entity has a physical presence in Australia; and
(b) to that extent, incurs its expenditure and pursues its objectives principally in Australia;
at all times during the income year in which the distribution is made.

207-119 Entity not treated as exempt institution eligible for refund in certain circumstances

For the purposes of this Act:
(a) an entity must not be treated as an *exempt institution that is eligible for a refund in relation to a *franked distribution if section 207-120, 207-122 or 207-124 applies to the entity in relation to the distribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) a beneficiary of a trust must not be treated as an exempt institution that is eligible for a refund in relation to a franked distribution made in an income year if section 207-126 applies to the beneficiary in relation to that income year.

207-120 Entity may be ineligible because of a distribution event

(1) This section applies to an entity (the ***ineligible entity***) if:

(a) a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), to the entity; and

(b) subsection (2) of this section applies because of a *distribution event in relation to the distribution.

(2) Subject to subsection (3) and to section 207-128, this subsection applies if, because of a *distribution event in relation to the *franked distribution:

(a) the ineligible entity or another entity:

(i) makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment to any entity; or

(ii) transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property to any entity; or

(iii) incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation; or

(b) if the distribution is made to the ineligible entity—the amount or value of the benefit *derived by the ineligible entity from the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the distribution as at the time the distribution is made; or

(c) if the distribution *flows indirectly to the ineligible entity—the amount or value of the benefit derived by the ineligible entity from the ineligible entity's *trust share amount in relation to the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the ineligible

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

entity's trust share amount in relation to the distribution as at the time when that amount arises; or

(d) any of the following entities has obtained, will obtain or may reasonably be expected to obtain, a benefit, advantage, right or privilege:

(i) the entity making the distribution;

(ii) an entity through which the distribution flows indirectly to the ineligible entity;

(iii) an *associate of any of those entities.

Note: For when paragraph (d) is satisfied, see also subsection 207-132(2).

Exception to paragraph (2)(b) or (c)

(3) Paragraph (2)(b) or (c) does not apply if:

(a) that paragraph would otherwise apply only because of expenses the ineligible entity has incurred, will incur, or may reasonably be expected to incur, for the purpose of obtaining the *franked distribution or *trust share amount mentioned in that paragraph; and

(b) the Commissioner considers the expenses to be reasonable.

Trust share amount

(4) An entity's ***trust share amount*** in relation to a *franked distribution that *flows indirectly to the entity under subsection 207-50(3) or (4) is the entity's share amount that is mentioned in that subsection.

Distribution event

(5) A ***distribution event*** in relation to a *franked distribution is an act, transaction or circumstance that has happened, will happen, or may reasonably be expected to happen, as part of, in relation to or as a result of:

(a) the payment or receipt of the distribution; or

(b) if the distribution *flows indirectly to an entity under subsection 207-50(3) or (4)—the arising of, or the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

distribution or receipt of, the entity's *trust share amount in relation to the distribution; or

(c) an *arrangement entered into in association with a matter mentioned in paragraph (a) or (b).

207-122 Entity may be ineligible if distribution is in the form of property other than money

This section applies to an entity (the ***ineligible entity***) to whom a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), if:

(a) one of the following is in the form of property other than money:

(i) if the distribution is made to the ineligible entity—all or part of the distribution;

(ii) if the distribution flows indirectly to the ineligible entity through the trustee of a trust under subsection 207-50(3) or (4)—all or a part of a distribution (the ***trust distribution***) made by the trustee of the trust that relates to the ineligible entity's *trust share amount in relation to the franked distribution; and

(b) the terms and conditions on which the franked distribution or trust distribution is made are such that the ineligible entity:

(i) does not receive immediate custody and control of the property; or

(ii) does not have the unconditional right to retain custody and control of the property in perpetuity; or

(iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property.

207-124 Entity may be ineligible if other money or property also acquired

Subject to section 207-128, this section applies to an entity (the ***ineligible entity***) to whom a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the ineligible entity or another entity has entered into an *arrangement as part of, or in association with:
  (i) the distribution; or
  (ii) if the distribution flows indirectly to the ineligible entity—the ineligible entity's *trust share amount in relation to the distribution; and
(b) because of the arrangement, the ineligible entity or another entity has acquired or will acquire (whether directly or indirectly) money or property, other than money or property comprising the distribution or the ineligible entity's trust share amount, from:
  (i) the entity making the distribution; or
  (ii) an entity through which the distribution flows indirectly to the ineligible entity; or
  (iii) an *associate of any of those entities (other than the ineligible entity).

207-126 Entity may be ineligible if distributions do not match trust share amounts

(1) This section applies to a beneficiary of a trust in relation to an income year if:
  (a) the sum of the distributions:
    (i) made to the beneficiary during the income year by the trustee of the trust; and
    (ii) that relate to the beneficiary's *trust share amount in relation to a *franked distribution made during the income year;

  is less than:
  (b) that trust share amount.

Commissioner's power to treat trust share amount as having been distributed during the income year

(2) Subsection (1) does not apply if the Commissioner, having regard to all the circumstances, considers that it would be reasonable to

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

treat the *trust share amount as having been distributed to the beneficiary in the income year.

207-128 Reinvestment choice

(1) If, apart from this section, paragraph 207-120(2)(a) or (d) or section 207-124 would apply to an entity (the ***receiving entity***) to whom a *franked distribution is made or *flows indirectly, that paragraph or section is taken not to apply to the receiving entity if:

(a) instead of receiving the distribution, or the *trust share amount concerned, by a payment of money, the receiving entity chooses to be issued with:

(i) if the distribution is made to the receiving entity—*shares in the *corporate tax entity making the distribution; or

(ii) if the distribution flows indirectly to the receiving entity—a fixed interest in the trust in relation to which the trust share amount arises; and

(b) the choice is genuine and furthers the purpose for which the entity was established; and

(c) the choice is not made for the purpose, or purposes that include the purpose, of benefiting the corporate tax entity, trust or any of their *associates (other than the receiving entity); and

(d) any benefit *derived by the corporate tax entity, trust or any of their associates (other than the receiving entity) because of that choice is one which is an ordinary incident of issuing the shares or interests to the receiving entity or of the receiving entity's holding of those shares or interests; and

(e) the parties that were involved in the *distribution event or *arrangement concerned deal with one another on an *arm's length basis in relation to the event or arrangement.

A vested and indefeasible interest constitutes a fixed interest

(2) The receiving entity's interest in a trust is a fixed interest if the interest is a vested and indefeasible interest in the trust's capital.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Special rule about whether interests in unit trusts are defeasible

(3) If:

(a) the trust is a unit trust and the receiving entity holds units in the unit trust; and

(b) the units are redeemable or further units are able to be issued; and

(c) the units held by the receiving entity will be redeemed, or any further units will be issued:

(i) if units in the unit trust are listed for quotation in the official list of an *approved stock exchange—for the price at which other units of the same kind in the unit trust are offered for sale on the exchange at the time of the redemption or issue; or

(ii) if the units are not listed as mentioned in subparagraph (i)—for their *market value at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the receiving entity's interest, as a unit holder, in the trust's capital is defeasible.

Commissioner's power to treat an interest in a trust as being a fixed interest

(4) If:

(a) the receiving entity has an interest in the trust's capital; and

(b) apart from this subsection, the interest would not be a vested or indefeasible interest; and

(c) the Commissioner considers that the interest should be treated as being vested and indefeasible, having regard to:

(i) the circumstances in which the interest is capable of not vesting, or the defeasance can happen; and

(ii) the likelihood of the interest not vesting or the defeasance happening; and

(iii) the nature of the trust; and

(iv) any other matter the Commissioner thinks relevant;

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

the Commissioner may determine that the interest is to be taken to be vested and indefeasible.

(5) A determination made under subsection (4) has effect according to its terms.

207-130 Controller's liability

(1) A *controller (for imputation purposes) of an entity (the ***controlled entity***) is liable to pay an amount under this section in respect of a refund paid to the controlled entity under Division 67 if:

(a) the controlled entity claimed the refund wholly or partly on the basis that:

(i) the controlled entity was entitled to a *tax offset under section 207-20, 207-45 or 207-110 in relation to a *franked distribution; and

(ii) the controlled entity was an *exempt institution that is eligible for a refund; and

(b) because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a *distribution event or an *arrangement in relation to the distribution, the controlled entity is not entitled to the tax offset; and

(c) the controller or an *associate of the controller benefited from that event or arrangement; and

(d) some or all of the amount that the controlled entity is liable to pay in respect of the refund remains unpaid after the day on which the amount becomes due and payable; and

(e) the Commissioner gives the controller written notice:

(i) stating that the controller is liable to pay an amount under this section; and

(ii) specifying that amount.

Except as provided for in subsection (5), this subsection does not affect any liability the controlled entity has in relation to the refund.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: Section 207-134 also provides that the controlled entity's present entitlement to a trust share amount is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

Note 2: For when paragraph (c) is satisfied, see also subsection 207-132(3).

(2) The amount that the *controller (for imputation purposes) is liable to pay under subsection (1):

(a) is the amount specified under subparagraph (1)(e)(ii); and

(b) becomes due and payable at the end of the period of 14 days that starts on the day on which the notice mentioned in paragraph (1)(e) is given.

(3) The amount that the *controller (for imputation purposes) is liable to pay under subsection (1) must not exceed the total amount or value of the benefit that the controller and its *associates obtained from the *distribution event or *arrangement.

(4) The total of:

(a) the amounts that the Commissioner recovers under subsection (1) in relation to the refund from all of the controlled entity's *controllers (for imputation purposes); and

(b) the amounts that the Commissioner recovers in relation to the refund from the controlled entity;

must not exceed the amount that the controlled entity was liable to pay as mentioned in paragraph (1)(d).

Controller of a company

(5) An entity is a ***controller (for imputation purposes)*** of a company if the entity is a *controller of the company (for CGT purposes).

Controller of an entity other than a company—basic meaning

(6) Subject to subsections (7) and (8), an entity is a ***controller (for imputation purposes)*** of an entity other than a company (the ***controlled entity***) if:

(a) a group in relation to the entity has the power, by means of the exercise of a power of appointment or revocation or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the controlled entity; or

(b) a group in relation to the entity is able (directly or indirectly) to control the application of the capital or income of the controlled entity; or

(c) a group in relation to the entity is capable, under a *scheme, of gaining the beneficial enjoyment mentioned in paragraph (a) or the control mentioned in paragraph (b); or

(d) the controlled entity or, if the controlled entity is a trust, the trustee of the trust:

(i) is accustomed; or

(ii) is under an obligation; or

(iii) might reasonably be expected;

to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or

(e) if the controlled entity is a trust—a group in relation to the entity is able (directly or indirectly) to remove or appoint the trustee of the trust; or

(f) a group in relation to the entity has *more than a 50% stake in the income or capital of the controlled entity; or

(g) entities in a group in relation to the entity are the only entities that, under the terms of:

(i) the constitution of the controlled entity or the terms on which the controlled entity is established; or

(ii) if the controlled entity is a trust—the terms of the trust;

can obtain the beneficial enjoyment of the income or capital of the controlled entity.

Group in relation to an entity

(7) For the purposes of subsection (6), each of the following constitutes a ***group*** in relation to an entity:

(a) the entity acting alone;

(b) an *associate of the entity acting alone;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the entity and one or more associates of the entity acting together;

(d) 2 or more associates of the entity acting together.

Commissioner's power to take an entity not to be a controller (for imputation purposes)

(8) If:

(a) at a particular time, an entity (the ***first entity***) would, but for this subsection, be a *controller (for imputation purposes) of an entity other than a company (the ***second entity***); and

(b) the Commissioner, having regard to all relevant circumstances, considers that it is reasonable that the first entity be taken not to be such a controller of the second entity at the particular time;

the first entity is taken *not* to be a controller (for imputation purposes) of the second entity at the particular time.

(9) Without limiting paragraph (8)(b), if the second entity is a trust, the Commissioner may have regard under that paragraph to the identity of the beneficiaries of the trust at any time (whether before or after the first entity began to be a *controller (for imputation purposes) of the second entity).

207-132 Treatment of benefits provided by an entity to a controller

(1) This section applies in relation to a benefit (the ***relevant benefit***) given by an entity to a *controller (for imputation purposes) of the entity, or to an *associate of such a controller, if:

(a) the controller or associate:

(i) makes a *franked distribution to the entity; or

(ii) is the trustee of the trust in relation to which a *trust share amount of the entity arises in relation to a franked distribution that *flows indirectly to the entity; and

(b) the benefit is, or was, given to the controller or associate at any time during the period that starts 3 years before, and ends

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

3 years after, the distribution is made or the trust share amount arises (as appropriate).

(2) For the purposes of paragraph 207-120(2)(d), the controller or *associate is taken to have obtained the relevant benefit because of a *distribution event in relation to the *franked distribution or *trust share amount.

(3) For the purposes of paragraph 207-130(1)(c), and at least to the extent of the relevant benefit, the controller or *associate is taken to have benefited from a *distribution event or *arrangement that caused section 207-120 to apply in relation to the *franked distribution or *trust share amount.

Commissioner's power not to apply subsection (2) or (3)

(4) Subsection (2) or (3) does not apply in relation to a benefit if the Commissioner is satisfied, having regard to all the circumstances, that it would be unreasonable to apply that subsection.

207-134 Entity's present entitlement disregarded in certain circumstances

The present entitlement of a beneficiary of a trust to a share of trust income is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* if:

(a) the beneficiary has claimed a *tax offset under section 207-45 or 207-110 of this Act on the basis that the beneficiary was an *exempt institution that was eligible for a refund in relation to a *trust share amount that is that share of trust income; but

(b) the beneficiary was not entitled to that tax offset because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a *distribution event, or an *arrangement, to which the trust share amount is related.

Note: This means that the trustee of the trust is liable to pay income tax on that share of the trust income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

207-136 Review of certain decisions

An entity that is dissatisfied with a decision of the Commissioner under any of the following provisions may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*:

(a) paragraph 207-120(3)(b);
(b) subsection 207-126(2);
(c) subsection 207-128(4);
(d) paragraph 207-130(1)(e);
(e) paragraph 207-130(8)(b);
(f) subsection 207-132(4).

Subdivision 207-F—No gross-up or tax offset where the imputation system has been manipulated

Guide to Subdivision 207-F

207-140 What this Subdivision is about

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

Table of sections

Operative provisions

207-145 Distribution that is made to an entity
207-150 Distribution that flows indirectly to an entity
207-155 When is a distribution made as part of a dividend stripping operation?
207-157 Distribution washing
207-160 Distribution that is treated as an interest payment

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

207-145 Distribution that is made to an entity

Whole of distribution manipulated

(1) If a *franked distribution is made to an entity in one or more of the following circumstances:

(a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;

(c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity;

(d) the distribution is made as part of a *dividend stripping operation;

(da) the distribution is one to which section 207-157 (which is about distribution washing) applies;

then, for the purposes of this Act:

(e) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20 or 207-35; and

(f) the entity is not entitled to a *tax offset under this Division because of the distribution; and

(g) if the distribution *flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Part of share of distribution manipulated

(2) If:

(a) a *franked distribution is made to an entity; and

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the Commissioner makes a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, for the purposes of this Act:

(c) the amount of the distribution is taken to have been reduced by the specified part; and

(d) the amount of the *franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Specified part}}{\text{*Franked distribution apart from this section}} \times \text{*Franking credit on the *franked distribution apart from this section}$$

Example: A franked distribution of $70 is made to the trustee of a trust. Apart from this section, the franking credit on the distribution ($30) would be included in the assessable income of the trust under section 207-35.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for the trustee in respect of $49 of the distribution.

Under this subsection, the amount included in the assessable income of the trust under section 207-35 because of the distribution is reduced from $30 to $9.

If there is a beneficiary of the trust that is presently entitled to the trust's income, the amount of the distribution that flows indirectly to the beneficiary is reduced from $70 to $21 under this subsection.

What happens if both subsection 207-90(2) and subsection (2) of this section would apply

(3) If, apart from this subsection, both subsection 207-90(2) and subsection (2) of this section would apply to an entity in relation to a *franked distribution, then:

(a) apply subsection 207-90(2) first; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) apply subsection (2) of this section on the basis that the amount of the *franked distribution had been reduced under subsection 207-90(2).

207-150 Distribution that flows indirectly to an entity

Whole of share of distribution manipulated

(1) If a *franked distribution *flows indirectly to an entity in an income year in one or more of the following circumstances:

(a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;

(c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity;

(d) the distribution is treated as an interest payment for the entity under section 207-160 of this Act;

(e) the distribution is made as part of a *dividend stripping operation;

(ea) the distribution is one to which section 207-157 (which is about distribution washing) applies;

then, for the purposes of this Act:

(f) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and

(g) the entity is not entitled to a *tax offset under this Division because of the distribution; and

(h) if the distribution *flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Partner

(2) If the *franked distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its *share of the *franking credit on the distribution.

Beneficiary

(3) If the *franked distribution *flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:
  (a) its share amount in relation to the distribution that is mentioned in that subsection; and
  (b) its *share of the *franking credit on the distribution.

Trustee

(4) If the *franked distribution *flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:
  (a) that share amount; and
  (b) its *share of the *franking credit on the distribution.

Part of share of distribution manipulated

(5) If:
  (a) a *franked distribution *flows indirectly to an entity in an income year; and
  (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its *share of the *franking credit on the distribution is worked out as follows:

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

$$\frac{\text{Specified part}}{\text{Entity's *share of the *franked distribution}} \times \text{Entity's *share of the *franking credit on the *franked distribution apart from this section}$$

(6) In addition, the following apply to an entity covered by subsection (5):

(a) if the distribution would otherwise *flow indirectly through the entity—the entity's *share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the specified part mentioned in subsection (5);

(b) if the entity would otherwise be entitled to a *tax offset under this Division because of the distribution—the amount of the tax offset is to be worked out as follows:

$$\text{Entity's *share of the *franking credit on the *franked distribution apart from this section} - \text{Amount worked out under subsection (5)}$$

Example: X is a partner in a partnership to which a franked distribution of $140 is made. The franking credit on the distribution ($60) is included in the assessable income of the partnership under section 207-35. X's share of the distribution is $70 and its share of the franking credit on the distribution is $30.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for X in respect of $42 of the distribution.

Under subsection (5), X will be allowed a deduction of $18.

X is the trustee of a trust and the distribution will flow indirectly through X to beneficiaries of the trust. For the purposes of working out a beneficiary's share of the distribution and its share of the franking credit, X's share of the franked distribution is reduced to $28 under this subsection.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

What happens if both subsection 207-95(1) and subsection (1) of this section would apply

(7) If, apart from this subsection, both subsection 207-95(1) and subsection (1) of this section would apply to an entity in relation to a *franked distribution, then:

(a) subsection (1) of this section applies to the entity; but

(b) subsection 207-95(1) does not apply to the entity.

What happens if both subsection 207-95(5) and subsection (5) of this section would apply

(8) If, apart from this subsection, both subsection 207-95(5) and subsection (5) of this section would apply to an entity in relation to a *franked distribution, then:

(a) apply subsections 207-95(5) and (6) first; and

(b) apply subsections (5) and (6) of this section on the basis that:

(i) the amount of the entity's *share of the *franking credit on the distribution had been reduced under subsection 207-95(5); and

(ii) the amount of the entity's *share of the distribution had been reduced under subsection 207-95(6).

