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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

**Exposure Draft**

**New Business Tax System (Entity  
Taxation) Bill 2000**

**No.     , 2000**

*(Treasury)*

**A Bill for an Act about income tax to  
implement a New Business Tax System, and  
for related purposes**



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<p><b>DRAFT-IN-CONFIDENCE</b></p> <p>This draft is supplied in confidence and should be given appropriate protection</p>
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OPC drafter to complete	
Does this Bill need a message? (See H of R Practice, third ed, pp392-397.) If yes list relevant clauses/items—	No
Does this Bill need a notice? (See H of R Standing Order 291.) If no list relevant clauses/items—	No
Is there any reason why this Bill should not be introduced in the Senate? (See Constitution section 53 and 55 and Drafting Direction 9/1994.)	Yes

## **A Bill for an Act about income tax to implement a New Business Tax System, and for related purposes**

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *New Business Tax System (Entity Taxation) Act 2000*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Taxation of non-fixed trusts**

### ***Income Tax Assessment Act 1997***

#### **1 Subsection 3-5(1)**

Repeal the subsection, substitute:

- (1) Income tax is payable for each year by each individual, each company and each trust covered by the non-fixed trust rules, and by some other entities.

Note 1: An entity that is exempt under Division 50 or another Commonwealth law does not have to pay income tax.

Note 2: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See Division 785.

Note 3: Income tax is imposed by the *Income Tax Act 1986* and the other Acts referred to in the definition of **income tax** in section 995-1.

#### **2 Section 4-1**

Repeal the section, substitute:

##### **4-1 Who must pay income tax**

Income tax is payable by each individual, each company and each trust covered by the non-fixed trust rules, and by some other entities.

For a full list of who must pay income tax, see Division 9, starting at section 9-1.

Note 1: The actual amount of income tax payable may be nil.

Note 2: There are special rules in Division 159 for applying the Act to non-fixed trusts (which are not legal persons).

#### **3 Section 9-1 (table item 2A)**

Renumber as item 3.

#### **4 Section 9-1 (after table item 2A)**

Insert:

- 4 A trust covered by the \* non-fixed trust rules section 4-1

**5 Section 9-1 (table item 3)**

Renumber as item 5.

**6 Section 9-1 (table item 4)**

Renumber as item 6.

**7 Section 9-1 (table item 5)**

Repeal the item, substitute:

- 7 A trustee (except a trustee of a trust covered by the \* non-fixed trust rules or a trustee covered by a later item in this table), but only in respect of some kinds of income of the trust **sections 98, 99, 99A and 102**

**8 Section 9-1 (table item 6)**

Renumber as item 8.

**9 Section 9-1 (table item 7)**

Renumber as item 9.

**10 Section 9-1 (table item 8)**

Renumber as item 10.

**11 Section 9-1 (table item 9)**

Renumber as item 11.

**12 Section 9-1 (table item 10)**

Renumber as item 12.

**13 Section 9-1 (table item 11)**

Renumber as item 13.

**14 Section 9-1 (table item 12)**

Renumber as item 14.

**15 Section 9-5 (table item 1AA)**

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Renumber as item 1.

**16 Section 9-5 (table item 1A)**

Renumber as item 2.

**17 Section 9-5 (table item 1)**

Renumber as item 3.

**18 Section 9-5 (table item 1)**

Omit “item 5”, substitute “item 7”.

**19 Section 9-5 (table item 2)**

Renumber as item 4.

**20 Section 9-5 (table item 3)**

Renumber as item 5.

**21 Section 9-5 (table item 4)**

Renumber as item 6.

**22 Section 9-5 (table item 5)**

Renumber as item 7.

**23 Part 3-5 (heading)**

Repeal the heading, substitute:

**Part 3-5—Non-fixed trust rules**

**Division 153—Overview of non-fixed trust rules**

**Table of Subdivisions**

Guide to Division 153

- 153-A Guide to the non-fixed trust rules
- 153-B Object of the non-fixed trust rules
- 153-C Coverage of the non-fixed trust rules

## Guide to Division 153

### 153-1 What this Division is about

This Division provides a Guide to the non-fixed trust rules and sets out the object of those rules.

## Subdivision 153-A—Guide to the non-fixed trust rules

### Table of sections

- 153-5 Background
- 153-10 Broad operation of non-fixed trust rules
- 153-15 Effect of this Subdivision

### 153-5 Background

*Trust covered by non-fixed trust rules liable for tax on its taxable income*

- (1) A trust covered by the non-fixed trust rules is liable to pay tax on its taxable income (see section 9-1).