207-155 When is a distribution made as part of a dividend stripping operation?

A distribution made to a *member of a *corporate tax entity is taken to be made as part of a ***dividend stripping operation*** if, and only if, the making of the distribution arose out of, or was made in the course of, a *scheme that:

(a) was by way of, or in the nature of, dividend stripping; or

(b) had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

207-157 Distribution washing

(1) This section applies to a *franked distribution received by a *member of a *corporate tax entity on a *membership interest (the ***washed interest***) if:

(a) the washed interest was acquired after the member, or a *connected entity of the member, disposed of a substantially identical membership interest; and

(b) a corresponding franked distribution is made to the member, or the connected entity, on the substantially identical interest.

Further requirement for connected entities

(2) However, if the entity that disposed of the substantially identical interest was a *connected entity of the member, this section does not apply to the *franked distribution unless:

(a) it would be concluded that the disposal took place wholly or partly because there was an expectation that the acquisition would, or would be likely to, take place; or

(b) it would be concluded that the acquisition took place wholly or partly because there was a belief that the disposal had taken place.

Substantially identical interests

(3) Without limiting paragraph (1)(a), for the purpose of that paragraph a *membership interest is substantially identical to the washed interest if it is any one or more of the following:

(a) fungible with, or economically equivalent to, the washed interest;

(b) a membership interest in the same *corporate tax entity as the washed interest and of a class that is the same as, or not materially different from, the washed interest;

(c) a membership interest in the same corporate tax entity as the washed interest and of a class that is exchangeable at a fixed rate for an interest of the same class as the washed interest;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) a membership interest in another corporate tax entity that holds predominantly membership interests that are covered by any of the preceding paragraphs;

(e) a membership interest in another corporate tax entity that is exchangeable at a fixed rate for interests that are covered by any one or more of paragraphs (a) to (c).

Exception for individuals who are small holders

(4) Despite subsection (1), this section does not apply to a *franked distribution made to an individual in an income year if the sum of the *tax offsets to which the individual would be entitled, worked out on the basis mentioned in subsection (5), is $5000 or less.

(5) Work out the sum of the *tax offsets:

(a) disregarding this Subdivision, to the extent it applies to the individual; and

(b) not disregarding this Subdivision, to the extent it applies to any other entity through which a *franked distribution *flows indirectly to the individual.

207-160 Distribution that is treated as an interest payment

(1) For the purposes of this Subdivision, a *franked distribution is treated as an ***interest payment*** for an entity to whom the distribution *flows indirectly if:

(a) all or a part of the entity's individual interest or share amount in relation to the distribution that is mentioned in subsection 207-50(2), (3) or (4) could reasonably be regarded as the payment of interest on a loan, having regard to:

(i) the way in which that individual interest or share amount was calculated; and

(ii) the conditions applying to the payment or application of that individual interest or share amount; and

(iii) any other relevant matters; and

(b) the entity's interest in the last intermediary entity (see subsection (2)):

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) was acquired, or was acquired for a period that was extended, at or after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997; or

(ii) was acquired as part of a *financing arrangement for the entity (including an arrangement extending to an earlier arrangement) that was entered into at or after that time.

(2) The entity's interest in the last intermediary entity is:

(a) if the distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2)—the entity's interest in the partnership; or

(b) if the distribution flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3)—the entity's interest in the trust; or

(c) if the distribution flows indirectly to the entity as the trustee of a trust under subsection 207-50(4)—the entity's interest in the trust in respect of which the entity is liable to be assessed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 208—Exempting entities and former exempting entities

Table of Subdivisions

Guide to Division 208
208-A What are exempting entities and former exempting entities?
208-B Franking with an exempting credit
208-C Amount of the exempting credit on a distribution
208-D Distribution statements
208-E Distributions to be franked with exempting credits to the same extent
208-F Exempting accounts and franking accounts of exempting entities and former exempting entities
208-G Tax effects of distributions by exempting entities
208-H Tax effect of a distribution franked with an exempting credit

Guide to Division 208

Table of sections

208-5 What is an exempting entity?
208-10 Former exempting entities
208-15 Distributions by exempting entities and former exempting entities

208-5 What is an exempting entity?

(1) An exempting entity is a corporate tax entity that is effectively owned by entities that, either because they are not Australian residents or because they receive distributions as exempt income or non-assessable non-exempt income, would not be able to fully utilise franking credits on distributions by the corporate tax entity.

(2) In deciding whether a corporate tax entity is effectively owned by such entities, these rules:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) look at the membership interests in the entity that involve the holder of the interest in bearing the risks and accruing the opportunities of ownership of the entity; and
(b) ask whether at least 95% of those membership interests, and 95% of any interests in those membership interests, are held by Australian residents or entities that receive distributions as exempt income or non-assessable non-exempt income.

208-10 Former exempting entities

When an entity ceases to be an exempting entity, it becomes a former exempting entity.

208-15 Distributions by exempting entities and former exempting entities

To ensure that franking credits accumulated by an exempting entity are not the target of franking credit trading, these rules:

(a) limit the circumstances in which a distribution franked with those credits can give rise to benefits under the imputation system; and
(b) quarantine those credits by moving them into a separate account, called the exempting account, when the entity ceases to be an exempting entity; and
(c) deny a recipient of a distribution franked with a credit from that account any benefit under the imputation system as a result of that distribution, unless the recipient was a member of the entity immediately before it became a former exempting entity.

Subdivision 208-A—What are exempting entities and former exempting entities?

Table of sections

208-20 Exempting entities
208-25 Effective ownership of entity by prescribed persons
208-30 Accountable membership interests

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

208-35 Accountable partial interests
208-40 Prescribed persons
208-45 Persons who are taken to be prescribed persons
208-50 Former exempting companies

208-20 Exempting entities

A *corporate tax entity is an ***exempting entity*** at a particular time if, at that time, the entity is effectively owned by prescribed persons.

Note: Prescribed persons are identified in sections 208-40 and 208-45.

208-25 Effective ownership of entity by prescribed persons

(1) An entity is ***effectively owned by prescribed persons*** at a particular time if:

(a) at that time:

(i) not less than 95% of the *accountable membership interests in the entity; or

(ii) not less than 95% of the *accountable partial interests in the entity;

are held by, or held indirectly for the benefit of, prescribed persons; or

(b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude that, at that time, the risks involved in, and the opportunities resulting from, holding accountable membership interests, or accountable partial interests, in the entity that are not held by, or directly or indirectly for the benefit of, prescribed persons are substantially borne by, or substantially accrue to, prescribed persons.

(2) In deciding whether it would be reasonable to conclude as mentioned in paragraph (1)(b):

(a) have regard to any *arrangement in respect of *membership interests (including unissued membership interests), or in respect of *partial interests, in the entity (including any derivatives held or issued in connection with those

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

membership interests or partial interests) of which the entity is aware; but

(b) do not have regard to risks involved in the ownership of membership interests, or partial interests, in the entity that are substantially borne by any person in the person's capacity as a secured creditor.

(3) An entity has a ***partial interest*** in a *corporate tax entity if it has an interest in a *membership interest in the corporate tax entity.

208-30 Accountable membership interests

(1) The purpose of this section is to identify which *membership interests in an entity are relevant in determining whether the entity is effectively owned by prescribed persons.

(2) A *membership interest in an entity is an ***accountable membership interest*** if it is not an excluded membership interest.

(3) A *membership interest in an entity is an ***excluded membership interest*** if, having regard to:

(a) the purposes for which the membership interest was issued; and

(b) any special or limited rights connected with, arising from, or attached to:

(i) the membership interest; or

(ii) other membership interests in the entity held by the holder of the membership interest; or

(iii) membership interests in the entity held by persons other than the holder of the membership interest; or

(iv) interests in any of the above;

including rights that are conferred or exercisable only if the holder of the membership interest or interests concerned is, or is not, a prescribed person; and

(c) the extent to which any such special or limited rights are similar to or differ from the rights that are normally attached

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

to the ownership of *ordinary membership interests in *corporate tax entities; and

(d) the relationship between the value of the membership interest and the value of the entity; and

(e) any relationship or connection (whether of a personal or business nature) between holders of membership interests in the entity of which the entity is aware; and

(f) any *arrangement in respect of membership interests (including unissued membership interests) in the entity, or interests in membership interests in the entity, of which the entity is aware;

it would be reasonable to conclude that the membership interest is not relevant in determining whether the entity is effectively owned by prescribed persons because holding the membership interest does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the entity that ordinarily arise from, or are ordinarily attached to, the holding of ordinary membership interests in an entity.

(4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.

(5) Without limiting subsection (3), a *membership interest in an entity held by a person who is not a prescribed person is an ***excluded membership interest*** if:

(a) it is a finance membership interest; or

(b) it is a distribution access membership interest; or

(c) it does not carry the right to receive distributions; or

(d) it was issued, transferred or acquired for a purpose (other than an incidental purpose) of ensuring that the entity is not effectively owned by prescribed persons.

(6) A *membership interest is a ***finance membership interest*** if:

(a) the membership interest is a *non-equity share in the entity; or

(b) having regard to the rights attached to the membership interest and to any *arrangement with respect to the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

membership interest of which the entity is aware, the membership interest is equivalent to a debt owed by the entity to the holder of the membership interest.

(7) A *membership interest to which subsection (6) does not apply is a ***finance membership interest*** if:

(a) the manner in which the *distributions payable in respect of the membership interest are calculated, and the conditions applying to the payment of such distributions, indicate that the distributions paid are equivalent to the receipt by the person to whom they are paid of interest or an amount in the nature of or similar to interest; or

(b) the capital invested by the holder of the membership interest will be redeemed or, because of an *arrangement between the holder and the entity or an *associate of the entity, it is reasonable for the holder to expect that the capital will be redeemed, for an amount that is not less than, or for property (including other membership interests in the entity) the value of which is not less than, the amount paid for the membership interest; or

(c) the membership interest is redeemable by the entity by payment of a lump sum or by the transfer of property, or the membership interest has a preferred right to a repayment of capital on a winding up, where the amount of the lump sum or the value of the property, or the amount of the capital to be repaid, as the case may be, is to be calculated by reference to an implicit interest rate.

(8) A *membership interest in an entity is a ***distribution access membership interest*** if, having regard to:

(a) the terms of the issue of the membership interest, including any guarantee of payment of distributions; and

(b) the amounts of the *distributions paid on the membership interest relative to the issue price of the membership interest; and

(c) whether there is any guaranteed rate at which *franked distributions are to be paid on the membership interest; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) the duration of the period within which the membership interest was issued; and
(e) the rights attached to other membership interests in the entity; and
(f) any other relevant matters;

it could be concluded that the membership interest was issued only for the purpose of paying distributions to the holder of the membership interest.

208-35 Accountable partial interests

(1) The purpose of this section is to identify which *partial interests in an entity are relevant in determining whether the entity is effectively owned by prescribed persons.

(2) A *partial interest in an entity is an ***accountable partial interest*** if it is not an excluded partial interest.

(3) A *partial interest in an entity is an ***excluded partial interest*** if, having regard to:
(a) the purposes for which the interest was granted; and
(b) the nature of the interest; and
(c) any special or limited rights connected with or arising from:
(i) the interest; or
(ii) other *membership interests, or partial interests, in the entity held by the holder of the interest; or
(iii) membership interests, or partial interests, in the entity held by persons other than the holder of the interest;

including rights that are conferred or exercisable only if the holder of the membership interests or partial interests concerned is, or is not, a prescribed person; and
(d) the extent to which the interest is similar to or differs from beneficial ownership; and
(e) the relationship between the value of the interest and the value of the entity; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(f) any relationship or connection (whether of a personal or business nature) between holders of partial interests in the entity, and the holders of membership interests in the entity, of which the entity is aware; and

(g) any *arrangement in respect of membership interests (including unissued membership interests) in the entity, or partial interests in the entity, of which the entity is aware;

it would be reasonable to conclude that the partial interest is not relevant in determining whether the entity is effectively owned by prescribed persons because holding the membership interest to which the partial interest relates does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the entity that ordinarily arise from, or are ordinarily attached to, the holding of *ordinary membership interests in an entity.

(4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.

(5) Without limiting subsection (3), a *partial interest in an entity is also an ***excluded partial interest*** if it was granted or otherwise created, or was transferred or acquired, for a purpose (other than an incidental purpose) of ensuring that the entity is not effectively owned by prescribed persons.

208-40 Prescribed persons

(1) A company is a ***prescribed person*** in relation to another *corporate tax entity if:

(a) the company is a foreign resident; or

(b) were the company to receive a *distribution made by the other corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the company.

(2) A trustee is a ***prescribed person*** in relation to a *corporate tax entity if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) all the beneficiaries in the trust are prescribed persons under other provisions of this section; or

(b) were the trustee to receive a *distribution made by the corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the trust estate.

(3) A partnership is a ***prescribed person*** in relation to a *corporate tax entity if:

(a) all the partners are prescribed persons under other provisions of this section; or

(b) were the partnership to receive a *distribution made by the corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the partnership.

(4) An individual (other than a trustee) is a prescribed person in relation to a *corporate tax entity if:

(a) he or she is a foreign resident; or

(b) were he or she to receive a *distribution made by the corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the individual.

(5) The Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island are prescribed persons in relation to any *corporate tax entity.

(6) An *exempt institution that is eligible for a refund cannot be a ***prescribed person*** in relation to a *corporate tax entity under this section.

208-45 Persons who are taken to be prescribed persons

(1) This section applies to a person that:

(a) is a company, a trustee, or a partnership, that holds *membership interests (whether *accountable membership interests or excluded membership interests), or *partial

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

interests (whether *accountable partial interests or excluded partial interests), in a *corporate tax entity (the ***relevant entity***); and

(b) is not a prescribed person under section 208-40.

(2) A company that holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(3) A trustee of a trust who holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(4) A trustee of a trust who holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if:

(a) unless subsection (7) applies, the trust is controlled by one or more persons who are prescribed persons; or

(b) all the beneficiaries who are presently entitled to, or during the relevant income year become presently entitled to, income from the trust are prescribed persons.

(5) In determining whether subsection (3) or (4) applies in respect of a trust that is controlled by a person, have regard to the way in which the person, or any *associate of the person, exercises powers in relation to the trust.

(6) A person ***controls a trust*** if:

(a) the person has the power, either directly, or indirectly through one or more interposed entities, to control the application of the income, or the distribution of the property, of the trust; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove the trustee of the trust; or

(c) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove beneficiaries of the trust; or

(d) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the person or of an *associate of the person.

(7) Paragraph (4)(a) does not apply in relation to a trust if some of the beneficiaries receiving income from the trust are not prescribed persons and the Commissioner considers that it is reasonable to conclude that the risks involved in, and the opportunities resulting from, holding the *membership interests or *partial interests in the relevant entity are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

(8) A partnership that holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(9) If any of the prescribed persons referred to in subsection (2), (3), (4) or (8) is a *corporate tax entity, that subsection applies even if the risks involved in, and the opportunities resulting from, holding any of the *membership interests, or *partial interests, in that entity are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

(10) An *exempt institution that is eligible for a refund cannot be taken to be a ***prescribed person*** in relation to a *corporate tax entity under this section.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

208-50 Former exempting companies

(1) Subject to subsection (2), a *corporate tax entity is a ***former exempting entity*** if it has, at any time, ceased to be an *exempting entity and is not again an exempting entity.

(2) If an entity that, at any time, becomes effectively owned by prescribed persons ceases to be so effectively owned within 12 months after that time, the entity is not taken, by so ceasing, to become a former exempting entity.

Subdivision 208-B—Franking with an exempting credit

Guide to Subdivision 208-B

208-55 What this Subdivision is about

If a former exempting entity makes a distribution in circumstances where it could be franked, the entity can frank the distribution with an exempting credit.

Table of sections

Operative provisions

208-60 Franking with an exempting credit

Operative provisions

208-60 Franking with an exempting credit

An entity franks a *distribution with an exempting credit if:

(a) the entity is a *former exempting entity when the distribution is made; and

(b) the entity is a *franking entity that satisfies the *residency requirement when the distribution is made; and

(c) the distribution is a *frankable distribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(d) the entity allocates an *exempting credit to the distribution.

Note: The residency requirement for an entity making a distribution is set out in section 202-20.

Subdivision 208-C—Amount of the exempting credit on a distribution

Guide to Subdivision 208-C

208-65 What this Subdivision is about

The amount of the exempting credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution. In that case, it is nil.

Table of sections

Operative provisions

208-70 Amount of the exempting credit on a distribution

Operative provisions

208-70 Amount of the exempting credit on a distribution

(1) Subject to subsection (2), the amount of the *exempting credit on a *distribution is that stated in the *distribution statement for the distribution.

(2) If the sum of the *franking credit and the *exempting credit stated in the *distribution statement for a *distribution exceeds the *maximum franking credit for the distribution, the amount of the exempting credit on the distribution is taken to be nil.

Note: If the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to equal that maximum under section 202-65.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 208-D—Distribution statements

Guide to Subdivision 208-D

208-75 Guide to Subdivision 208-D

Former exempting entities and exempting entities that make certain distributions must provide additional information in the distribution statement given to the recipient.

Table of sections

Operative provisions

208-80 Additional information to be included by a former exempting entity or exempting entity

Operative provisions

208-80 Additional information to be included by a former exempting entity or exempting entity

(1) A *former exempting entity that makes a *distribution *franked with an exempting credit must include in the *distribution statement given to the recipient, a statement that there is an *exempting credit of a specified amount on the distribution.

(2) An *exempting entity that makes a *frankable distribution to a *member must include in the *distribution statement given to the member, a statement to the effect that members who are Australian residents are not entitled to a *tax offset or *franking credit as a result of the distribution, except for certain *corporate tax entities, and employees who receive the distribution in connection with certain *employee share schemes.

(3) If, under subsection (1) or (2), a statement must be included in a *distribution statement, the distribution statement is taken not to have been given unless the statement is included.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 208-E—Distributions to be franked with exempting credits to the same extent

Guide to Subdivision 208-E

208-85 What this Subdivision is about

All frankable distributions made within a franking period must be franked to the same extent with an exempting credit.

Table of sections

Operative provisions

208-90 All frankable distributions made within a franking period must be franked to the same extent with an exempting credit
208-95 Exempting percentage
208-100 Consequences of breaching the rule in section 208-90

Operative provisions

208-90 All frankable distributions made within a franking period must be franked to the same extent with an exempting credit

(1) If an entity *franks a *distribution with an exempting credit, it must frank each other *frankable distribution made within the same *franking period with an exempting credit worked out at the same *exempting percentage.

(2) If an entity is not a *former exempting entity for the whole of a *franking period (the ***longer period***), then, for the purposes of subsection (1), each period within that longer period during which the entity is a former exempting entity is taken to be a ***franking period***.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

208-95 Exempting percentage

The ***exempting percentage*** for a *frankable distribution is worked out using the formula:

$$\frac{\text{Amount of the *exempting credit on the distribution}}{\text{*Maximum franking credit for the distribution}} \times 100$$

208-100 Consequences of breaching the rule in section 208-90

If an entity *franks a *distribution with an exempting credit in breach of section 208-90:

(a) that distribution is taken not to have been franked with an exempting credit; and

(b) each other *frankable distribution made by the entity within the relevant *franking period is taken not to have been franked with an exempting credit.