*Trust covered by the non-fixed trust rules may pass on credits for the tax it has paid*

- (2) The trust may pass on to its members the benefit of the tax it has paid on its taxable income by allocating franking credits to most distributions it makes to those members (see Divisions 160 and 161).

### 153-10 Broad operation of non-fixed trust rules

The non-fixed trust rules (Divisions 153 to 159) are relevant to you if you are:

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- (a) a current or former member of a trust covered by the non-fixed trust rules; or
- (b) an associate of a current or former member of a trust covered by the non-fixed trust rules.

Those Divisions deal with the tax consequences for you of a distribution to you by the trust. The following table summarises the broad operation of those Divisions and related provisions:

<b>Broad operation of non-fixed trust rules</b>		
<b>Item</b>	<b>Major topic</b> <i>Subordinate topics</i> Rules	<b>Provisions</b>
<b>1</b>	<b>Taxation of distributions</b>	
1.1	<i>Distribution from profits</i> The distribution goes into your assessable income.	Subdivision 154-A
1.2	<i>Distribution from contributed capital</i> Distributions of contributed capital are dealt with under the CGT provisions.	Division 104
1.3	<i>Distribution of prior taxed amount if you are a tax free recipient</i> The distribution does not go into your assessable income and does not affect the cost base of your membership interest for CGT purposes.	Subdivision 154-C
1.4	<i>Distribution of prior taxed amount if you are not a tax free recipient</i> The distribution goes into your assessable income.	Subdivision 154-C
<b>2</b>	<b>General rules about distributions</b>	
2.1	<i>Basic rule on what is a distribution</i> Basically: (a) any amount the trust pays to you; or (b) any property the trust transfers to you; or (c) any amount the trust credits to you as a member of the trust; is a distribution to you if you are a member of the trust.	Subdivision 156-B

## Schedule 1 Taxation of non-fixed trusts

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### Broad operation of non-fixed trust rules

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Item	Major topic <i>Subordinate topics</i> Rules	Provisions
2.2	<i>Things specifically included as distributions</i> There are specific inclusions for: (a) benefits provided to former members; and (b) benefits provided to associates of current and former members; and (c) loans; and (d) forgiveness of debts; and (e) loan repayments; and (f) bonus unit issues.	Subdivisions 156-C to 156-F
2.3	<i>Source rules</i> To identify the source from which a distribution is made: (a) the profits first rule is usually applied; and (b) the slice rule is applied in some circumstances when a membership interest of yours ceases to exist. Special provision is made for prior taxed amounts.	Division 157
<b>3</b>	<b>Special rules about bonus unit issues</b>	
3.1	<i>How to determine the consideration for acquiring bonus units</i>	Division 158
<b>4</b>	<b>Other provisions</b>	
4.1	<i>What a non-fixed trust is</i>	definition of <b>non-fixed trust</b> in subsection 995-1(1)
4.2	<i>How to apply the Act to non-fixed trusts (which are not legal persons)</i>	Division 159

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### 153-15 Effect of this Subdivision

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

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## **Subdivision 153-B—Object of the non-fixed trust rules**

### **Table of sections**

153-20 Object of non-fixed trust rules

### **153-20 Object of non-fixed trust rules**

The object of the \*non-fixed trust rules is to provide tax treatment for \*non-fixed trusts, and for \*distributions made by non-fixed trusts, that is comparable with the tax treatment for companies and \*dividends paid by companies.

## **Subdivision 153-C—Coverage of the non-fixed trust rules**

### **Table of sections**

153-25 Trusts covered by the non-fixed trust rules

### **153-25 Trusts covered by the non-fixed trust rules**

- (1) The \*non-fixed trust rules apply to a trust for an income year if at any time during the income year the trust is a \*non-fixed trust unless it was at that time an \*excluded trust.
- (2) If the \*non-fixed trust rules apply to a trust for one income year of the trust, they apply to the trust for all subsequent income years of the trust:
  - (a) even if the trust ceases be a \*non-fixed trust; and
  - (b) even if the trust becomes an \*excluded trust.
- (3) A reference in the \*non-fixed trust rules to a ***non-fixed trust*** includes a reference to a trust to which those rules continue to apply after it has ceased to be a \*non-fixed trust.

## **Division 154—Non-fixed trusts rules (taxation of distributions)**

### **Table of Subdivisions**

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Guide to Division 154

- 154-A Distributions from profits
- 154-B Distributions from contributed capital
- 154-C Distributions of prior taxed amounts
- 154-D Distributions from mixed sources

**Guide to Division 154**

**154-1 What this Division is about**

This Division deals with the tax effect for you of receiving a distribution by a non-fixed trust. The tax effect depends on the source of the distribution (whether the distribution is made from profits, contributed capital or a prior taxed amount).

**Subdivision 154-A—Distributions from profits**

**154-5 Distributions made from profits included in your assessable income**

A \*distribution that a \*non-fixed trust makes to you from \*profits is included in your assessable income.

Note 1: Division 156 tells you what counts as a distribution.

Note 2: Division 157 tells you how to work out whether a distribution is made from profits.

**Subdivision 154-B—Distributions from contributed capital**

**154-10 Distributions made from contributed capital dealt with by CGT rules**

A \*distribution that a \*non-fixed trust makes to you from \*contributed capital is dealt with under the CGT provisions in Division 104.

Note 1: Division 156 tells you what counts as a distribution.

Note 2: Division 157 tells you how to work out whether a distribution is made from contributed capital.

## **Subdivision 154-C—Distributions of prior taxed amounts**

### **Guide to Subdivision 154-C**

#### **154-35 What this Subdivision is about**

This Subdivision prevents the taxation of a distribution of an amount to a member of a non-fixed trust if the member, or the trustee on behalf of the member, has previously been taxed on the amount.

#### **Table of sections**

##### **Operative provisions**

- 154-45 Object of this Subdivision
- 154-50 Effect of distribution of a prior taxed amount
- 154-55 Prior taxed amounts and tax-free recipients

*[This is the end of the Guide]*

#### **Operative provisions**

##### **154-45 Object of this Subdivision**

The object of this Subdivision is to prevent a \*member of a \*non-fixed trust being double taxed on a \*distribution by the trust of an amount that has already been included in the assessable income of:

- (a) the member; or
- (b) the trustee on behalf of the member; or
- (c) the trustee (if no member is presently entitled).

##### **154-50 Effect of distribution of a prior taxed amount**

- (1) This section deals with a \*distribution of a \*prior taxed amount that a \*non-fixed trust makes to you.

## Schedule 1 Taxation of non-fixed trusts

Note 1: Division 156 tells you what counts as a distribution.

Note 2: Division 157 tells you how to work out whether a distribution is of a prior taxed amount.

(2) The \*distribution:

(a) is not included in your assessable income; and

(b) is not exempt income;

if you are a \*tax-free recipient of the \*prior taxed amount.

Note: There is no adjustment to the cost base for CGT purposes of your membership interest in the non-fixed trust.

(3) The \*distribution is included in your assessable income if you are not a \*tax-free recipient of the \*prior taxed amount.

### 154-55 Prior taxed amounts and tax-free recipients

- (1) The following table sets out the amounts that are **prior taxed amounts** and who the **tax-free recipients** for those amounts are:

Prior taxed amounts and tax-free recipients		
Item	Prior taxed amount	You are a tax-free recipient if...
1	An amount that is assessable income of a beneficiary of a trust under section 97 of the <i>Income Tax Assessment Act 1936</i>	you are the beneficiary
2	An amount that was net income on which a trustee of a trust was liable to pay tax under section 98 of the <i>Income Tax Assessment Act 1936</i> (reduced by the amount of tax the trustee was liable to pay)	you are the beneficiary
3	An amount that was net income on which a trustee of a trust was liable to pay tax under section 99 or 99A of the <i>Income Tax Assessment Act 1936</i> (reduced by the amount of tax the trustee was liable to pay)	you were a *member of the trust during the income year for which the section 99 or section 99A assessment was made

**Prior taxed amounts and tax-free recipients**

<b>Item</b>	<b>Prior taxed amount</b>	<b>You are a tax-free recipient if...</b>
4	An amount on which a trustee of a *closely-held trust (within the meaning of Division 6D of Part III of the <i>Income Tax Assessment Act 1936</i> ) was liable to pay *ultimate beneficiary non-disclosure tax (reduced by the amount of tax the trustee was liable to pay)	you were: (a) an ultimate beneficiary for the amount; or (b) a beneficiary of the *trustee beneficiary for the amount at the time when the trustee beneficiary was presently entitled to the amount; or (c) a beneficiary of a trust whose trustee was a beneficiary of the trustee beneficiary at the time the trustee beneficiary was presently entitled to the amount (whether directly or through another trust whose trustee was so entitled)

- (2) An amount ceases to be a prior taxed amount if it is distributed at a time when the trust is not covered by the \*non-fixed trust rules.