Subdivision 208-F—Exempting accounts and franking accounts of exempting entities and former exempting entities

Guide to Subdivision 208-F

208-105 What this Subdivision is about

This Subdivision:

- creates an exempting account for each former exempting entity; and
- identifies when exempting credits and debits arise in those accounts and the amount of those credits and debits; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

- identifies when there is an exempting surplus or deficit in the account; and
- identifies when franking credits and debits arise in the franking account of an entity because it is an exempting entity, or former exempting entity.

Table of sections

Operative provisions

208-110 Exempting account
208-115 Exempting credits
208-120 Exempting debits
208-125 Exempting surplus and deficit
208-130 Franking credits arising because of status as exempting entity or former exempting entity
208-135 Relationships that will give rise to a franking credit under item 5 of the table in section 208-130
208-140 Membership of the same effectively wholly-owned group
208-145 Franking debits arising because of status as exempting entity or former exempting entity
208-150 Residency requirement
208-155 Eligible continuing substantial member
208-160 Distributions that are affected by a manipulation of the imputation system
208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit
208-170 Where a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* affects part of the distribution
208-175 When does a distribution franked with an exempting credit flow indirectly to an entity?
208-180 What is an entity's share of the exempting credit on a distribution?
208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

208-110 Exempting account

Each *former exempting entity has an ***exempting account***.

208-115 Exempting credits

(1) The following table sets out when a credit arises in the *exempting account of a *former exempting entity. A credit in the former exempting entity's account is called an ***exempting credit***.

Exempting Credits

Item	If:	A credit of:	Arises:
1	the entity had a *franking surplus at the time it became a *former exempting entity (at the time of its ***transition***)	an amount equal to: (a) in a case not covered by paragraph (b)—the franking surplus; or (b) if the entity has been a former exempting entity at any time within a period of 12 months before its transition—so much of the franking surplus as would have been the entity's *exempting surplus had it remained a former exempting entity throughout the period	immediately after its transition

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Exempting Credits			
Item	**If:**	**A credit of:**	**Arises:**
2	the entity receives a *distribution *franked with an exempting credit; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160	an amount worked out under subsection 208-165(1)	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Exempting Credits

Item	If:	A credit of:	Arises:
3	the entity receives a *distribution *franked with an exempting credit; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution	an amount worked out under subsection 208-170(1)	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Exempting Credits			
Item	**If:**	**A credit of:**	**Arises:**
4	a *distribution *franked with an exempting credit *flows indirectly to the entity (the ***ultimate recipient***); and the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to an *exempting credit because of the distribution had the distribution been made to the ultimate recipient	an amount equal to the exempting credit that would have arisen for the ultimate recipient if: (a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and (b) the distribution had been made to the ultimate recipient; and (c) the distribution had been franked with an exempting credit equal to the ultimate recipient's *share of the actual exempting credit	on the day on which the distribution is made
5	the entity *pays a *PAYG instalment; and the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the entity was an *exempting entity for the whole or part of the relevant *PAYG instalment period	an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity	on the day on which the payment is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Exempting Credits

Item	If:	A credit of:	Arises:
6	the entity *pays income tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity was an *exempting entity for the whole or part of that income year	an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity	on the day on which the payment is made
7	the *exempting account of the entity would, apart from this item, be in *deficit immediately before the end of an income year	an amount equal to the deficit	immediately before the end of the income year
8	the entity becomes an *exempting entity; and the entity has an *exempting deficit at the time it becomes an exempting entity	an amount equal to the exempting deficit	immediately after the entity becomes an exempting entity
9	the entity *pays diverted profits tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity was an *exempting entity for the whole or part of that income year	an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity, multiplied by the proportion worked out under subsection (2)	on the day on which the payment is made

(2) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

208-120 Exempting debits

(1) The following table sets out when a debit arises in the *exempting account of the *former exempting entity. A debit in the *former exempting entity's exempting account is called an ***exempting debit***.

Exempting debits

Item	If:	A debit of:	Arises:
1	the entity had a *franking deficit at the time it became a *former exempting entity (at the time of its ***transition***)	an amount equal to: (a) in a case not covered by paragraph (b)—the franking deficit; or (b) if the entity has been a former exempting entity at any time within a period of 12 months before its transition—so much of the franking deficit as would have been the entity's *exempting deficit had it remained a former exempting entity throughout the period	immediately after its transition
2	the entity makes a *distribution *franked with an exempting credit	an amount equal to the *exempting credit on the distribution	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Exempting debits

Item	If:	A debit of:	Arises:
3	the entity *receives a refund of income tax; and the entity was an *exempting entity during all or part of the income year to which the refund relates; and the entity satisfies the *residency requirement for the income year to which the refund relates	an amount equal to that part of the refund that is attributable to the period during which the entity is an exempting entity	on the day on which the refund is received
4	the Commissioner makes a determination under paragraph 204-30(3)(b) giving rise to an *exempting debit for the entity (streaming distributions)	the amount specified in the determination	on the day specified in section 204-35
5	a *franking debit arises for the entity under section 204-15 (linked distributions), 204-25 (substituting tax-exempt bonus shares for franked distributions) or a determination made under paragraph 204-30(3)(a) (streaming distributions); and the entity was an *exempting entity for the whole or part of the period to which the franking debit relates	an amount equal to that part of the franking debit that relates to the period during which the entity was an exempting entity	when the franking debit arises

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Exempting debits			
Item	**If:**	**A debit of:**	**Arises:**
6	the Minister makes a determination under paragraph 208-185(4)(a) giving rise to an *exempting debit for the entity	the amount specified in the determination	on the day specified in the determination
7	the entity becomes an *exempting entity; and the entity has an *exempting surplus at the time it becomes an exempting entity	an amount equal to the exempting surplus	immediately after the entity becomes an exempting entity
8	the entity *receives a refund of diverted profits tax; and the entity was an *exempting entity during all or part of the income year to which the refund relates; and the entity satisfies the *residency requirement for the income year to which the refund relates	an amount equal to that part of the refund that is attributable to the period during which the entity is an exempting entity, multiplied by the proportion worked out under subsection (2)	on the day on which the refund is received

(2) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

208-125 Exempting surplus and deficit

(1) An entity's *exempting account is in ***surplus*** at a particular time if, at that time, the sum of the *exempting credits in the account exceeds the sum of the *exempting debits in the account. The amount of the ***exempting surplus*** is the amount of the excess.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) An entity's *exempting account is in ***deficit*** at a particular time if, at that time, the sum of the *exempting debits in the account exceeds the sum of the *exempting credits in the account. The amount of the ***exempting deficit*** is the amount of the excess.

208-130 Franking credits arising because of status as exempting entity or former exempting entity

The following table sets out when a credit arises in the *franking account of an entity because of its status as an *exempting entity or *former exempting entity.

Franking credits arising because of status as an exempting entity or former exempting entity

Item	If:	A credit of:	Arises:
1	an entity becomes a *former exempting entity; and the entity has a *franking deficit at the time it becomes a former exempting entity	an amount equal to the franking deficit	immediately after the entity becomes a former exempting entity
2	an entity receives a *distribution *franked with an exempting credit; and the entity is an *exempting entity at the time the distribution is made; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and	an amount worked out under subsection 208-165(1)	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits arising because of status as an exempting entity or former exempting entity

Item	If:	A credit of:	Arises:
	the entity is an *eligible continuing substantial member in relation to the distribution; and the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160		
3	the entity receives a *distribution *franked with an exempting credit; and the entity is an *exempting entity at the time the distribution is made; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of	an amount worked out under subsection 208-170(1)	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits arising because of status as an exempting entity or former exempting entity

Item	If:	A credit of:	Arises:
	that section) is to arise in respect of a specified part of the distribution		
4	a *distribution *franked with an exempting credit *flows indirectly to the entity (the ***ultimate recipient***); and the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to a *franking credit because of the distribution had the distribution been made to the ultimate recipient	an amount equal to the franking credit that would have arisen for the ultimate recipient if: (a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and (b) the distribution had been made to the ultimate recipient; and (c) the distribution had been franked with a franking credit equal to the ultimate recipient's *share of the actual franking credit	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits arising because of status as an exempting entity or former exempting entity

Item	If:	A credit of:	Arises:
5	an *exempting entity makes a *franked distribution to the entity (the ***recipient***); and at the time the distribution is made: (a) the recipient is an exempting entity; and (b) the recipient satisfies the *residency requirement; and (c) the relationship between the entities is of the type mentioned in section 208-135; and the recipient satisfies the residency requirement for the income year in which the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the recipient; and the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160	an amount worked out using the formula in subsection 208-165(2)	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits arising because of status as an exempting entity or former exempting entity

Item	If:	A credit of:	Arises:
6	an *exempting entity makes a *franked distribution to the entity (the ***recipient***); and at the time the distribution is made: (a) the recipient is an exempting entity; and (b) the recipient satisfies the *residency requirement; and (c) the relationship between the entities is of the type mentioned in section 208-135; and the recipient satisfies the residency requirement for the income year in which the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the recipient; and the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution	an amount worked out using the formula in subsection 208-170(2)	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits arising because of status as an exempting entity or former exempting entity

Item	If:	A credit of:	Arises:
7	a *distribution made by an *exempting entity *flows indirectly to the entity (the ***ultimate recipient***); and the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to a *franking credit because of the distribution had the distribution been made to the ultimate recipient	an amount equal to the franking credit that would have arisen for the ultimate recipient if: (a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and (b) the distribution had been made to the ultimate recipient; and (c) the distribution had been franked with a franking credit equal to the ultimate recipient's *share of the actual franking credit	on the day on which the distribution is made
8	the Minister makes a determination under paragraph 208-185(4)(b) giving rise to a *franking credit for the entity	the amount of the credit specified in the determination	on the day specified in the determination
9	an *exempting debit arises for the entity under item 3, 5 or 8 of the table in section 208-120	an amount equal to the exempting debit	when the exempting debit arises

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits arising because of status as an exempting entity or former exempting entity			
Item	**If:**	**A credit of:**	**Arises:**
10	a *former exempting entity becomes an *exempting entity; and the entity has an *exempting surplus at the time it becomes an *exempting entity	an amount equal to the *exempting surplus	immediately after it becomes an exempting entity

Note: Item 9 is designed to reverse out franking debits that arise in relation to a period during which the entity is an exempting entity. The entity will receive an exempting debit instead.

208-135 Relationships that will give rise to a franking credit under item 5 of the table in section 208-130

(1) A relationship between an entity making a *franked distribution and the recipient of the distribution is of a type that gives rise to a *franking credit under item 5 or 6 of the table in section 208-130 if either:

(a) both entities are members of the same effectively wholly-owned group; or

(b) the recipient holds more than 5% of the *membership interests in the entity making the distribution (other than finance membership interests or distribution access membership interests within the meaning of section 208-30 or membership interests that do not carry the right to receive distributions) and it would be reasonable to conclude that the risks involved in, and the opportunities resulting from, holding those membership interests are substantially borne by, or substantially accrue to, the recipient.

(2) In deciding whether it would be reasonable to make the conclusion mentioned in paragraph (1)(b):

(a) have regard to any *arrangement in respect of the *membership interests (including unissued membership

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

interests) in the entity making the distribution (including derivatives held or issued in connection with those membership interests); and

(b) do not have regard to risks involved in the ownership of membership interests in the entity making the distribution that are substantially borne by any person in the person's capacity as a secured creditor.

208-140 Membership of the same effectively wholly-owned group

(1) Two *corporate tax entities are members of the ***same effectively wholly-owned group of entities*** on a particular day if:

(a) throughout that day, not less than 95% of the *accountable membership interests in each of the entities, and not less than 95% of the *accountable partial interests in each of the entities, are held by, or are held indirectly for the benefit of, the same persons; or

(b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude, having regard to the matters mentioned in subsection (2), that, throughout that day, the risks involved in, and the opportunities resulting from, holding accountable membership interests, or accountable partial interests, in each of the entities are substantially borne by, or substantially accrue to, the same persons.

(2) The matters to which regard is to be had as mentioned in paragraph (1)(b) are:

(a) any special or limited rights attaching to *accountable membership interests, or *accountable partial interests, in each of the entities held by persons other than the persons mentioned in paragraph (1)(b) or their *associates; and

(b) any special rights attaching only to accountable membership interests, or accountable partial interests, in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates; and

(c) the respective proportions:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) that accountable membership interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable membership interests in the entity concerned, bear to all the accountable membership interests in that entity; and

(ii) that accountable partial interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable partial interests in the entity concerned, bear to all the accountable partial interests in that entity; and

(d) the respective proportions that:

(i) the total value of accountable membership interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable membership interests in the entity concerned, bear to the total value of all the accountable membership interests in that entity; and

(ii) the total value of accountable partial interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable partial interests in the entity concerned, bear to the total value of all the accountable partial interests in that entity; and

(e) the purposes for which accountable membership interests, or accountable partial interests, in each of the entities were issued or granted to persons other than the persons mentioned in paragraph (1)(b) or their associates; and

(f) any *arrangement in respect of accountable membership interests, or accountable partial interests, in each of the entities held by persons other than the persons mentioned in paragraph (1)(b) or their associates (including any derivatives held or issued in connection with those membership interests or interests) of which the entity concerned is aware.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

208-145 Franking debits arising because of status as exempting entity or former exempting entity

The following table sets out when a debit arises in the *franking account of an entity because of its status as an *exempting entity or *former exempting entity.

Franking debits arising because of status as an exempting entity or former exempting entity

Item	If:	A debit of:	Arises:
1	an entity becomes a *former exempting entity; and the entity has a *franking surplus at the time it becomes a former exempting entity	the amount of the franking surplus	immediately after the entity becomes a former exempting entity
2	the *exempting account of a *former exempting entity would, apart from item 7 of the table in section 208-115, be in *deficit immediately before the end of an income year	an amount equal to the deficit	immediately before the end of the income year
3	an *exempting credit arises in the *exempting account of the entity under item 5, 6 or 9 of the table in section 208-115	an amount equal to the exempting credit	when the exempting credit arises

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking debits arising because of status as an exempting entity or former exempting entity			
Item	**If:**	**A debit of:**	**Arises:**
4	a *former exempting entity becomes an *exempting entity; and the entity has an *exempting deficit at the time it becomes an *exempting entity	an amount equal to the exempting deficit	immediately after it becomes an exempting entity
5	a *franking credit arises in the *franking account of an entity under item 3 or 4 of the table in section 205-15 because a *distribution is made by an *exempting entity to the entity, or a distribution made by an exempting entity *flows indirectly to the entity	an amount equal to the amount of the franking credit	when the franking credit arises

Note 1: Item 3 of the table is designed to reverse out franking credits that arise in relation to a period during which the entity is an exempting entity. The entity will receive an exempting credit instead.

Note 2: Item 5 of the table is designed to reverse out franking credits that arise under the core rules because an entity receives a franked distribution from an exempting entity. Only a recipient who is itself an exempting entity is entitled to a franking credit in these circumstances.

208-150 Residency requirement

The tables in sections 208-115, 208-120, 208-130 and 208-145 are relevant for the purposes of subsection 205-25(1).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note 1: Subsection 205-25(1) sets out the residency requirement for an income year in which, or in relation to which, an event specified in one of the tables occurs.

Note 2: Section 207-75 sets out the residency requirement that must be satisfied by the entity receiving a distribution when the distribution is made.

208-155 Eligible continuing substantial member

(1) A *member of a *former exempting entity is an ***eligible continuing substantial member*** in relation to a *distribution made by the entity if the following provisions apply.

(2) At both the time when the *distribution was made, and the time immediately before the entity ceased to be an *exempting entity, the *member was entitled to not less than 5% of:

(a) where the entity is a company:

(i) if the voting shares (as defined in the *Corporations Act 2001*) in the relevant former exempting entity are not divided into classes—those voting shares; or

(ii) if the voting shares (as so defined) in the relevant former exempting entity are divided into 2 or more classes—the shares in one of those classes; and

(b) where the entity is a *public trading trust—the units in the trust; and

(c) where the entity is a *corporate limited partnership—the income of the partnership.

(3) At both the time when the *distribution was made, and the time immediately before the entity ceased to be an *exempting entity, the *member was a person referred to in one or more of the following paragraphs:

(a) a person who is a foreign resident;

(b) a *life insurance company;

(c) an exempting entity;

(d) a *former exempting entity;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(e) a trustee of a trust in which an interest was held by a person referred to in any of paragraphs (a) to (d);

(f) a partnership in which an interest was held by a person referred to in any of paragraphs (a) to (d).

(4) If the assumptions set out in subsection (5) are made:

(a) if the *member was a person referred to in any of paragraphs (3)(a) to (d)—the member; or

(b) if the member was a trustee of a trust or a partnership, being a trust or partnership in which a person referred to in any of those paragraphs held an interest—the holder of the interest;

would (if a foreign resident) be exempt from *withholding tax on the distribution or (if an Australian resident) be entitled to a *franking credit or a *tax offset in respect of the distribution.

(5) The assumptions referred to in subsection (4) are that:

(a) the relevant former exempting entity was an *exempting entity at the time it made the *distribution; and

(b) the distribution was a *franked distribution made to the member; and

(c) if the *member was a *former exempting entity—the member was an exempting entity; and

(d) if the member was a trustee of a trust or partnership in which a former exempting entity had an interest—the former exempting entity was an exempting entity.

(6) A person is taken to hold an interest in a trust, for the purposes of paragraph (3)(e), if:

(a) the person is a beneficiary under the trust; or

(b) the person *derives, or will derive, income indirectly, through interposed trusts or partnerships, from *distributions received by the trustee.

(7) A person is taken to hold an interest in a partnership, for the purposes of paragraph (3)(f), if:

(a) the person is a partner in the partnership; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the person *derives, or will derive, income indirectly, through interposed trusts or partnerships, from *distributions received by the partnership.

208-160 Distributions that are affected by a manipulation of the imputation system

For the purposes of item 2 of the table in section 208-115 and items 2 and 5 of the table in section 208-130, a *distribution to an entity is affected by a manipulation of the imputation system if:

(a) the Commissioner has made a determination under paragraph 204-30(3)(c) that no *imputation benefit is to arise for the entity in respect of the distribution; or

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of the distribution to the entity; or

(c) the distribution is part of a *dividend stripping operation.

208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit

(1) Use the following formula to work out:

(a) the amount of an *exempting credit arising under item 2 of the table in section 208-115 because a *former exempting entity receives a *distribution *franked with an exempting credit; or

(b) the amount of a *franking credit arising under item 2 of the table in section 208-130 because an *exempting entity receives a distribution franked with an exempting credit;

$$\text{*Exempting credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) Use the following formula to work out the amount of a *franking credit arising under item 5 of the table in section 208-130 because an *exempting entity receives a *distribution *franked with an exempting credit:

$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

208-170 Where a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* affects part of the distribution

(1) Use the following formula to work out:

(a) the amount of an *exempting credit arising under item 3 of the table in section 208-115 because a *former exempting entity receives a *distribution *franked with an exempting credit; or

(b) the amount of a *franking credit arising under item 3 of the table in section 208-130 because an *exempting entity receives a distribution franked with an exempting credit;

$$\text{*Exempting credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}} \times \frac{\text{Amount of the distribution} - \text{Specified part of the distribution}}{\text{Amount of the distribution}}$$

(2) Use the following formula to work out the amount of a *franking credit arising under item 6 of the table in section 208-130 because an *exempting entity receives *a distribution *franked with an exempting credit:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}} \times \frac{\text{Amount of the distribution} - \text{Specified part of the distribution}}{\text{Amount of the distribution}}$$

208-175 When does a distribution franked with an exempting credit flow indirectly to an entity?

A *distribution *franked with an exempting credit is taken to ***flow indirectly*** to an entity if, had it been a *franked distribution, it would have been taken to have flowed indirectly to the entity under section 207-50.

208-180 What is an entity's share of the exempting credit on a distribution?

To work out an entity's ***share*** of the *exempting credit on a *distribution *franked with that credit, use sections 207-55 and 207-57 to work out what the entity's share of the credit would be it if were a *franking credit on a *franked distribution. The entity's share of the exempting credit is equal to that amount.

208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth

(1) The Minister may make a determination or determinations under this section if:

(a) at a particular time, a *corporate tax entity is an *exempting entity; and

(b) at that time all of the *membership interests in the entity are owned by the Commonwealth; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the Commonwealth has offered for sale or sold, or proposes to offer for sale, some or all of the membership interests; and

(d) the Minister is satisfied, having regard to the matters mentioned in subsection (2), that it is desirable to make a determination or determinations under this section in relation to the entity.

(2) The matters to which the Minister must have regard under paragraph (1)(d) are:

(a) whether the making of the determination or determinations is necessary to enable the entity to make *distributions *franked at a *franking percentage of 100% after the sale; and

(b) the extent to which the success of the sale or proposed sale depended or will depend upon the ability of the entity to make *franked distributions; and

(c) the extent to which the reduction in receipts of income tax resulting from the making of the determination or determinations would be offset by the receipt of increased proceeds from the sale; and

(d) any other matters that the Minister thinks relevant.

(3) The following provisions of this section apply after the *exempting entity becomes a *former exempting entity.

(4) If the *former exempting entity would, apart from this section, have an *exempting surplus at the end of an income year, the Minister may, in writing, determine that:

(a) an *exempting debit of the entity (not exceeding the exempting surplus) specified in the determination is taken to have arisen immediately before the end of that income year; and

(b) a *franking credit of the entity equal to the amount of the exempting debit is taken to have arisen immediately before the end of that income year.

(5) A determination under this section may be expressed to be subject to compliance by the *former exempting entity with such conditions as are specified in the determination.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(6) If a condition specified in a determination is not complied with, the Minister may revoke the determination and, if the Minister thinks it appropriate, make a further determination under subsection (4).

(7) A determination, unless it is revoked, has effect according to its terms.

Subdivision 208-G—Tax effects of distributions by exempting entities

Guide to Subdivision 208-G

208-190 What this Subdivision is about

Generally, a franked distribution from an exempting entity will only generate a tax effect for the recipient under Division 207 if the recipient is also an exempting entity.

A concession is made to employees of the entity who receive a franked distribution because they hold shares acquired under an eligible employee share scheme.

Table of sections

Operative provisions

208-195 Division 207 does not generally apply
208-200 Distributions to exempting entities
208-205 Distributions to employees acquiring shares under eligible employee share schemes
208-215 Eligible employee share schemes

Operative provisions

208-195 Division 207 does not generally apply

Division 207 does not apply to a *distribution by an *exempting entity, unless expressly applied under this Subdivision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

208-200 Distributions to exempting entities

(1) Division 207 applies to a *franked distribution made by an *exempting entity to another exempting entity if the distribution gives rise to a *franking credit for the other exempting entity under item 5 or 6 of the table in section 208-130.

(2) Division 207 applies to a *franked distribution that is made by an *exempting entity and *flows indirectly to another exempting entity if the distribution gives rise to a *franking credit for that other entity under item 7 of the table in section 208-130.

208-205 Distributions to employees acquiring shares under eligible employee share schemes

Division 207 also applies to a *franked distribution made by an *exempting entity if:

(a) the distribution is made to an individual who, at the time the distribution is made, is an employee of:
  (i) the exempting entity; or
  (ii) a *subsidiary of the exempting entity; and

(b) the employee acquired a beneficial interest in the *share on which the distribution is made:
  (i) under an *employee share scheme; and
  (ii) in circumstances specified as relevant in section 208-215; and

(c) the employee does not hold that beneficial interest as a trustee.

208-215 Eligible employee share schemes

(1) An individual acquires a beneficial interest in a *share in a company under an *employee share scheme in circumstances that are relevant for the purposes of paragraphs 208-205(b) and 208-235(b) if:

(a) all the *ESS interests available for acquisition under the scheme relate to:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) ordinary shares; or

(ii) preference shares to which are attached substantially the same rights as are attached to ordinary shares; and

(b) immediately after the individual acquires the interest:

(i) he or she does not hold a beneficial interest in more than 10% of the shares in the company; and

(ii) he or she is not in a position to control, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of the company; and

(c) the share is not a *non-equity share.

(2) An individual also acquires a beneficial interest in a *share in a company under an *employee share scheme in circumstances that are relevant for the purposes of paragraphs 208-205(b) and 208-235(b) if:

(a) the share is part of a stapled security; and

(b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the beneficial interest in the stapled security.

(3) For the purposes of paragraph (1)(b), you are taken to:

(a) hold a beneficial interest in any *shares in the company that you can acquire under an *ESS interest that is a beneficial interest in a right to acquire a beneficial interest in such shares; and

(b) be in a position to cast votes as a result of holding that interest in those shares.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 208-H—Tax effect of a distribution franked with an exempting credit

Guide to Subdivision 208-H

208-220 What this Subdivision is about

Generally, a distribution franked with an exempting credit will only generate a tax effect for the recipient under Division 207 if a tax effect would have been generated for the recipient had the recipient received a franked distribution when the distributing entity was an exempting entity.

Table of sections

Operative provisions

208-225 Division 207 does not generally apply
208-230 Distributions to exempting entities and former exempting entities
208-235 Distributions to employees acquiring shares under eligible employee share schemes
208-240 Distributions to certain individuals

Operative provisions

208-225 Division 207 does not generally apply

Division 207 does not apply to a *distribution *franked with an exempting credit, unless the Division is expressly applied to the distribution under this Subdivision.

208-230 Distributions to exempting entities and former exempting entities

Division 207 applies to a *distribution *franked with an exempting credit by a *former exempting entity as if it were a *franked distribution if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the recipient of the distribution is a former exempting entity and the distribution gives rise to an *exempting credit for the recipient; or

(b) the recipient of the distribution is an *exempting entity and the distribution gives rise to a *franking credit for the recipient; or

(c) the distribution *flows indirectly to a former exempting entity and gives rise to an exempting credit for that entity; or

(d) the distribution flows indirectly to an exempting entity and gives rise to a franking credit for that entity.

208-235 Distributions to employees acquiring shares under eligible employee share schemes

Division 207 also applies to a *distribution *franked with an exempting credit made by a *former exempting entity as if it were a *franked distribution if:

(a) the distribution is made to an individual who, at the time the distribution is made, is an employee of:

(i) the former exempting entity; or

(ii) a *subsidiary of the former exempting entity; and

(b) the employee acquired a beneficial interest in the *share on which the distribution is made:

(i) under an *employee share scheme; and

(ii) in circumstances specified as relevant in section 208-215; and

(c) the employee does not hold that beneficial interest as a trustee.

208-240 Distributions to certain individuals

Division 207 also applies to a *distribution *franked with an exempting credit made by a *former exempting entity as if it were a *franked distribution if:

(a) a *corporate tax entity other than a former exempting entity became an *exempting entity; and

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) immediately before the entity became an exempting entity all the accountable membership interests and accountable partial interests were beneficially owned (whether directly or indirectly) by individuals who were Australian residents; and

(c) the entity became an exempting entity because some or all of the individuals ceased to be Australian residents; and

(d) the entity becomes a former exempting entity because all of the individuals are or have become Australian residents; and

(e) an amount attributable to a distribution *franked with an exempting credit made by the entity is included in the assessable income of such an individual; and

(f) all the accountable membership interests or accountable partial interests in the entity were, throughout the period beginning when the entity became an exempting entity and ending when the amount was received by the individual mentioned in paragraph (e), beneficially owned (directly or indirectly) by that individual; and

(g) the individual is an eligible continuing substantial member in relation to the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 210—Venture capital franking

Table of Subdivisions

Guide to Division 210
210-A Franking a distribution with a venture capital credit
210-B Participating PDFs
210-C Distributions that are frankable with a venture capital credit
210-D Amount of the venture capital credit on a distribution
210-E Distribution statements
210-F Rules affecting the allocation of venture capital credits
210-G Venture capital sub-account
210-H Effect of receiving a distribution franked with a venture capital credit

Guide to Division 210

Table of sections

210-1 Purpose of venture capital franking
210-5 How is this achieved?
210-10 What is a venture capital credit?
210-15 What does the PDF have to do to distribute the credits?
210-20 Limits on venture capital franking

210-1 Purpose of venture capital franking

The purpose of these rules is to encourage venture capital investment by superannuation funds and other entities that deal with superannuation.

210-5 How is this achieved?

This is done by giving tax benefits to those entities when they invest in PDFs, which are the vehicles for venture capital

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

investment. If the PDF makes a distribution franked with a venture capital credit, the relevant venture capital investor receives a certain part of a distribution from the PDF as exempt income and, in addition, is entitled to a tax offset equal to the venture capital credit.

210-10 What is a venture capital credit?

(1) There is a venture capital franking sub-account in the franking account of each PDF.

(2) Venture capital credits arise in the sub-account if the PDF pays income tax that is reasonably attributable to capital gains from venture capital investments.

210-15 What does the PDF have to do to distribute the credits?

Only a participating PDF can distribute venture capital credits. A PDF elects to participate by keeping a record of its venture capital sub-account.

210-20 Limits on venture capital franking

(1) The venture capital credit on a distribution cannot exceed the franking credit on the distribution. It is, in this sense, a species of franking credit.

(2) A PDF can only distribute venture capital credits if it does it so that all members of the PDF receive venture capital credits in proportion to their holdings.

(3) If a PDF has a venture capital surplus when it makes a distribution, it must frank the distribution with venture capital credits.

(4) There are measures to ensure that a PDF does not maintain a venture capital deficit over a prolonged period.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 210-A—Franking a distribution with a venture capital credit

Guide to Subdivision 210-A

210-25 What this Subdivision is about

A PDF can only frank a distribution with a venture capital credit if certain conditions are met. These conditions are set out in this Subdivision.

Table of sections

Operative provisions

210-30 Franking a distribution with a venture capital credit

Operative provisions

210-30 Franking a distribution with a venture capital credit

An entity ***franks*** a *distribution ***with a venture capital credit*** if:

(a) the entity is a *participating PDF at the time the distribution is made; and

(b) the distribution is *frankable with a venture capital credit; and

(c) the entity allocates a *venture capital credit to the distribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 210-B—Participating PDFs

Guide to Subdivision 210-B

210-35 What this Subdivision is about

A PDF may participate if it elects to keep a record of its venture capital sub-account.

Table of sections

Operative provisions

210-40 What is a participating PDF

Operative provisions

210-40 What is a participating PDF

A *PDF is a ***participating PDF*** at a particular time if it keeps a record of its *venture capital sub-account at that time.

Subdivision 210-C—Distributions that are frankable with a venture capital credit

Guide to Subdivision 210-C

210-45 What this Subdivision is about

A distribution can only be franked with a venture capital credit if all members of the PDF receive distributions in proportion to their holdings.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

210-50 Which distributions can be franked with a venture capital credit?

Operative provisions

210-50 Which distributions can be franked with a venture capital credit?

A *distribution by a *participating PDF is ***frankable with a venture capital credit*** if:

(a) the distribution is a *franked distribution; and

(b) the distribution is made under a resolution under which:

(i) distributions are made to all members of the PDF; and

(ii) the amount of the distribution per *membership interest is the same for each of those distributions.

Subdivision 210-D—Amount of the venture capital credit on a distribution

Guide to Subdivision 210-D

210-55 What this Subdivision is about

The amount of the venture capital credit on a distribution is that stated in the distribution statement, unless the amount exceeds the franking credit on the distribution.

In that case, the amount of the venture capital credit on the distribution is taken to be the same as the franking credit.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

210-60 Amount of the venture capital credit on a distribution

Operative provisions

210-60 Amount of the venture capital credit on a distribution

(1) The amount of the *venture capital credit on a *distribution is that stated in the *distribution statement for the distribution, unless that amount exceeds the *franking credit on the distribution.

(2) If the amount of the *venture capital credit stated in the *distribution statement for a *distribution exceeds the *franking credit on the distribution, the amount of the venture capital credit is taken to be the same as the amount of the franking credit, and not the amount stated in the distribution statement.

Subdivision 210-E—Distribution statements

Guide to Subdivision 210-E

210-65 What this Subdivision is about

A participating PDF that makes a distribution franked with a venture capital credit must provide additional information in the distribution statement given to the recipient.

Table of sections

Operative provisions

210-70 Additional information to be included when a distribution is franked with a venture capital credit

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Operative provisions

210-70 Additional information to be included when a distribution is franked with a venture capital credit

(1) A *participating PDF that makes a *distribution *franked with a venture capital credit must include in the *distribution statement given to the recipient:

(a) a statement that there is a *venture capital credit of a specified amount on the distribution; and

(b) a statement to the effect that the venture capital credit is only relevant for a taxpayer who is:

(i) the trustee of a fund that is a *complying superannuation fund in relation to the income year in which the distribution is made and is not a *self managed superannuation fund; or

(ii) the trustee of a fund that is a *complying approved deposit fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund; or

(iii) the trustee of a unit trust that is a *pooled superannuation trust in relation to the income year in which the distribution is made; or

(iv) a *life insurance company.

(2) If, under subsection (1), a statement must be included in a *distribution statement, the distribution statement is taken not to have been given unless the statement is included.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 210-F—Rules affecting the allocation of venture capital credits

Guide to Subdivision 210-F

210-75 What this Subdivision is about

If a PDF has a venture capital surplus when it makes a distribution frankable with venture capital credits, it must frank the distribution with venture capital credits.

Table of sections

Operative provisions

210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made
210-81 Distributions to be franked with venture capital credits to the same extent
210-82 Consequences of breaching the rule in section 210-81

Operative provisions

210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made

(1) If a *participating PDF would otherwise have a *venture capital surplus at the time a *distribution that is *frankable with a venture capital credit is made, the PDF must either:

(a) allocate a *venture capital credit to the distribution that is equal to the *franking credit on the distribution; or

(b) allocate a venture capital credit to the distribution that either alone or when added to venture capital credits allocated to other distributions made under the resolution of the PDF under which the distribution in question is made, reduces the surplus to nil, or creates a *venture capital deficit.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) A *venture capital debit arises for a *participating PDF when a *distribution is made if the PDF does not allocate a *venture capital credit in accordance with subsection (1). The amount of the debit is:

Subsection (1) franked amount – Actual franked amount

where:

actual franked amount is the amount of the *venture capital credit that is allocated to the *distribution by the PDF (this may be nil).

subsection (1) franked amount is the amount of the *venture capital credit that would have been allocated to the *distribution if the PDF had made the smallest allocation needed to satisfy subsection (1).

210-81 Distributions to be franked with venture capital credits to the same extent

(1) If a *PDF *franks a *distribution with a venture capital credit, it must frank each other distribution made under the same resolution with a venture capital credit worked out using the same venture capital percentage.

(2) The ***venture capital percentage*** for a *distribution is worked out using the formula:

$$\frac{\text{Amount of the *venture capital credit on the distribution}}{\text{Maximum franking credit for the distribution}} \times 100$$

210-82 Consequences of breaching the rule in section 210-81

If a *PDF *franks a *distribution with a venture capital credit in breach of section 210-81:

(a) the distribution is taken not to have been franked with a venture capital credit; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) each other distribution made under the same resolution is taken not to have been franked with a venture capital credit.

Subdivision 210-G—Venture capital sub-account

Guide to Subdivision 210-G

210-85 What this Subdivision is about

This Subdivision:

- creates a venture capital sub-account for each PDF; and
- identifies when venture capital credits and debits arise in the sub-account and the amount of those credits and debits; and
- identifies when there is a venture capital surplus or deficit in the sub-account; and
- creates a liability to pay venture capital deficit tax if the account is in deficit at certain times.

Table of sections

210-90 The venture capital sub-account
210-95 Venture capital deficit tax

Operative provisions

210-100 Venture capital sub-account
210-105 Venture capital credits
210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax
210-115 Participating PDF may elect to have venture capital credits arise on its assessment day
210-120 Venture capital debits
210-125 Venture capital debit where CGT limit is exceeded
210-130 Venture capital surplus and deficit
210-135 Venture capital deficit tax

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax
210-145 Effect of a liability to pay venture capital deficit tax on the franking account
210-150 Deferring venture capital deficit

210-90 The venture capital sub-account

(1) Each PDF has a venture capital sub-account in its franking account. The sub-account exists even if the PDF does not elect to become a participating PDF by keeping a record of it.

(2) To the extent that income tax is reasonably attributable to capital gains from venture capital investments, it generates a venture capital credit in the sub-account. There are other circumstances in which a venture capital credit arises.

(3) If a PDF receives a refund of that tax, a venture capital debit will arise for the PDF. There are other circumstances in which a venture capital debit will arise, such as on the payment of a distribution franked with a venture capital credit.

210-95 Venture capital deficit tax

(1) Venture capital deficit tax is payable if a PDF's venture capital sub-account is in deficit at the end of the PDF's income year, or immediately before it ceases to be a PDF.

(2) A PDF's venture capital sub-account may be in deficit, even if its franking account is not. This can happen because only income tax on income of a particular kind (capital gains on venture capital investments) gives rise to venture capital credits. This means that when a PDF anticipates a venture capital credit, it is not only anticipating that income tax will be paid, but that income tax on income of that kind will be paid. Although income tax may, in fact, later be paid, it will not necessarily be income of the kind that would give rise to a venture capital credit. This results in franking credits arising even while the venture capital sub-account remains in deficit.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) The discrepancy between the franking account balance and the venture capital sub-account balance can also arise because venture capital credits do not necessarily arise at the same time as the relevant franking credits and debits (see item 1 of the table in section 210-105 and item 2 of the table in section 210-120).

Operative provisions

210-100 Venture capital sub-account

Each *PDF has a ***venture capital sub-account*** within its *franking account.

Note: The balance in the venture capital sub-account on 1 July 2002 will be either nil or, if the entity has a venture capital surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

210-105 Venture capital credits

The table sets out when a credit arises in the *venture capital sub-account of a *PDF. A credit in a PDF's venture capital sub-account is called a ***venture capital credit***.

Credits in the venture capital sub-account

Item	If:	A credit of:	Arises on:
1	the *PDF has a *franking credit because it has *paid a PAYG instalment; and the whole or part of the instalment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF	that part of the franking credit that is reasonably attributable to the CGT event	the day on which the franking credit arises; or if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Credits in the venture capital sub-account			
Item	**If:**	**A credit of:**	**Arises on:**
2	the *PDF has a *franking credit because it has *paid income tax; and the whole or part of the payment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF	that part of the franking credit that is reasonably attributable to the CGT event	the day on which the franking credit arises; or if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day
3	the *PDF incurs a liability to pay *venture capital deficit tax	the amount of the liability	immediately after the liability is incurred

210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax

In determining the extent to which a *franking credit is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the *PDF, have regard to:

(a) the extent to which the credit can reasonably be attributed to the *payment of a PAYG instalment or the payment of income tax by the PDF in relation to its *section 124ZZB SME assessable income for an income year; and

(b) the extent to which the section 124ZZB SME assessable income can reasonably be attributed to the CGT event.