**Subdivision 154-D—Distributions from mixed sources****154-60 Distributions from mixed sources**

For the purposes of this Act, a reference to a \*distribution by a \*non-fixed trust from, or not from, one of the following sources:

- (a) \*profits;
- (b) \*contributed capital;
- (c) a \*prior taxed amount;

is a reference to a distribution to the extent to which it is made from, or not made from, that source if the distribution is made from 2 or more sources.

## **Division 156—Non-fixed trust rules (what counts as a distribution)**

### **Table of Subdivisions**

#### Guide to Division 156

156-A—Object of this Division

156-B—Basic rule

156-C—Special inclusions

156-D—Exceptions to Subdivision 156-C

156-E—Benefits and loans through interposed entities

156-F—General rules applying to all amounts treated as distributions under Subdivision 156-C

### **Guide to Division 156**

#### **156-1 What this Division is about**

This Division tells you what counts as a distribution by a non-fixed trust.

The rules are intended to follow broadly the rules for determining what counts as a dividend by a company.

#### **Table of sections**

156-5 Overview of Division

#### **156-5 Overview of Division**

The following table summarises the broad operation of this Division:

**Over view of Division 156**

	<b>Major topic</b> <i>Minor topic</i> Rule	<b>Provisions</b>
<b>1</b>	<b>Basic test for what is a distribution</b>	Subdivision 156-B
1.1	A distribution is any money or other property distributed to you, or any amount credited to you as a member, if you are a member of the non-fixed trust.	section 156-20
<b>2</b>	<b>Specific inclusions</b>	Subdivision 156-C
2.1	<i>Arrangements that give rise to distributions</i> An arrangement covered by items 2.3, 2.5, 2.6, 2.7 and 2.8 is treated as giving rise to a distribution to you (even though the basic test in item 1.1 is not met).	
2.2	<i>Effect of arrangement giving rise to a distribution</i> The distribution will be included in your assessable income if it is made from profits. If the distribution is covered by item 2.3, 2.5 or 2.6, it is not frankable but does give rise to a debit to the non-fixed trust's franking account (under the imputation provisions).	
2.3	<i>Specific inclusion No. 1</i> <i>Distribution benefit provided to current and former members and associates</i> A distribution benefit that the non-fixed trust provides to you is treated as a distribution to you if: (a) you are a member, or an associate of a member, when the benefit is provided; or (b) it would be reasonable to conclude that the benefit was provided to you because you were at some time a member or an associate of a member.	section 156-75

**Schedule 1** Taxation of non-fixed trusts

<b>Over view of Division 156</b>		
	<b>Major topic</b> <i>Minor topic</i> Rule	<b>Provisions</b>
2.4	<i>What counts as providing a distribution benefit?</i>  The concept of <b>providing a distribution benefit</b> is very wide and includes: (a) making a payment (other than a loan) that is wholly, or to some extent, made to you, on your behalf or for your benefit; or (b) crediting an amount that is wholly, or to some extent, credited to you, on your behalf or for your benefit; or (c) transferring property to you.	subsection 156-75(2)
2.5	<i>Specific inclusion No. 2</i> <i>Making a loan to member, former member or associate</i>	sections 156-80, 156-85 and 156-86
2.6	<i>Specific inclusion No. 3</i> <i>Forgiving a debt owed by a member, former member or associate</i>	section 156-90
2.7	<i>Specific inclusion No. 4</i> <i>Providing excessive remuneration or termination payment</i>	section 156-92
2.8	<i>Specific inclusion No. 5</i> <i>Repaying a loan that amounted to a contribution of capital</i>	section 156-93
2.9	<i>Specific inclusion No. 6</i> <i>Issuing bonus units where member has a choice of receiving a distribution instead</i>	section 156-94
<b>3</b>	<b>Exclusions from the specific inclusions</b>	Subdivision 156-D
3.1	<i>Forgiving certain debts</i>	section 156-100
3.2	<i>Paying genuine debts</i>	section 156-105
3.3	<i>Paying an amount or making a loan to another non-fixed trust or a company</i>	section 156-110
3.4	<i>Benefit or loan included in assessable income (or specifically made not assessable)</i>	section 156-115