210-115 Participating PDF may elect to have venture capital credits arise on its assessment day

(1) Before a *PDF's assessment day for an income year, the PDF may elect to have the *venture capital credits that arise because of the *payment of PAYG instalments and income tax during that income year arise on the assessment day.

(2) The *PDF's ***assessment day*** for an income year is the earlier of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the day on which the PDF furnishes its *income tax return for the income year; or

(b) the day on which the Commissioner makes an assessment of the amount of the PDF's taxable income for that year under section 166 of the *Income Tax Assessment Act 1936*.

210-120 Venture capital debits

The table sets out when a debit arises in the *venture capital sub-account of a *PDF. A debit in a PDF's venture capital sub-account is called a ***venture capital debit***.

Debits in the venture capital sub-account

Item	If:	A debit of:	Arises on:
1	the *PDF makes a *distribution *franked with a venture capital credit	the amount of the *venture capital credit	the day on which the distribution is made
2	the *PDF receives a *franking debit as a result of *receiving a refund of income tax; and all or part of the refund is attributable to a *payment of a PAYG instalment or a payment of income tax that gave rise to a *venture capital credit of the PDF	that part of the refund that is attributable to a payment of a PAYG instalment or a payment of income tax that gave rise to a venture capital credit of the PDF	the day on which the franking debit arises; or if the venture capital credit did not arise until a later day—that later day
3	a *venture capital debit arises for the *PDF under subsection 210-80(2)	the amount of the venture capital debit arising under that subsection	the day on which the *distribution giving rise to the venture capital debit is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Debits in the venture capital sub-account			
Item	**If:**	**A debit of:**	**Arises on:**
4	the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the *PDF (streaming distributions); and the *imputation benefit underlying the determination is a *tax offset under section 210-170	the amount of the tax offset	on the day on which the franking debit arises
5	a *venture capital debit arises for the *PDF under section 210-125 because its net venture capital credits for an income year exceed certain limits	the amount of the excess	the last day of the income year

210-125 Venture capital debit where CGT limit is exceeded

(1) A *venture capital debit arises for a *PDF where the PDF's net venture capital credits for the income year exceed whichever is the lesser of:

(a) the PDF's CGT limit for that income year; and

(b) the tax paid by the PDF on its *SME income component for that income year.

Net venture capital credits

(2) The *PDF's ***net venture capital credits*** for the income year is:

Venture capital credits – Venture capital debits

where:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

venture capital credits is the total *venture capital credits of the *PDF that relate to tax in relation to taxable income of that income year.

venture capital debits is the total *venture capital debits of the *PDF that relate to tax in relation to taxable income of that income year.

CGT limit

(3) The *PDF's ***CGT limit*** for the income year is worked out using the formula:

$$\frac{\text{Ordinary capital gains from venture capital CGT events}}{\text{Ordinary capital gains from all SME CGT events}} \times \text{*Section 124ZZB SME assessable income} \times \text{SME tax rate}$$

where:

ordinary capital gains from all SME CGT events means the total of the *ordinary capital gains for the income year for *CGT events in relation to *SME investments of the *PDF.

ordinary capital gains from venture capital CGT events means the total of *ordinary capital gains for the income year for *CGT events in relation to shares in companies that are *qualifying SME investments.

SME tax rate is the tax rate applicable to the *SME income component of the *PDF for the income year.

Tax paid by the PDF on its SME income component

(4) The ***tax paid by the PDF on its SME income component*** for the income year is the tax paid by the *PDF on its *SME income component after allowing *tax offsets referred to in section 4-10.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

210-130 Venture capital surplus and deficit

(1) A *PDF's *venture capital sub-account is in ***surplus*** at a particular time if, at that time, the sum of the *venture capital credits in the account exceeds the sum of the *venture capital debits in the account. The amount of the ***venture capital surplus*** is the amount of the excess.

(2) A *PDF's *venture capital sub-account is in ***deficit*** at a particular time if, at that time, the sum of the *venture capital debits in the account exceeds the sum of the *venture capital credits in the account. The amount of the ***venture capital deficit*** is the amount of the excess.

(3) A *PDF's *venture capital sub-account may be in *deficit even though its *franking account as a whole is in *surplus. Similarly, a PDF's venture capital sub-account may be in surplus even though its franking account as a whole is in deficit.

210-135 Venture capital deficit tax

(1) While recognising that an entity may anticipate *venture capital credits when *franking *distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its *venture capital sub-account at certain times and levying tax if the account is in *deficit.

(2) An entity is liable to pay *venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if its *venture capital sub-account is in *deficit at the end of an income year.

(3) An entity is liable to pay *venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if:

(a) it ceases to be a *PDF; and

(b) immediately before it ceases to be a PDF, its *venture capital sub-account is in *deficit.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax

(1) If an entity is liable to pay *venture capital deficit tax under subsection 210-135(2) because its *venture capital sub-account is in *deficit at the end of an income year, the amount (if any) of *franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(2) because its *franking account is in *deficit at that time is reduced by the amount of the liability for venture capital deficit tax.

(2) If an entity is liable to pay *venture capital deficit tax under subsection 210-135(3) because it ceases to be a *PDF during an income year, the amount (if any) of *franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(3) because it ceases to be a *franking entity at that time is reduced by the amount of the liability for *venture capital deficit tax.

210-145 Effect of a liability to pay venture capital deficit tax on the franking account

(1) If an entity incurs a liability to pay *venture capital deficit tax, a *franking credit arises for the entity immediately after the liability arises (the ***relevant day***).

(2) The amount of the *franking credit is equal to:

(a) if no liability to pay *franking deficit tax arises on the relevant day—the amount of the *venture capital deficit tax; or

(b) if a liability to pay franking deficit tax also arises on the relevant day—the amount of the venture capital deficit tax reduced by the amount of the franking deficit tax.

210-150 Deferring venture capital deficit

(1) The object of this section is to ensure that an entity does not avoid *venture capital deficit tax by deferring the time at which a *venture capital debit occurs.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) An entity is taken to have *received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 210-135(2) if:

(a) the refund is paid within 3 months after the end of that year; and

(b) the entity's *venture capital sub-account would have been in *deficit, or in deficit to a greater extent, at the end of the previous income year if the refund had been received in the previous income year.

(3) If an entity ceases to be a *PDF during an income year, it is taken to have *received a refund of income tax immediately before it ceased to be a PDF for the purposes of subsection 210-135(3) if:

(a) the refund is attributable to a period in the year during which the entity was a PDF; and

(b) the refund is paid within 3 months after the entity ceases to be a PDF; and

(c) the *venture capital sub-account of the entity would have been in *deficit, or in deficit to a greater extent, immediately before it ceased to be a PDF if the refund had been received before it ceased to be a PDF.

Subdivision 210-H—Effect of receiving a distribution franked with a venture capital credit

Guide to Subdivision 210-H

210-155 What this Subdivision is about

A superannuation fund or other entity that deals with superannuation that receives a distribution franked with a venture capital credit is entitled to a tax offset equal to the credit.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

210-160 The significance of a venture capital credit
210-165 Recipients for whom the venture capital credit is not significant

Operative provisions

210-170 Tax offset for certain recipients of distributions franked with venture capital credits
210-175 Amount of the tax offset
210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

210-160 The significance of a venture capital credit

(1) The venture capital credit on a distribution is only significant in the hands of a relevant venture capital investor (basically a superannuation fund or other entity that deals with superannuation).

(2) That investor receives a tax offset. In most cases, this will be equal to the venture capital credit.

(3) Under section 124ZM of the *Income Tax Assessment Act 1936*, that part of the distribution that is franked with a venture capital credit is also treated as exempt income in the hands of the entity.

210-165 Recipients for whom the venture capital credit is not significant

(1) For other entities, the fact that all or part of the franking credit on a distribution is also a venture capital credit can be ignored.

(2) The franking credit will either generate a gross-up of the entity's assessable income and a corresponding tax offset under Division 207 or, if the right to make an election under section 124ZM of the *Income Tax Assessment 1936* is exercised, the franked part of the distribution will be treated as exempt income.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) The unfranked part of the distribution is treated as exempt income under section 124ZM of the *Income Tax Assessment Act 1936*.

Operative provisions

210-170 Tax offset for certain recipients of distributions franked with venture capital credits

(1) The recipient of a *distribution *franked with a venture capital credit is entitled to a *tax offset for the income year in which the distribution is made if:

(a) the recipient is a relevant venture capital investor; and

(b) the recipient is not:

(i) a partnership; or

(ii) a trustee (other than the trustee of a *complying superannuation fund, a *non-complying superannuation fund, a *complying approved deposit fund, a *non-complying approved deposit fund or a *pooled superannuation trust); and

(c) the recipient satisfies the *residency requirement for an entity receiving a distribution; and

(d) the distribution is not *exempt income of the recipient (ignoring section 124ZM of the *Income Tax Assessment Act 1936*); and

(e) the recipient is a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*; and

(f) the distribution is not part of a *dividend stripping operation; and

(g) the Commissioner has not made a determination under paragraph 204-30(3)(c) that no *imputation benefit is to arise for the receiving entity in respect of the distribution; and

(h) the Commissioner has not made a determination under paragraph 177EA(5)(b) that no imputation benefit is to arise in respect of the distribution to the recipient.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Relevant venture capital investors

(2) The following entities are ***relevant venture capital investors***:

(a) the trustee of a fund that is a *complying superannuation fund in relation to the income year in which the *distribution is made and is not a *self managed superannuation fund;

(b) the trustee of a fund that is a *complying approved deposit fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund;

(c) the trustee of a unit trust that is a *pooled superannuation trust in relation to the income year in which the distribution is made;

(d) a *life insurance company.

210-175 Amount of the tax offset

Where the recipient is not a life insurance company

(1) If the entity receiving the *distribution is not a *life insurance company, the *tax offset is equal to the *venture capital credit on the distribution.

Where the recipient is a life insurance company

(2) If the entity receiving the *distribution is a *life insurance company, the *tax offset is worked out using the formula:

$$\text{Tax offset to which the entity would otherwise be entitled} \times \frac{\text{*Complying superannuation class of taxable income}}{\text{Total income}}$$

where:

complying superannuation class of taxable income means the *complying superannuation class of taxable income of the company for the income year in which the *distribution is made.

tax offset to which the entity would otherwise be entitled is the *tax offset that the company would be entitled to under subsection (1) if the entity were not a life insurance company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

total income is the company's assessable income for the income year.

210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

If the recipient of a *distribution *franked with a venture capital credit is entitled to a *tax offset under section 210-170, Division 207 does not apply to that *part of the distribution that is venture capital franked.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 214—Administering the imputation system

Table of Subdivisions

Guide to Division 214
214-A Franking returns
214-B Franking assessments
214-C Amending franking assessments
214-D Collection and recovery
214-E Records

Guide to Division 214

Table of sections

214-1 Purpose of the system
214-5 Key features

214-1 Purpose of the system

These provisions:

(a) allow the Commissioner to gather sufficient information to determine whether tax is payable by a corporate tax entity under the imputation system; and

(b) provide for the Commissioner to assess the amount of tax that is payable; and

(c) specify when the tax is payable; and

(d) establish systems to support the assessment and collection of the tax.

214-5 Key features

(1) Initial information about a corporate tax entity's franking activities is provided by means of a return, called a franking return, given by the entity to the Commissioner.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The Commissioner is able to require corporate tax entities to give a franking return for an income year by publishing a notice in the *Gazette*.

(3) The Commissioner is also able to require a particular corporate tax entity to give a franking return for one or more income years. The Commissioner might do this, for example, if the Commissioner wishes to audit the corporate tax entity's franking activities over a number of years.

(4) The Commissioner may assess whether tax is payable under the imputation system and the amount of that tax.

(5) In most cases, this is done by treating the first franking return of a corporate tax entity for an income year as an assessment by the Commissioner. To this extent, there is self-assessment.

(6) An assessment by the Commissioner is conclusive evidence of a corporate tax entity's tax liabilities under the imputation system, except for the purposes of objection, review and appeal processes under Part IVC of the *Tax Administration Act 1953* (see section 350-10 in Schedule 1 to the *Taxation Administration Act 1953*).

(7) Assessments can be amended by the Commissioner within certain time limits.

Subdivision 214-A—Franking returns

Guide to Subdivision 214-A

214-10 What this Subdivision is about

A franking return for an income year provides the Commissioner with information about a corporate tax entity's franking activities during that year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

214-15 Notice to give a franking return—general notice
214-20 Notice to a specific corporate tax entity
214-25 Content and form of a franking return
214-30 Franking account balance
214-35 Venture capital sub-account balance
214-40 Meaning of ***franking tax***
214-45 Effect of a refund on franking returns

Operative provisions

214-15 Notice to give a franking return—general notice

(1) The Commissioner may publish a notice in the *Gazette* requiring each *corporate tax entity to which the notice applies to give the Commissioner a *franking return for an income year specified in the notice.

(2) An entity to which the notice applies must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

214-20 Notice to a specific corporate tax entity

(1) The Commissioner may give a *corporate tax entity a written notice requiring the entity to give the Commissioner a *franking return for an income year specified in the notice.

(2) The entity must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

(3) The entity must comply with the requirement regardless of whether the entity has given, or has been required to give, the Commissioner a *franking return.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

214-25 Content and form of a franking return

(1) A *corporate tax entity must include the following information in its *franking return for an income year:

(a) if the entity is a *franking entity at the end of the income year—its *franking account balance at the end of the income year; and

(b) if the entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and

(c) if the entity is a *PDF at the end of the income year—its *venture capital sub-account balance at the end of the income year; and

(d) if the entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and

(e) the amounts (if any) of *franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year; and

(f) any other information required by the Commissioner for the purposes of administering this Part.

(2) The return must be in the *approved form.

214-30 Franking account balance

A *corporate tax entity's ***franking account balance*** at a particular time is:

(a) if the entity has a *franking surplus or a *franking deficit at that time—the amount of the surplus or deficit; or

(b) if the entity does not have a franking surplus or a franking deficit at that time—nil.

214-35 Venture capital sub-account balance

A *PDF's ***venture capital sub-account balance*** at a particular time is:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) if the PDF has a *venture capital surplus or a *venture capital deficit at that time—the amount of the surplus or deficit; or
(b) if the entity does not have a venture capital surplus or a venture capital deficit at that time—nil.

214-40 Meaning of *franking tax*

Each of the following is a ***franking tax***:
(a) *franking deficit tax;
(b) *over-franking tax;
(c) *venture capital deficit tax.

214-45 Effect of a refund on franking returns

If no franking return is outstanding

(1) If:
(a) a *corporate tax entity *receives a refund of income tax or *receives a refund of diverted profits tax; and
(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3); and
(c) when the refund is received, the entity does not have a *franking return that is *outstanding for the income year in which the liability arose;
the entity must give the Commissioner a franking return for the income year within 14 days after the refund is received.

Refund received within 14 days before an outstanding franking return is due

(2) If:
(a) an entity *receives a refund of income tax or *receives a refund of diverted profits tax; and
(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) when the refund is received, the entity has a *franking return that is *outstanding for the income year in which the liability arose; and

(d) the entity receives the refund within the period of 14 days ending on the day by which the outstanding return must be given to the Commissioner;

the entity may, instead of accounting for the liability, or increased liability, in the outstanding return, account for it in a further return given to the Commissioner within 14 days after the refund is received.

*Meaning of **outstanding***

(3) A *franking return for an income year is ***outstanding*** at a particular time if each of the following is true at that time:

(a) the *corporate tax entity has been required to give a *franking return for the income year;

(b) the time within which the franking return must be given has not yet passed;

(c) the franking return has not yet been given.

Subdivision 214-B—Franking assessments

Guide to Subdivision 214-B

214-55 What this Subdivision is about

The Commissioner may make an assessment of a corporate tax entity's liability to pay franking tax, and the franking account balance and the venture capital sub-account balance on which that liability is based. An entity's first franking return for an income year is treated as an assessment by the Commissioner. To this extent, there is self-assessment.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

214-60 Commissioner may make a franking assessment
214-65 Commissioner taken to have made a franking assessment on first return
214-70 Part-year assessment
214-75 Validity of assessment
214-80 Objections

Operative provisions

214-60 Commissioner may make a franking assessment

(1) The Commissioner may make an assessment of:

(a) if a *corporate tax entity is a *franking entity at the end of the income year—its *franking account balance at the end of the income year; and

(b) if a corporate tax entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and

(c) if a corporate tax entity is a *PDF at the end of the income year—its *venture capital sub-account balance at the end of the income year; and

(d) if a corporate tax entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and

(e) the amounts (if any) of *franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year.

This is a ***franking assessment*** for the entity for the income year.

(1A) However, the Commissioner must not make an assessment under subsection (1) for an entity for an income year if:

(a) the entity is not required under Subdivision 214-A to give the Commissioner a *franking return for the income year; and

(b) the entity is not required under Division 214 of the *Income Tax (Transitional Provisions) Act 1997* to give the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Commissioner a franking return for the balancing period ending within the income year; and

(c) the entity was required to lodge an *income tax return for the income year by a particular time; and

(d) the entity has lodged that income tax return; and

(e) 3 years have passed since the later of the following:

(i) the time mentioned in paragraph (c);

(ii) the time when the entity lodged that income tax return.

(2) The Commissioner must give the entity notice of the assessment as soon as practicable after making the assessment.

214-65 Commissioner taken to have made a franking assessment on first return

(1) If:

(a) a *corporate tax entity gives the Commissioner a *franking return for an income year on a particular day (the ***return day***); and

(b) the return is the first franking return given by the entity for the year; and

(c) the Commissioner has not already made a *franking assessment for the entity for the year;

the Commissioner is taken to have made a franking assessment for the entity for the year on the return day, and to have assessed:

(d) the entity's *franking account balance at a particular time as that stated in the return as the balance at that time; and

(e) the entity's *venture capital sub-account balance (if any) at a particular time as that stated in the return as the balance at that time; and

(f) the amounts (if any) of *franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the return.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The return is taken to be notice of the assessment signed by the Commissioner and given to the entity on the return day.

214-70 Part-year assessment

(1) The Commissioner may, at any time during an income year, make a *franking assessment for a *corporate tax entity for a particular period within that year as if the beginning and end of that period were the beginning and end of an income year.

(2) This Part applies, for the purposes of that assessment, as if the beginning and end of the period were the beginning and end of an income year.

214-75 Validity of assessment

The validity of a *franking assessment is not affected because any of the provisions of this Act have not been complied with.

214-80 Objections

If a *corporate tax entity is dissatisfied with a *franking assessment made in relation to the entity, the entity may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Subdivision 214-C—Amending franking assessments

Guide to Subdivision 214-C

214-90 What this Subdivision is about

The Commissioner may amend franking assessments within certain time limits.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

214-95 Amendments within 3 years of the original assessment
214-100 Amended assessments are treated as franking assessments
214-105 Further return as a result of a refund affecting a franking deficit tax liability
214-110 Later amendments—on request
214-115 Later amendments—failure to make proper disclosure
214-120 Later amendments—fraud or evasion
214-125 Further amendment of an amended particular
214-135 Amendment on review etc.
214-140 Notice of amendments

Operative provisions

214-95 Amendments within 3 years of the original assessment

(1) The Commissioner may amend a *franking assessment for a *corporate tax entity for an income year at any time during the period of 3 years after the *original franking assessment day for the entity for that year.

(2) The ***original franking assessment day*** for a *corporate tax entity for an income year is the day on which the first *franking assessment for the entity for the income year is made.

214-100 Amended assessments are treated as franking assessments

Once an amended *franking assessment for a corporate tax entity for an income year is made, it is taken to be a ***franking assessment*** for the entity for the year.

214-105 Further return as a result of a refund affecting a franking deficit tax liability

(1) If:

(a) a *franking assessment for a *corporate tax entity for an income year has been made; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) on a particular day (the ***further return day***) the entity gives the Commissioner a further *franking return for the income year under subsection 214-45(1) (because the entity has *received a refund of income tax that affects its liability to pay *franking deficit tax);

the Commissioner is taken to have amended the entity's franking assessment on the further return day, and to have assessed:

(c) the entity's *franking account balance at a particular time as that stated in the further return as the balance at that time; and

(d) the entity's *venture capital sub-account balance (if any) at a particular time as that stated in the further return as the balance at that time; and

(e) the amounts (if any) of *franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the further return.

(2) The further return is taken to be notice of the amended assessment signed by the Commissioner and given to the entity on the further return day.

214-110 Later amendments—on request

The Commissioner may amend a *franking assessment for a *corporate tax entity for an income year after the end of the period of 3 years after the *original franking assessment day for the entity for the year if, within that 3 year period:

(a) the entity applies for the amendment; and

(b) the entity gives the Commissioner all the information necessary for making the amendment.

214-115 Later amendments—failure to make proper disclosure

(1) If:

(a) a *corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

for a *franking assessment for the entity for an income year; and

(b) in making the assessment, the Commissioner makes an *under-assessment; and

(c) the Commissioner is not of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time during the period of 6 years after the *original franking assessment day for the entity for the year.

(2) The Commissioner makes an ***under-assessment*** in a *franking assessment (the ***earlier assessment***) if, in amending the earlier assessment, the Commissioner would have to do one or more of the following for the amended assessment to be correct:

(a) reduce the *franking surplus (including to a nil balance);

(b) increase the *franking deficit (including from a nil balance);

(c) increase *franking tax payable.

214-120 Later amendments—fraud or evasion

If:

(a) a *corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary for a *franking assessment for the entity for an income year; and

(b) in making the assessment, the Commissioner makes an *under-assessment; and

(c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time.

214-125 Further amendment of an amended particular

(1) If:

(a) a *franking assessment has been amended (the ***first amendment***) in any particular; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular so as to *reduce the assessment;

the Commissioner may do so within a period of 3 years after the first amendment.

(2) The Commissioner ***reduces a franking assessment*** if the Commissioner amends the assessment by doing one or more of the following:

(a) increasing the *franking surplus (including from a nil balance);

(b) decreasing the *franking deficit (including to a nil balance);

(c) decreasing *franking tax payable.

214-135 Amendment on review etc.

Nothing in this Subdivision prevents the amendment of a *franking assessment:

(a) to give effect to a decision on a review or appeal; or

(b) to *reduce the assessment as a result of an objection made under this Act or pending an appeal or review.

214-140 Notice of amendments

If the Commissioner amends an entity's *franking assessment, the Commissioner must give the entity notice of the amendment as soon as practicable after making the amendment.

Subdivision 214-D—Collection and recovery

Guide to Subdivision 214-D

214-145 What this Subdivision is about

Franking tax is due and payable at certain times and the general interest charge applies to unpaid amounts.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Table of sections

Operative provisions

214-150 Due date for payment of franking tax
214-155 General interest charge
214-160 Refunds of amounts overpaid

Operative provisions

214-150 Due date for payment of franking tax

General rule

(1) Unless this section provides otherwise, *franking tax assessed for a *corporate tax entity because of events that have occurred, or are taken to have occurred, during an income year is due and payable on the last day of the month immediately following the end of the income year.

Part-year assessments

(2) *Franking tax payable because of an assessment under section 214-70 (a part-year assessment) is due and payable on the day specified in the notice of assessment as the day on which it is due and payable.

Amended assessments—other than because of deficit deferral

(3) If:

(a) the Commissioner amends a *franking assessment (the ***earlier assessment***) other than because of the operation of section 214-105 (an amendment because of a refund of tax that affects *franking deficit tax liability); and

(b) the amount of *franking tax of a particular type payable under the amended assessment exceeds the amount of franking tax of that type payable under the earlier assessment;

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

the excess amount is due and payable one month after the day on which the assessment was amended.

Tax payable because of deficit deferral

(4) If:

(a) a *corporate tax entity *receives a refund of income tax or *receives a refund of diverted profits tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3);

the franking deficit tax or, if there is an increase in an existing liability to pay franking deficit tax, the difference between the original liability and the increased liability, is due and payable on:

(c) if the entity accounts for the liability, or increased liability, in a *franking return that is *outstanding for the income year in which the liability arose—the day on which the outstanding return is required to be given to the Commissioner; or

(d) in any other case—14 days after the day on which the refund was received.

214-155 General interest charge

If:

(a) *franking tax of a particular type payable by a *corporate tax entity remains unpaid after the time by which it is due and payable; and

(b) the Commissioner has not allocated the unpaid amount to an *RBA;

the entity is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(c) starts at the beginning of the day on which the franking tax was due to be paid; and

(d) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the franking tax;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(ii) general interest charge on any of the franking tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

214-160 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to *franking tax.

Subdivision 214-E—Records

Guide to Subdivision 214-E

214-170 What this Subdivision is about

Generally applicable provisions to do with record keeping apply for the purposes of the imputation system.

Table of sections

Operative provisions

214-175 Record keeping

Operative provisions

214-175 Record keeping

(1) Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if:

(a) the reference in that section to a person carrying on a business were a reference to a *corporate tax entity; and

(b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to:

(i) the entity's *franking account balance; and

(ii) the entity's liability to pay *franking tax; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) paragraph (5)(a) of that section were omitted.

(2) A *PDF does not need to maintain records under section 262A of the *Income Tax Assessment Act 1936* in relation to a *venture capital sub-account if the *PDF does not elect to be a *participating PDF.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 215—Consequences of the debt/equity rules

Subdivision 215-A—Application of the imputation system to non-share equity interests

215-1 Application of the imputation system to non-share equity interests

(1) The *imputation system applies to a *non-share equity interest in the same way as it applies to a *membership interest.

(2) The *imputation system applies to an equity holder in an entity who is not a member of the entity in the same way as it applies to a member of the entity.

Subdivision 215-B—Non-share dividends that are unfrankable to some extent

Guide to Subdivision 215-B

215-5 What this Subdivision is about

While non-share dividends are, as a general rule, frankable, all or part of some non-share dividends are taken to be unfrankable by virtue of these rules.

Table of sections

215-10 Certain non-share dividends by ADIs unfrankable
215-15 Non-share dividends are unfrankable if profits are unavailable
215-20 Working out the available frankable profits
215-25 Anticipating available frankable profits

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

215-10 Certain non-share dividends by ADIs unfrankable

(1) A *non-share dividend paid by an ADI (an authorised deposit-taking institution) for the purposes of the *Banking Act 1959* is ***unfrankable*** if:

(a) the ADI is an Australian resident; and

(b) the non-share dividend is paid in respect of a *non-share equity interest that:

(i) by itself; or

(ii) in combination with one or more *schemes that are *related schemes to the scheme under which the interest arises;

forms part of the ADI's Tier 1 capital either on a solo or consolidated basis (within the meaning of the *prudential standards); and

(c) the non-share equity interest is issued at or through a *permanent establishment of the ADI in a *listed country; and

(d) the funds from the issue of the non-share equity interest are raised and applied solely for one or more purposes permitted under subsection (2) in relation to the non-share equity interest.

(2) The permitted purposes in relation to the *non-share equity interest (the ***relevant interest***) are the following:

(a) the purpose of the business of the ADI carried on at or through the permanent establishment other than the transfer of funds directly or indirectly to:

(i) the Australian head office of the permanent establishment; or

(ii) any *connected entity of the ADI that is an Australian resident; or

(iii) a permanent establishment of the ADI, or of a connected entity of the ADI, located in Australia;

(b) the purpose of redeeming:

(i) a *debt interest; or

(ii) a non-share equity interest;

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

that is issued, before the relevant interest is issued, at or through the permanent establishment and is held by a connected entity of the ADI that is an Australian resident;

(c) the purpose of returning funds to:

(i) the Australian head office of the permanent establishment; or

(ii) a permanent establishment of the ADI or of a connected entity of the ADI, located in Australia;

if the funds are contributed, before the relevant interest is issued, for use in the business of the ADI carried on at or through the permanent establishment.

215-15 Non-share dividends are unfrankable if profits are unavailable

(1) If:

(a) a *corporate tax entity pays a *non-share dividend; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity is nil, or less than nil;

the non-share dividend is ***unfrankable***.

(2) If:

(a) a *corporate tax entity pays a *non-share dividend that is not one of a number of non-share dividends paid at the same time; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity, although greater than nil, are less than the amount of the non-share dividend;

the entity is taken to have made a ***frankable distribution*** equal to the amount of the available frankable profits. The remainder of the dividend is taken to be an ***unfrankable*** distribution.

(3) If:

(a) a *corporate tax entity pays a *non-share dividend that is one of a number paid at the same time; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) immediately before the payment, the amount of the *available frankable profits of the entity, although greater than nil are less than the sum of the amounts of the non-share dividends;

the entity is taken to have made a ***frankable distribution*** equal to the amount worked out using the formula:

$$\frac{\text{Amount of the *non-share dividend}}{\text{Sum of the amounts of all the non-share dividends}} \times \text{*Available frankable profits}$$

The remainder of the dividend is taken to be an ***unfrankable*** distribution.

215-20 Working out the available frankable profits

(1) Use the following formula to work out the amount of a *corporate tax entity's ***available frankable profits*** at a particular time:

$$\text{Maximum frankable amount} - \left[\text{Committed share dividends} + \text{Undebited non-share dividends}\right]$$

where:

committed share dividends means the sum of:

(a) the amounts of any *distributions that are not *non-share dividends and are paid by the entity at that time; and

(b) if the entity has announced that it will pay distributions that are not non-share dividends at a later time, or is committed or has resolved (formally or informally) to paying such distributions at a later time—the amounts of those distributions.

maximum frankable amount means the maximum amount of *frankable *distributions (other than *non-share dividends) that the *corporate tax entity could pay at that time having regard to its available profits at that time.

undebited non-share dividends means the sum of the amounts of the franked parts of the *non-share dividends (worked out under subsection (2)) that:

(a) were not debited to available profits; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) were paid within the preceding 2 income years or were paid under the same *scheme under which the entity pays the non-share dividend.

(2) The amount of the ***franked part*** of a *non-share dividend is worked out using the following formula:

*Franking credit on the dividend × Applicable gross-up rate

where:

applicable gross-up rate means the *corporate tax gross-up rate of the entity making the distribution for the income year in which the distribution is made.

215-25 Anticipating available frankable profits

(1) A *corporate tax entity that pays a *non-share dividend may anticipate *available frankable profits if:

(a) the entity:

(i) has announced the payment of; or

(ii) is committed or has resolved (formally or informally) to pay;

*distributions other than non-share dividends (the ***committed distributions***) after payment of the non-share dividend; and

(b) but for this subsection, section 215-15 would apply to the non-share dividend; and

(c) the entity's available frankable profits would be greater than nil at the relevant time if the committed distributions were ignored; and

(d) it is reasonable to expect that available profits will arise after payment of the non-share dividend and before payment of the committed distributions; and

(e) it is reasonable to expect that, having regard to the available profits mentioned in paragraph (d), the amount of the entity's *adjusted available frankable profits immediately after each of the committed distributions is paid will be greater than nil.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

The ***available frankable profits*** immediately before the entity pays the non-share dividend is then the smallest of the amounts of the adjusted available frankable profits mentioned in paragraph (e).

(2) The entity's ***adjusted available frankable profits*** immediately after a committed distribution is paid is the amount that would be its *available frankable profits at that time if all committed distributions to be paid after that time, and the *non-share dividend, were ignored.

(3) A *franking debit arises for the entity if:

(a) the entity anticipates*available frankable profits under subsection (1); and

(b) the available frankable profits of the entity are less than nil:

(i) immediately after the last of the committed distributions is made; or

(ii) immediately before the end of the income year following the income year in which the *non-share dividend is paid;

whichever is earlier.

(4) The *franking debit is equal to the lesser of:

(a) the amount by which the *available frankable profits is below nil; and

(b) the amount of the franked part of the *non-share dividend (worked out using subsection 215-20(2)) or, if more than one non-share dividend is made at the relevant time, the sum of the amounts of the franked parts of those non-share dividends.

(5) In working out the entity's *available frankable profits for the purposes of subsection (3) or (4), disregard:

(a) any *distributions that:

(i) the entity announces, or becomes committed to or resolves (formally or informally) to pay after the payment of the *non-share dividend; and

(ii) have not been paid; and

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(b) any estimate made by the entity under subsection (1) after the non-share dividend is paid.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 216—Cum dividend sales and securities lending arrangements

Table of Subdivisions

216-A Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else

216-B Statements to be made where there is a cum dividend sale or securities lending arrangement

Subdivision 216-A—Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else

Table of sections

216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else

216-5 First situation (cum dividend sales)

216-10 Second situation (securities lending arrangements)

216-15 Distribution closing time

216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else

There are 2 situations in which a *franked distribution, or a distribution *franked with an exempting credit, that is made to a *member of a *corporate tax entity is taken to have been made to another entity.

216-5 First situation (cum dividend sales)

(1) The first situation is one in which:

(a) the *corporate tax entity makes a *franked distribution, or a *distribution franked with an exempting credit, to a *member

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

of the entity in respect of a *membership interest in the entity; and

(b) at the *distribution closing time, the member is under an obligation to transfer the membership interest to another person under a contract for the sale of the membership interest; and

(c) the contract:

(i) requires that the distribution be paid on to the other person; and

(ii) is entered into in the ordinary course of trading on an *approved stock exchange in Australia or elsewhere.

(2) The *distribution is taken to have been made to the other person as a *member of the entity (and not to the member).

Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

(3) The *distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-10.

216-10 Second situation (securities lending arrangements)

(1) The second situation is one in which:

(a) the *corporate tax entity makes a *franked distribution, or a *distribution franked with an exempting credit, to a *member of the entity in respect of a *membership interest in the entity; and

(b) at the time the distribution was made, the member was under an obligation to pay the distribution to another person under a securities lending arrangement; and

(c) the obligation was incurred in the member's capacity as the borrower under the securities lending arrangement; and

(d) the *distribution closing time occurred during the borrowing period.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(2) The *distribution is taken to have been made to the other person as a *member of the entity (and not to the member).

Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

(3) The distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-5.

216-15 Distribution closing time

If *distributions by a *corporate tax entity are made to those *members who were members as at a particular time at or before the distribution is made, that time is the ***distribution closing time*** in relation to those distributions.

Subdivision 216-B—Statements to be made where there is a cum dividend sale or securities lending arrangement

Table of sections

216-20 Cum dividend sale—statement by securities dealer
216-25 Cum dividend sale—statement by party
216-30 Securities lending arrangements—statement by borrower

216-20 Cum dividend sale—statement by securities dealer

If:

(a) section 216-5 applies in relation to a *franked distribution or a *distribution franked with an exempting credit (cum dividend sales); and

(b) a *securities dealer has acted for a particular party to the contract concerned;

the securities dealer must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

216-25 Cum dividend sale—statement by party

If:

(a) section 216-5 applies in relation to a *franked distribution or a *distribution franked with an exempting credit (cum dividend sales); and

(b) a particular party to the contract concerned has not had a *securities dealer acting for him or her;

that party must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

216-30 Securities lending arrangements—statement by borrower

If section 216-10 (securities lending arrangements) applies in relation to a *franked distribution, or a *distribution franked with an exempting credit, the borrower must, as soon as practicable after the making of the distribution, give to the lender a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 218—Application of imputation rules to co-operative companies

218-5 Application of imputation rules to co-operative companies

(1) The *imputation system applies to a *co-operative company in the same way as it applies to any other company but with the modifications set out in this section.

(2) Each reference to a *distribution is taken to include a reference to an amount distributed as mentioned in paragraph 120(1)(a) or (b) of the *Income Tax Assessment Act 1936*.

(3) Despite subsection 202-75(1) (about giving distribution statements), a *co-operative company does not have to give the recipient of a *frankable distribution a *distribution statement unless the *franking percentage for the distribution is greater than zero.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 219—Imputation for life insurance companies

Table of Subdivisions

Guide to Division 219
219-A Application of imputation rules to life insurance companies
219-B Franking accounts of life insurance companies

Guide to Division 219

219-1 What this Division is about

This Division sets out how the imputation rules are applied to a life insurance company.

Subdivision 219-A—Application of imputation rules to life insurance companies

Table of sections

219-10 Application of imputation rules to life insurance companies

219-10 Application of imputation rules to life insurance companies

(1) This Part (except this Division) applies to a *life insurance company in the same way as it applies to any other company.

(2) However, that application is subject to the modifications set out in this Division.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Subdivision 219-B—Franking accounts of life insurance companies

Table of sections

219-15 Franking credits
219-30 Franking debits
219-40 Residency requirement
219-45 Assessment day
219-50 Amount attributable to shareholders' share of income tax liability
219-55 Adjustment resulting from an amended assessment
219-70 Tax offset under section 205-70
219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied

219-15 Franking credits

(1) The table in section 205-15 does not apply to a *life insurance company.