**Over view of Division 156**

	<b>Major topic</b> <i>Minor topic</i> Rule	<b>Provisions</b>
3.5	<i>Making a loan in the ordinary course of business on arm's length terms</i>	section 156-120
3.6	<i>Making a commercial loan</i>	section 156-125
3.7	<i>An amalgamated loan in the year in which it is made</i>	section 156-135
3.8	<i>Commissioner's discretion based on hardship</i>	section 156-140
<b>4</b>	<b>Distribution benefits and loans through interposed entities</b>	Subdivision 156-E
4.1	In certain circumstances, distribution benefits provided, and loans made, to you through entities interposed between you and the non-fixed trust are treated as having been provided or made by the non-fixed trust	

**Subdivision 156-A—Object of this Division****Table of sections**

156-10 Object of this Division

**156-10 Object of this Division**

The object of this Division is to ensure that what counts as a distribution by a \*non-fixed trust is broadly comparable with what counts as a dividend by a company.

**Subdivision 156-B—Basic rule****Guide to Subdivision 156-B****156-15 What this Subdivision is about**

This Subdivision sets out the basic rule for what counts as a distribution by a non-fixed trust.

## Table of sections

- 156-20 Basic rule—benefit to member
- 156-25 Amount of distribution

*[This is the end of the Guide]*

### 156-20 Basic rule—benefit to member

- (1) A \*non-fixed trust makes a **distribution** to you if you are a \*member of the trust and the trust:
  - (a) distributes money to you; or
  - (b) distributes other property to you; or
  - (c) credits an amount to you as a member of the trust.
- (2) For the purposes of this section, the \*non-fixed trust is not to be taken to credit an amount to you as a \*member of the trust merely because you become presently entitled to income or capital of the trust.

Note: There will, of course, be a **distribution** to you if you are paid an amount to which you are presently entitled.

### 156-25 Amount of distribution

- (1) The amount of the \*distribution that a \*non-fixed trust makes to you is:
  - (a) the amount distributed or credited to you less the consideration (if any) provided to the trust for the amount distributed or credited if the distribution is in the form of a distribution or crediting of \*money; or
  - (b) the market value of the property distributed less the consideration (if any) provided to the trust for the property distributed if the distribution is in the form of a distribution of property (other than money).
- (2) In determining the amount of the consideration provided, disregard:
  - (a) any consideration in the form of:
    - (i) a surrender, cancellation or redemption of a \*membership interest of yours in the trust; or

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- (ii) a reduction in the rights attaching to a membership interest of yours in the trust; and
  - (b) any consideration provided for:
    - (i) a membership interest of yours in the trust; or
    - (ii) the granting of additional rights to be attached to your existing membership interests in the trust.
  - (3) If consideration is provided in a form other than the payment of money, the amount of the consideration provided is equal to the market value of that consideration.

## **Subdivision 156-C—Special inclusions**

### **Guide to Subdivision 156-C**

#### **156-65 What this Subdivision is about [109B]**

This Subdivision provides that a non-fixed trust will be taken to have made a distribution to you in certain circumstances even though the basic test in section 156-20 has not been met.

#### **Table of sections**

156-70	Object of this Subdivision
156-75	Distribution benefits referable to current or former membership [109C]
156-80	Loans [109D]
156-85	Amalgamated loan from a previous year treated as distribution if minimum repayment not made [109E]
156-86	Amalgamated loans and minimum yearly repayments [109E]
156-90	Forgiven debts [109F]
156-92	Excessive remuneration or termination payment [109]
156-93	Payment in respect of loan from member
156-94	Bonus unit issues [6BA(5)]

*[This is the end of the Guide]*

## Object of Subdivision

### 156-70 Object of this Subdivision

The object of this Subdivision is to ensure that the provision of certain benefits, the making of certain \*loans, the \*forgiveness of certain debts and the repayment of certain loans by a \*non-fixed trust are treated as distributions.

### 156-75 Distribution benefits referable to current or former membership [109C]

*When non-fixed trust is taken to make a distribution*

- (1) A \*non-fixed trust is taken to make a **distribution** to you at the end of an income year of the trust if the trust \*provides a distribution benefit (see subsection (2)) to you during the income year and:
- (a) when the benefit is provided you are:
    - (i) a \*member of the trust; or
    - (ii) an \*associate of a member of the trust; or
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the benefit was provided to you because you had at some time been:
    - (i) a member of the trust; or
    - (ii) an associate of a member of the trust.

Note 1: The provision of some kinds of distribution benefits does not give rise to a distribution (see Subdivision 156-D).