(2) The following table sets out when a *franking credit arises under this section in the *franking account of a *life insurance company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits in the franking account

Item	If:	A credit of:	Arises:
1	the company *pays a PAYG instalment; and the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the payment is made before the company's *assessment day for that income year; and the company is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that: (a) the company estimates will be attributable to the *shareholders' share of the income tax liability of the company for that income year; and (b) is attributable to the period during which the company was a franking entity	on the day on which the payment is made (see note 1 to this subsection)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
2	the company *paid a PAYG instalment; and the company satisfied the *residency requirement for the income year in relation to which the PAYG instalment was paid; and the payment was made before the company's *assessment day for that income year; and the company was a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the company's assessment day for that income year (see note 1 to this subsection)
3	the company *pays a PAYG instalment; and the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the payment is made on or after the company's *assessment day for that income year; and the company is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the day on which the payment is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
4	the company *pays income tax; and the company satisfies the *residency requirement for the income year for which the tax is paid; and the company is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the day on which the payment is made
5	a *franked distribution is made to the company; and the company satisfies the *residency requirement for the income year in which the distribution is made; and the company is a *franking entity when it receives the distribution; and the company is entitled to a *tax offset under Division 207 because of the distribution; and the tax offset is not subject to the refundable tax offset rules (see Division 67)	the amount of the tax offset	on the day on which the distribution is made

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
6	a *franked distribution *flows indirectly to the company through a partnership or the trustee of a trust; and the company is a *franking entity when the franked distribution is made; and the company is entitled to a *tax offset under Division 207 because of the distribution; and the tax offset is not subject to the refundable tax offset rules (see Division 67)	the amount of the tax offset	at the time specified in subsection (3)
7	the company incurs a liability to pay *franking deficit tax under section 205-45 or 205-50	the amount of the liability	immediately after the liability is incurred
8	a *franking credit arises under subsection 418-55(1) in relation to an *exploration credit	the amount of the *franking credit specified in subsection 418-55(2)	at the time provided by subsection 418-55(3)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking credits in the franking account			
Item	**If:**	**A credit of:**	**Arises:**
9	the company *pays diverted profits tax; and the company satisfies the *residency requirement for the income year for which the tax is paid; and the company is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity; multiplied by the proportion worked out under subsection (4)	on the day on which the payment is made

Note 1: On the assessment day, a franking credit that arose under item 1 of the table:

- is reversed by a franking debit that arises under item 1 of the table in section 219-30; and
- is replaced with a franking credit that arises under item 2 of the table in this section.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

Note 3: To find out whether a tax offset under Division 207 is subject to the refundable tax offset rules: see section 67-25.

(3) A *franking credit covered by item 6 of the table arises at the end of the income year:

(a) that is an income year of the last partnership or trust interposed between:

(i) the *life insurance company; and

(ii) the *corporate tax entity that made the distribution; and

(b) during which the *franked distribution *flows indirectly to the life insurance company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(4) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

219-30 Franking debits

(1) The table in section 205-30 (except items 2 and 2A) applies to a *life insurance company in the same way as it applies to any other company.

(2) The following table sets out when a *franking debit arises under this section in the *franking account of a *life insurance company.

Franking debits in the franking account

Item	If:	A debit of:	Arises:
1	a *franking credit arises for the company under item 1 of the table in section 219-15 (*payment of a PAYG instalment)	the amount of the franking credit	on the company's *assessment day for the income year mentioned in that item
2	the company *receives a refund of income tax; and the company satisfies the *residency requirement for the income year to which the refund relates; and the company was a *franking entity for the whole or part of that income year	that part of the refund that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the day on which the refund is received

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Franking debits in the franking account

Item	If:	A debit of:	Arises:
3	the company *receives a *tax offset refund; and the company does not satisfy the *residency requirement for the income year to which the refund relates; and the company was a *franking entity for the whole or part of that income year; and the company's *franking account is in *surplus on the day on which the refund is received	the lesser of: (a) that part of the refund that is attributable to: (i) the *shareholders' share of the income tax liability of the company for that income year; and (ii) the period during which the company was a franking entity; and (b) the amount of the *franking surplus	on the day on which the refund is received
4	the company *receives a refund of diverted profits tax; and the company satisfies the *residency requirement for the income year to which the refund relates; and the company was a *franking entity for the whole or part of that income year	that part of the refund that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity; multiplied by the proportion worked out under subsection (3)	on the day on which the refund is received

Note 1: On the assessment day, a franking debit that arises under item 1 of this table reverses the effect of a franking credit that arose under item 1 of the table in section 219-15.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

219-40 Residency requirement

The tables in sections 219-15 and 219-30 are relevant for the purposes of subsection 205-25(1) (about the residency requirement).

219-45 Assessment day

A *life insurance company's ***assessment day*** for an income year is the earlier of:

(a) the day on which the company furnishes its *income tax return for that income year; or

(b) the day on which the Commissioner makes an assessment of the amount of the company's taxable income for that income year under section 166 of the *Income Tax Assessment Act 1936*.

219-50 Amount attributable to shareholders' share of income tax liability

(1) Subsection (2) applies to a *life insurance company in relation to the payment or refund mentioned in an item of a table in this Subdivision (except item 1 of the table in section 219-15).

Note: The operation of this section is affected by section 219-75 if a tax offset under section 205-70 is applied to work out the company's income tax liability.

(2) For the purposes of this Part, the part of the payment or refund that is attributable to the *shareholders' share of the income tax liability of the company for an income year must be worked out as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Method statement

Step 1. Work out the part of the company's total income tax liability for the income year that is attributable to the company's shareholders.

The result of this step is the ***shareholders' share*** of the income tax liability of the company for the income year.

Step 2. Divide the step 1 result by that total income tax liability.

The result of this step is the ***shareholders' ratio*** for the income year.

Step 3. Multiply the amount of the payment or refund by the *shareholders' ratio.

The result of this step is the part of the payment or refund that is attributable to the *shareholders' share of the income tax liability of the company for the income year.

(3) For the purposes of this Part, the estimate mentioned in item 1 of the table in section 219-15 (the part of a payment estimated to be attributable to the *shareholders' share of a company's income tax liability for an income year) must be worked out on the basis of:

(a) subject to paragraph (b), the method statement in subsection (2); and

(b) the company's reasonable estimate of the amounts that, on the company's *assessment day for the income year, will be:

(i) its total income tax liability for the income year; and

(ii) the part of that total income tax liability that is attributable to its shareholders.

(4) In working out the part of the income tax liability of a *life insurance company that is attributable to the shareholders of the company for the purposes of this section, regard is to be had to the accounting records of the company.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

219-55 Adjustment resulting from an amended assessment

(1) This section applies in relation to the *franking account of a *life insurance company if:

(a) the assessment of the company's income tax liability for an income year is amended on a particular day (the ***adjustment day***); and

(b) the *shareholders' ratio (the ***new ratio***) based on the amended assessment is different from the shareholders' ratio used previously in relation to that income year to work out a *franking credit or *franking debit for the company; and

(c) the franking account would have a different balance on the adjustment day if the new ratio had been used to work out all the franking credits and franking debits covered by paragraph (b).

Note: The operation of this section is affected by section 219-75 if a tax offset under section 205-70 is, or has been, applied to work out the company's income tax liability.

(2) On the adjustment day, a *franking credit or *franking debit (as appropriate) of the amount worked out under subsection (3) arises in the *franking account.

(3) The amount is an adjustment that will bring the *franking account to the balance that it would have on the adjustment day if the new ratio had been used to work out all the *franking credits and *franking debits covered by paragraph (1)(b).

Example: On the basis of a shareholders' ratio of 60% for the income year, franking credits of the amounts of $6,000, $6,000, $6,000 and $6,000 arose under item 2 of the table in section 219-15 for Company X.

An amended assessment results in a new shareholders' ratio of 70%. Under this section, a franking credit of $4,000 arises on the day of the amended assessment to bring the balance of the franking account from $24,000 to $28,000, which would be the account's balance if the new shareholders' ratio had been used.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

219-70 Tax offset under section 205-70

(1) For the purposes of paragraph 205-70(1)(c), if a *life insurance company was entitled to a *tax offset under section 205-70 for a previous income year, assume section 63-10 applied to the part of the company's basic income tax liability for that previous income year that was attributable to its shareholders.

(2) In working out the part of the company's basic income tax liability that was attributable to its shareholders, have regard to the company's accounting records.

Example: The following apply to a life insurance company that satisfies the residency requirement for an income year:

(a) the company has a tax offset of $60,000 under section 205-70 (the franking deficit offset) for that year;

(b) the company's basic income tax liability for that year would be $100,000 if the franking deficit offset were disregarded;

(c) 20% of the $100,000 is attributable to the company's shareholders (the shareholders' part).

As a result of applying $20,000 of the franking deficit offset to reduce the shareholders' part to nil, the company's basic income tax liability becomes $80,000. The remaining $40,000 of the offset will be included in a franking deficit tax offset for the next income year for which the company satisfies the residency requirement.

219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied

Revised shareholders' ratio—modification of section 219-50

(1) Subsection (2) applies to a *life insurance company if a *tax offset under section 205-70 is applied to work out the company's income tax liability for an income year.

Note: This means subsection (2) applies if the tax offset is applied to reduce the part of the company's basic income tax liability mentioned in subsection 219-70(1) in relation to the income year.

(2) For the purposes of working out the amount of a *franking credit or *franking debit for the company in relation to the income year

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(other than a franking credit covered by item 1 of the table in section 219-15), section 219-50 has effect as if:

(a) steps 1 and 2 of the method statement in section 219-50 were omitted; and

(b) the reference in step 3 of that method statement to the *shareholders' ratio were a reference to the ***revised shareholders' ratio*** worked out as follows:

Method statement

Step 1. Work out the remainder (if any) of the part of the company's basic income tax liability mentioned in subsection 219-70(1) after the *tax offset is applied to reduce that part.

Note: The part mentioned in that subsection is the part of an amount of the company's income tax liability for the income year that is attributable to its shareholders.

Step 2. Divide the step 1 result by the company's total income tax liability for the income year (after applying the *tax offset).

The result (which can be nil) is the company's ***revised shareholders' ratio*** for the income year.

Example: For the 2002-2003 income year X Co (which is a life insurance company) has a tax offset of $68,000 under section 205-70. Its income tax liability for that year would have been $400,000 on the assessment day (1 February 2004) if the tax offset were disregarded. Of that liability, $80,000 is attributable to the shareholders. The step 1 result is therefore $12,000 ($80,000 minus $68,000).

X Co's income tax liability after applying the tax offset is $332,000 ($400,000 minus $68,000). The revised shareholders' ratio is therefore 3/83 ($12,000 divided by $332,000).

For that income year, the company paid $249,000 of PAYG instalments before the assessment day and $83,000 of income tax one month after that day.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

On the assessment day, a franking credit of $9,000 arises under item 2 of the table in section 219-15 ($249,000 multiplied by 3/83). On the day the additional amount of tax is paid, another franking credit of $3,000 arises under item 4 of that table ($83,000 multiplied by 3/83).

Adjustment resulting from amended assessment—modification of section 219-55

(3) Subsection (4) applies to a *life insurance company if:

(a) the assessment of the company's income tax liability for an income year (the ***previous assessment***) is amended; and

(b) at least one of the following applies:

(i) a *tax offset under section 205-70 is applied in making that amended assessment;

(ii) a tax offset under section 205-70 was applied in making the previous assessment.

(4) Section 219-55 has effect in relation to the company as if:

(a) if subparagraph (3)(b)(i) of this section applies—a reference in that section to the new ratio were a reference to the revised shareholders' ratio that is based on the amended assessment; and

(b) if subparagraph (3)(b)(ii) of this section applies—the reference in paragraph (1)(b) of that section to the *shareholders' ratio used previously were a reference to the revised shareholders' ratio that is based on the previous assessment.

Example: Continuing the example in subsection (2), the assessment of X Co for the 2002-2003 income year is amended on 31 March 2004. Under the amended assessment, X Co's income tax liability would be $300,000 if the tax offset were disregarded.

Of that liability, $60,000 is attributable to the shareholders. That amount is reduced by the tax offset of $68,000 to nil.

X Co's liability to pay income tax is therefore reduced to $240,000 ($300,000 minus $60,000) and it will receive a refund of $92,000 ($332,000 minus $240,000). As the revised shareholders' ratio has become nil, no franking debit arises from the refund.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

The franking credits that previously arose from the payments of PAYG instalments and income tax would not have arisen if the new revised shareholders' ratio had been used. Section 219-55 (as applied by subsection (4) of this section) therefore operates to create an adjustment to cancel those franking credits. The adjustment is a franking debit of $12,000 that arises on the day of the amendment of the assessment.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Division 220—Imputation for NZ resident companies and related companies

Table of Subdivisions

Guide to Division 220
220-A Objects of this Division
220-B NZ company treated as Australian resident for imputation system if company chooses
220-C Modifications of other Divisions of this Part

Guide to Division 220

220-1 What this Division is about

A company resident in New Zealand may choose that the imputation system apply in relation to it. If it does, the rest of this Part applies in relation to it as if it were an Australian resident company, but with modifications. Some of the modifications also affect:

(a) other companies that are members of the same wholly-owned group; or

(b) entities that receive distributions from the company resident in New Zealand.

Subdivision 220-A—Objects of this Division

Table of sections

220-15 Objects
220-20 What is an ***NZ resident***?

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

220-15 Objects

(1) The main objects of this Division are:

(a) to allow a company that is an *NZ resident to choose that the *imputation system apply in relation to it; and

(b) if the company makes that choice, to apply the rest of this Part in relation to the company generally as if it were an Australian resident.

(2) Another object of this Division is to prevent the benefits of the *imputation system from being inappropriately made available to or through a *member of a company that is a foreign resident, by modifying the way in which the rest of this Part applies to:

(a) a company that has chosen that the system apply in relation to it; and

(b) other companies that are members of the same *wholly-owned group as that company; and

(c) other entities that receive (directly or indirectly) *distributions from that company.

220-20 What is an *NZ resident*?

Company

(1) A company is an ***NZ resident*** if:

(a) the company is incorporated in New Zealand; or

(b) the company is not incorporated in New Zealand but carries on business there and either:

(i) has its central management and control there; or

(ii) has its voting power controlled by *members who are NZ residents.

Natural person

(2) A natural person is an ***NZ resident*** if he or she resides in New Zealand.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) A natural person is also an ***NZ resident*** if his or her domicile is in New Zealand, unless the Commissioner is satisfied that the person's permanent place of abode is outside New Zealand.

(4) A natural person is also an ***NZ resident*** if he or she has actually been in New Zealand, continuously or intermittently, during more than half of the income year, unless the Commissioner is satisfied that:

(a) the person's usual place of abode is outside New Zealand; and

(b) the person does not intend to take up residence in New Zealand.

Not an NZ resident if an Australian resident

(5) A person is *not* an ***NZ resident*** if the person is an Australian resident. This has effect despite subsections (1), (2), (3) and (4).

Subdivision 220-B—NZ company treated as Australian resident for imputation system if company chooses

Table of sections

220-25 Application of provisions of Part 3-6 outside this Division
220-30 What is an ***NZ franking company***?
220-35 Making an NZ franking choice
220-40 When is an NZ franking choice in force?
220-45 Revoking an NZ franking choice
220-50 Cancelling an NZ franking choice

220-25 Application of provisions of Part 3-6 outside this Division

(1) The provisions of Part 3-6 outside this Division apply in relation to a company that is an *NZ franking company at a time as if it were an Australian resident at that time.

(2) They apply with the modifications made by the other sections of this Division.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

220-30 What is an *NZ franking company*?

A company is an ***NZ franking company*** at a time if, at the time, the company is an *NZ resident and has an *NZ franking choice in force.

220-35 Making an NZ franking choice

A company that is an *NZ resident may, by notice in the *approved form given to the Commissioner, choose that the *imputation system is to apply in relation to the company. The choice is an ***NZ franking choice***.

220-40 When is an NZ franking choice in force?

(1) A company's *NZ franking choice comes into force:
  (a) at the start of the company's income year in which the notice was given to the Commissioner; or
  (b) at the start of a later income year specified in the notice.

(2) The *NZ franking choice continues in force until it is revoked by the company or cancelled by the Commissioner.

220-45 Revoking an NZ franking choice

(1) A company may revoke its *NZ franking choice by notice in the *approved form given to the Commissioner.

(2) To avoid doubt, the revocation takes effect when the notice is given to the Commissioner.

220-50 Cancelling an NZ franking choice

(1) The Commissioner may cancel a company's *NZ franking choice by written notice given to the company, but only if the Commissioner is satisfied that either:
  (a) the company was liable to pay *franking deficit tax or *over-franking tax (whether or not because of

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

section 220-800 (about joint and several liability for the tax)) and the company did not pay the tax by the day on which it was due and payable; or

(b) the company has not complied with subsection 214-15(2) or 214-20(2) (about giving the Commissioner a *franking return).

(2) To avoid doubt, the cancellation takes effect when the notice is given to the company.

Review of cancellation

(3) If the company is dissatisfied with the cancellation of the choice, it may object against the cancellation in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Note: That Part provides for review of the cancellation objected against.

Effect of cancelling a choice on making another choice in future

(4) If the company makes another *NZ franking choice, it does not come into force unless the Commissioner consents in writing to the choice coming into force.

(5) In consenting, the Commissioner may specify when the choice is to come into force. The consent has effect according to its terms, despite section 220-40.

(6) The Commissioner must give a copy of the consent to the company.

Subdivision 220-C—Modifications of other Divisions of this Part

Table of sections

Franking NZ franking companies' distributions

220-100 Residency requirement for franking
220-105 Unfrankable distributions by NZ franking companies

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

220-110 Maximum franking credit under section 202-60

NZ franking companies' franking accounts etc.

220-205 Franking credit for payment of NZ franking company's withholding tax liability
220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company
220-215 Effect on franking account if NZ franking choice ceases to be in force

Franking accounts of NZ franking company and some of its 100% subsidiaries

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

Effect of NZ franking company making distribution that is non-assessable and non-exempt

220-350 Providing for a franking credit to arise

Effects of supplementary dividend from NZ franking company

220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend
220-405 Franked distribution and supplementary dividend flowing indirectly
220-410 Franking credit reduced if tax offset reduced

Rules about exempting entities

220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities
220-505 Post-choice NZ franking company is not automatically prescribed person
220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

NZ franking companies' exempting accounts

220-605 Effect on exempting account if NZ franking choice ceases to be in force

Tax effect of distribution franked by NZ franking company with an exempting credit

220-700 Tax effect of distribution franked by NZ franking company with an exempting credit

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Joint and several liability for NZ resident company's unmet franking liabilities

220-800 Joint and several liability for NZ resident company's franking tax etc.

Franking NZ franking companies' distributions

220-100 Residency requirement for franking

(1) An *NZ franking company satisfies the ***residency requirement*** when making a *distribution only if the distribution is made at least one month after the notice constituting the company's *NZ franking choice was given to the Commissioner.

Note: This section is relevant to both section 202-5 and section 208-60, which let a company frank a distribution, or frank a distribution with an exempting credit, only if the company satisfies the residency requirement when making the distribution.

(2) Section 202-20, as applying because of section 220-25, has effect subject to this section.

Note: Section 202-20 sets out how a company satisfies the residency requirement when making a distribution.

220-105 Unfrankable distributions by NZ franking companies

(1) These *distributions by an *NZ franking company are *unfrankable:

(a) a conduit tax relief additional dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand);

(b) a supplementary dividend (as defined in that section).

(2) This section does not limit section 202-45 (about *unfrankable distributions).

220-110 Maximum franking credit under section 202-60

For the purposes of working out the *maximum franking credit for a *frankable distribution made by an *NZ franking company in a *foreign currency, translate the amount of the distribution into

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Australian currency at the exchange rate applicable at the time of the decision to make the *distribution.

NZ franking companies' franking accounts etc.

220-205 Franking credit for payment of NZ franking company's withholding tax liability

(1) A *franking credit arises in the *franking account of a company on the day a payment is made of *withholding tax that the company is liable under section 128B of the *Income Tax Assessment Act 1936* to pay, if:

(a) because of section 220-25, the company satisfies the *residency requirement for the income year in which it *derived the income on which it was liable to pay the withholding tax; and

(b) the company is a *franking entity for the whole or part of that income year.

The amount of the credit equals the amount of the payment.

(2) For the purposes of determining whether the company satisfies the *residency requirement for the income year described in paragraph (1)(a), section 205-25 has effect as if the derivation of the income described in that paragraph were an event specified in a relevant table for the purposes of that section.

220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company

No tax offset for NZ franking company

(1) An *NZ franking company to which a *franked distribution is made or *flows indirectly is not entitled under Division 207 to a *tax offset for the *distribution. That Division has effect subject to this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Denial of tax offset does not stop franking credit or debit arising

(2) However, subsection (1) does not prevent a *franking credit or *franking debit from arising in the *NZ franking company's *franking account under Division 205 or 208. To avoid doubt, the amount of the credit or debit, and the time at which it arises, are the same as they would be apart from subsection (1).

Note: This has the effect that the amount and timing of the credit or debit are worked out as if the NZ franking company had been entitled to the tax offset that subsection (1) prevents the company from being entitled to.

220-215 Effect on franking account if NZ franking choice ceases to be in force

(1) This section has effect if:

(a) a company has made an *NZ franking choice; and

(b) the choice is revoked or cancelled at a time (the ***end time***); and

(c) immediately before the end time the company is a foreign resident.

Franking debit if franking surplus just before end time

(2) A *franking debit arises in the company's *franking account on the day during which the end time occurs if the account was in *surplus immediately before that time. The amount of the debit equals the *franking surplus.

Franking deficit tax if franking deficit just before end time

(3) If the company's *franking account was in *deficit immediately before the end time, subsection 205-45(3) applies in relation to the company as if it ceased to be a *franking entity at the end time.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

(4) Subsection (3) does not limit the effect of subsection 205-45(3).

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Take account of franking debit arising under section 220-605

(5) Take account of any *franking debit arising under section 220-605 because of the revocation or cancellation in working out for the purposes of this section whether the company's *franking account is in *surplus or *deficit immediately before the end time.

Note: Section 220-605 provides for a franking debit to arise in the company's franking account immediately before the end time if, immediately before the end time, the company was a former exempting entity and its exempting account was in deficit.

Franking accounts of NZ franking company and some of its 100% subsidiaries

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

(1) This section has effect if all these conditions are met in relation to a company (the ***franking donor company***) at a time:

(a) the franking donor company is at the time:

(i) an Australian resident or a *post-choice NZ franking company; and

(ii) a *100% subsidiary of a post-choice NZ franking company (the ***parent company***) that is not a 100% subsidiary of another company that is a member of the same *wholly-owned group as the parent company;

(b) the franking donor company is at the time a 100% subsidiary of a post-choice NZ franking company (the ***NZ recipient company***) in relation to which these requirements are met:

(i) there must be no companies that are *NZ residents and 100% subsidiaries of the NZ recipient company interposed between it and the franking donor company;

(ii) the NZ recipient company must be either the parent company or a 100% subsidiary of the parent company;

(c) there are interposed between the NZ recipient company and the franking donor company at the time one or more companies, each of which:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(i) is a 100% subsidiary of the NZ recipient company; and
(ii) is neither an Australian resident nor an NZ resident.

*What is a **post-choice NZ franking company**?*

(2) A company is a ***post-choice NZ franking company*** at a time if:
(a) at the time, the company is an *NZ franking company; and
(b) the notice constituting the *NZ franking choice that makes the company an NZ franking company at the time was given to the Commissioner at or before the time.

Franking donor company's franking surplus when conditions met

(3) If the franking donor company's *franking account is in *surplus at the first time all the conditions in subsection (1) are met:
(a) a *franking debit equal to the surplus arises in the franking donor company's franking account immediately after that time; and
(b) a *franking credit equal to the surplus arises in the NZ recipient company's franking account immediately after that time.

Franking donor company's franking deficit when conditions met

(4) If the franking donor company's *franking account is in *deficit at the first time all the conditions in subsection (1) are met, subsection 205-45(3) applies in relation to the franking donor company as if:
(a) it ceased to be a *franking entity at that time; and
(b) its franking account had been in deficit to the same extent immediately before that cessation.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

NZ recipient company's franking account after conditions are met

(5) If, apart from paragraph (a), a *franking credit or *franking debit would arise in the franking donor company's *franking account at a time (the ***accounting time***) that is a time when all the conditions in subsection (1) are met but after the first time at which all those conditions are met in relation to the franking donor company:

(a) the credit or debit does not arise in the franking donor company's franking account; and

(b) a credit or debit of the same amount arises at the accounting time in the NZ recipient company's franking account instead.

(6) However, subsection (5) does not apply in relation to:

(a) a *franking debit arising in the franking donor company's *franking account under subsection (3); or

(b) a *franking credit arising in that account because of item 5 of the table in section 205-15 in conjunction with subsection (4) of this section; or

(c) a franking debit arising in that account under paragraph 220-605(3)(a).

Note 1: Item 5 of the table in section 205-15 gives rise to a franking credit immediately after a liability to franking deficit tax arises. Subsection (4) of this section causes such a liability to arise under section 205-45.

Note 2: Paragraph 220-605(3)(a) gives rise to a franking debit if the NZ franking choice of a company that is a former exempting entity is revoked or cancelled and the company's exempting account is in deficit immediately before the revocation or cancellation.

Franking donor company's benchmark franking percentage

(7) Subsection (5) does not affect the franking donor company's *benchmark franking percentage.

Special rules if franking donor company is former exempting entity

(8) If the franking donor company becomes a *former exempting entity at the first time all the conditions in subsection (1) are met:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) subsections (3) and (4) do not apply; and
(b) subsection (5) does not apply in relation to:
(i) a *franking credit arising in the franking donor company's *franking account under item 1 of the table in section 208-130 immediately after that time; or
(ii) a *franking debit arising in the franking donor company's franking account under item 1 of the table in section 208-145 immediately after that time.

Note: Subsection (8) ensures that the franking donor company's franking account has a nil balance immediately after the company becomes a former exempting entity and that there is an appropriate balance in the company's exempting account that is not made available for use by the NZ recipient company in franking distributions.

Effect of NZ franking company making distribution that is non-assessable and non-exempt

220-350 Providing for a franking credit to arise

(1) This section has effect if:
(a) an *NZ franking company makes a *franked distribution to a company (the ***receiving company***); and
(b) the distribution does not *flow indirectly through the receiving company to another entity; and
(c) because of section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*:
(i) all of the distribution is *exempt income, or is *non-assessable non-exempt income, in the hands of the receiving company; or
(ii) part of the distribution is exempt income, or is non-assessable non-exempt income, in the hands of the receiving company.

(2) A *franking credit arises in the receiving company's *franking account on the day on which the distribution is made.

Note: If only part of the distribution is exempt income or non-assessable non-exempt income:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) a franking credit in relation to the distribution will arise under this section in relation to the part of the distribution that is exempt income, or that is non-assessable non-exempt income; and

(b) another franking credit in relation to the distribution will arise under item 3 of the table in subsection 205-15(1) in relation to the part of the distribution that is not exempt income, or that is not non-assessable non-exempt income (see also subsection 207-90(2)).

(3) The amount of the *franking credit that so arises is:

(a) if subparagraph (1)(c)(i) applies—the amount of the franking credit on the distribution made by the *NZ franking company; or

(b) if subparagraph (1)(c)(ii) applies—so much of the franking credit on the distribution made by the NZ franking company as is attributable to the part of the distribution referred to in that subparagraph.

(4) The table in subsection 205-15(1) has effect subject to this section.

Effects of supplementary dividend from NZ franking company

220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend

(1) This section has effect if:

(a) an *NZ franking company:

(i) makes a *franked distribution to an entity (the ***recipient***) in an income year; and

(ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) to the recipient in connection with the franked distribution; and

(b) an amount is included in the recipient's assessable income for the income year under section 207-20, and the recipient is entitled to a *tax offset for the income year under that section or section 207-110; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(c) the recipient is entitled to a tax offset under Division 770 because of the inclusion of the *distribution in the recipient's assessable income for the income year.

Reduced gross-up

(2) The amount included in the recipient's assessable income under section 207-20 is reduced by the amount of the supplementary dividend (but not below zero).

Reduced tax offset

(3) The amount of the *tax offset under section 207-20 is reduced by the amount of the supplementary dividend (but not below zero).

What happens if certain provisions apply

(4) Subsections (2) and (3) do not apply to the recipient in relation to the *franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

(a) subsection 207-90(1);
(b) subsection 207-90(2);
(c) subsection 207-145(1);
(d) subsection 207-145(2).

(5) If subsection 207-90(2) or 207-145(2) would also apply to the recipient in relation to the *franked distribution, apply that subsection on the basis that:

(a) the amount of the *franking credit on the distribution;

had been reduced by:

(b) so much of the supplementary dividend as does not exceed that amount of the franking credit.

Relationship with sections 207-20, 207-90 and 207-145

(6) Sections 207-20, 207-90 and 207-145 have effect subject to this section.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

220-405 Franked distribution and supplementary dividend flowing indirectly

(1) This section has effect if:

(a) an *NZ franking company:

(i) makes a *franked distribution; and

(ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) in connection with the franked distribution; and

(b) the franked distribution and the supplementary dividend *flow indirectly to an entity (the ***recipient***) in an income year because the recipient is a partner in a partnership or a beneficiary or trustee of a trust; and

(c) the recipient is entitled under section 207-45 to a *tax offset in connection with the *distribution; and

(d) the recipient is entitled to a tax offset under Division 770 for the income year because of the distribution.

Recipient that is a partner or beneficiary

(2) If the *franked distribution *flows indirectly to the recipient under subsection 207-50(2) or (3), then:

(a) the recipient can deduct an amount for the income year that is equal to so much of its share of the supplementary dividend as does not exceed:

(i) if the distribution flows indirectly to the recipient under subsection 207-50(2)—the recipient's individual interest in relation to the distribution that is mentioned in that subsection; or

(ii) if the distribution flows indirectly to the recipient under subsection 207-50(3)—the recipient's share amount in relation to the distribution that is mentioned in that subsection; and

(b) the recipient's *tax offset under section 207-45 is reduced by so much of the deduction under paragraph (a) as does not exceed its *share of the *franking credit on the distribution.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Recipient that is a trustee

(3) If the *franked distribution *flows indirectly to the recipient under subsection 207-50(4), then:

(a) the share amount mentioned in that subsection in relation to the distribution is reduced by so much of the recipient's share of the supplementary dividend as does not exceed that share amount; and

(b) the recipient's *tax offset under section 207-45 is reduced by so much of the reduction under paragraph (a) as does not exceed its *share of the *franking credit on the distribution.

What happens if certain provisions apply

(4) Subsection (2) or (3) (as appropriate) does not apply to the recipient in relation to the *franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

(a) subsection 207-95(1);

(b) subsection 207-95(5);

(c) subsection 207-150(1);

(d) subsection 207-150(5).

(5) If subsection 207-90(5) or 207-150(5) would also apply to the recipient in relation to the *franked distribution, apply that subsection on the basis that:

(a) the amount of the recipient's *share of the *franking credit on the distribution;

had been reduced by:

(b) so much of the recipient's share of the supplementary dividend as does not exceed the amount of that share of the franking credit.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

When does a supplementary dividend flow to an entity?

(6) A supplementary dividend ***flows indirectly*** to an entity if it would have *flowed indirectly to the entity under subsection 207-50(2), (3) or (4), if:

(a) the dividend had been a *franked distribution; and

(b) a reference in that subsection to the entity's *share of the franked distribution had been a reference to the entity's share of the supplementary dividend.

Share of supplementary dividend

(7) The entity's ***share of the supplementary dividend*** is worked out as follows:

$$\text{Amount of the supplementary dividend} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

(8) Nothing in this section has the effect of including in the entity's assessable income its share of the supplementary dividend.

Relationship with Subdivisions 207-B, 207-D, 207-E and 207-F

(9) Subdivisions 207-B, 207-D, 207-E and 207-F have effect subject to this section.

220-410 Franking credit reduced if tax offset reduced

(1) If, under section 220-400 or 220-405, a *corporate tax entity's *tax offset (the ***reduced tax offset***) for the *franked distribution described in that section is less than it would be apart from that section, the *franking credit arising in that entity's *franking account because of the *distribution is equal to the reduced tax offset.

(2) The following provisions have effect subject to this section:

(a) items 3 and 4 of the table in section 205-15;

(b) items 5 and 6 of the table in section 219-15.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Note: Each of those items gives rise to a franking credit for a franked distribution if the recipient is entitled under Division 207 to a tax offset for the distribution. Those items provide that the amount of the credit equals the amount of that offset.

Rules about exempting entities

220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities

(1) A company is not an *exempting entity at a particular time if:
  (a) it is a *post-choice NZ franking company at the time; and
  (b) the company is a *listed public company at the time.

(2) A company (the ***non-exempting company***) is not an *exempting entity at a particular time if at the time:
  (a) the non-exempting company is a *100% subsidiary of a company (the ***listed company***) that is not an exempting entity because of subsection (1); and
  (b) the non-exempting company is an Australian resident or a *post-choice NZ franking company; and
  (c) if:
    (i) there are one or more companies interposed between the non-exempting company and the listed company; and
    (ii) one or more of the interposed companies are *NZ residents;

  all of the interposed companies that are NZ residents are post-choice NZ franking companies.

(3) This section has effect despite section 208-20 (about an entity being an *exempting entity).

220-505 Post-choice NZ franking company is not automatically prescribed person

(1) A *post-choice NZ franking company is not a prescribed person under section 208-40 for the purposes of working out whether another *corporate tax entity is an *exempting entity at a particular

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

time because it is effectively owned by prescribed persons within the meaning of section 208-25.

(2) However, this section does not prevent the company from being taken under section 208-45 to be a prescribed person for those purposes.

220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

(1) This section has effect for the purposes of working out whether a company is an *exempting entity at a particular time because it is effectively owned by prescribed persons within the meaning of section 208-25, if:

(a) at the time the company is a *100% subsidiary of another company (the ***parent company***) that is not a 100% subsidiary of another member of the same *wholly-owned group; and

(b) at the time the parent company is a *post-choice NZ franking company; and

(c) there is at least one company (the ***non-Tasman company***) that meets all these conditions:

(i) the non-Tasman company is neither an Australian resident nor an *NZ resident at the time;

(ii) the non-Tasman company is a member of the same wholly-owned group at the time;

(iii) the non-Tasman company is interposed between the parent company and a company that, at the time, is an Australian resident or a post-choice NZ franking company.

(2) At the time, each company that is a *100% subsidiary of the parent company is a prescribed person if the parent company is a prescribed person at the time for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(3) At the time, each company that is a *100% subsidiary of the parent company is *not* a prescribed person if the parent company is *not* a prescribed person for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).

(4) This section has effect despite sections 208-40, 208-45 and 220-505 so far as those sections apply in relation to a *100% subsidiary of the parent company.

NZ franking companies' exempting accounts

220-605 Effect on exempting account if NZ franking choice ceases to be in force

(1) This section has effect if:
  (a) a company has made an *NZ franking choice; and
  (b) the choice is revoked or cancelled at a time (the ***end time***); and
  (c) immediately before the end time:
    (i) the company is a foreign resident; and
    (ii) the company is a *former exempting entity.

Exempting debit if exempting surplus just before end time

(2) An *exempting debit arises in the company's *exempting account at the end time if the account was in *surplus immediately before that time. The amount of the debit equals the *exempting surplus.

If exempting deficit just before end time

(3) If the company's *exempting account was in *deficit immediately before the end time:
  (a) a *franking debit equal to that deficit arises in the company's *franking account immediately before the end time; and
  (b) an *exempting credit equal to that deficit arises in the company's exempting account at the end time.

---

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

Tax effect of distribution franked by NZ franking company with an exempting credit

220-700 Tax effect of distribution franked by NZ franking company with an exempting credit

(1) This section has effect if an *NZ franking company *franks with an exempting credit a *distribution the company makes when it is a *former exempting entity.

(2) If, under Subdivision 208-H, Division 207 applies in relation to the *distribution, it applies subject to the provisions of this Division that modify the effect of that Division.

Note 1: Subdivision 208-H provides in some cases for the tax effect of a distribution franked with an exempting credit by applying Division 207 as if the distribution were a franked distribution.

Note 2: Sections 220-400 and 220-405 modify the effect of Division 207 so far as it relates to the tax effect of distributions by NZ franking companies that pay supplementary dividends in connection with the distributions.

(3) Subdivision 208-H has effect subject to this section.

Joint and several liability for NZ resident company's unmet franking liabilities

220-800 Joint and several liability for NZ resident company's franking tax etc.

(1) This section has effect if:

(a) a company (the ***defaulter***) became liable under another section to pay an amount described in subsection (2) because the company was an *NZ franking company; and

(b) the amount was unpaid by the time (the ***defaulter's due time***) it was due and payable by the defaulter; and

(c) at any time during the period for the amount (see subsection (2)), the defaulter was a member of the same

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

*wholly-owned group as one or more other companies (each of which is a ***contributor***).

(2) For the purposes of subsection (1), the amount and period are shown in the table:

Amount and period

Item	For an amount of this kind:	The period is:
1	*Franking deficit tax	Whichever of these periods is relevant: (a) if the defaulter was liable to pay the tax because its franking account was in deficit at the end of an income year—that income year; (b) if the defaulter was liable to pay the tax because of another event—the period starting at the start of the income year in which the event occurred and ending when the event occurred
2	*Over-franking tax	The income year in which the defaulter made the *frankable distribution that made the defaulter liable to pay the tax
3	*General interest charge on *franking deficit tax or *over-franking tax	The period identified under item 1 or 2 for the tax
4	Administrative penalty that: (a) is mentioned in section 284-75, 284-145, 286-75 or 288-25 in Schedule 1 to the *Taxation Administration Act 1953*; and (b) relates entirely to *franking deficit tax or *over-franking tax	The period identified under item 1 or 2 for the tax

(3) Just after the defaulter's due time, these companies become jointly and severally liable to pay the unpaid amount:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(a) the defaulter;

(b) each contributor, other than one that, at that time:

(i) is neither an Australian resident nor an *NZ resident; or

(ii) is prohibited by an *Australian law or a law of New Zealand from entering into an *arrangement that would make the contributor jointly or severally liable for the unpaid amount.

(4) The joint and several liability of a particular contributor becomes due and payable by the contributor 14 days after the Commissioner gives it written notice of the liability.

Note 1: Two or more contributors will have different due and payable dates for the same liability if the Commissioner gives them notice of their liability on different days.

Note 2: This section does not affect the time at which the liability for the unpaid amount arose for, or became due and payable by, the defaulter.

(5) If:

(a) the unpaid amount (the ***first interest amount***) is *general interest charge for a day in relation to another unpaid amount (the ***primary liability***) that consists of *franking deficit tax or *over-franking tax; and

(b) on a day the Commissioner gives a particular contributor written notice under subsection (4) of the contributor's liability for the first interest amount; and

(c) general interest charge arises:

(i) for a day (the ***later day***) after the days mentioned in paragraphs (a) and (b); and

(ii) in relation to the primary liability; and

(d) the general interest charge for the later day has not been paid or otherwise discharged in full by the time it became due and payable;

the Commissioner is taken to have given the contributor written notice under subsection (4) of the general interest charge for the later day on that later day.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017

(6) Section 254 of the *Income Tax Assessment Act 1936* applies in relation to the contributors' liability as if it were a liability for tax.

Note: Section 254 of the *Income Tax Assessment Act 1936* deals with the payment of tax by agents and trustees.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2017C00336 registered 12/10/2017