Note 2: A non-fixed trust is treated as providing a distribution benefit to a member or member's associate if an interposed entity provides a distribution benefit to the member or associate in certain circumstances (see Subdivision 156-E).

*Providing a distribution benefit*

- (2) An entity **provides a distribution benefit** to you if the entity:
- (a) makes a payment (other than a \*loan) that is wholly, or to some extent, made to you, on your behalf or for your benefit; or
  - (b) credits an amount that is wholly, or to some extent, credited to you, on your behalf or for your benefit; or
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(c) transfers property to you.

*Amount of distribution*

- (3) The amount of the \*distribution is:
- (a) the amount paid to the extent to which it is made to you, on your behalf or for your benefit; or
  - (b) the amount credited to the extent to which it is credited to you, on your behalf or for your benefit; or
  - (c) the value of the property transferred.

*Amount of distribution arising from transfer of property*

- (4) The value of the property transferred is the amount that would have been paid for the transfer by parties dealing at arm's length less any consideration given by you for the transfer. The value is nil if the consideration given by you equals or exceeds the amount that would have been paid at arm's length for the transfer.

### **156-80 Loans [109D]**

*Loans treated as distributions in year of making*

- (1) A \*non-fixed trust is taken to make a **distribution** to you at the end of an income year of the trust (the **current year**) if:
- (a) the trust makes a \*loan to you during the current year; and
  - (b) either:
    - (i) you are a \*member of the trust, or an \*associate of a member of the trust, when the loan is made; or
    - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because you had at some time been a member of the trust or an associate of a member of the trust; and
  - (c) the loan \*remains unpaid at the end of the current year.

Note 1: Some loans do not give rise to a distribution (see Subdivision 156-D). A loan that does not give rise to a distribution because of section 156-125 may nonetheless be

taken into account as a constituent loan for the purposes of section 156-85 (see paragraph 156-86(1)(b)).

Note 2: Some repayments cannot be counted for the purpose of this subsection (see section 960-190).

Note 3: A non-fixed trust is treated as making a loan to a member or member's associate if an interposed entity makes a loan to the member or associate (see Subdivision 156-E).

*Amount of distribution*

- (2) The amount of the distribution taken to have been made is the amount of the principal that \*remains unpaid at the end of the current year.

*In which income year is a loan made?*

- (3) For the purposes of this Subdivision, a loan is made to you at the time:
- (a) the amount of the loan is paid to you by way of loan; or
  - (b) anything described in the definition of **loan** in subsection 995-1(1) is done in relation to you.

*Loans made before 1 July 2001*

- (4) If the terms of a loan made before 1 July 2001 are varied on or after that day by extending the term of the loan or increasing its amount, this Division applies to the loan as if it were made on the new terms when the variation occurred.

**156-85 Amalgamated loan from a previous year treated as distribution if minimum repayment not made [109E]**

*Amalgamated loan treated as distribution in first year in which payment is less than minimum yearly repayment*

- (1) A \*non-fixed trust is taken to make a **distribution** to you at the end of one of the trust's income years (the **current year**) if:
- (a) the trust made an \*amalgamated loan to you in an earlier income year; and
  - (b) the amalgamated loan \*remains unpaid at the end of the current year; and

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- (c) the current year is the first income year in which:
- (i) the amount paid to the trust during the income year in relation to the amalgamated loan is less than the minimum yearly repayment of the amalgamated loan (worked out under subsection 156-86(4)) for the income year; and
  - (ii) section 156-140 does not apply.

Note: The amalgamated loan does not give rise to a distribution for that year if the minimum yearly repayment is not made and you satisfy the Commissioner that treating the loan as a distribution would cause hardship (see section 156-140).

*Amount of distribution*

- (2) The amount of the distribution is taken to be the amount of the amalgamated loan that \*remains unpaid at the end of the current year.

### **156-86 Amalgamated loans and minimum yearly repayments [109E]**

*What is an amalgamated loan?*

- (1) For the purposes of this Subdivision, a \*non-fixed trust is taken to make a loan (the **amalgamated loan**) to you during an income year of the trust if the trust makes one or more loans (**constituent loans**) to you during the year, each of which:
- (a) \*remains unpaid at the end of the year; and
  - (b) would cause the trust to be taken under section 156-80 to make a distribution to you at the end of the year, apart from section 156-125; and
  - (c) has the same maximum term for the purposes of that section.

The amount of the amalgamated loan is the sum of the amounts of the constituent loans that \*remain unpaid at the end of the income year in which the amalgamated loan is made.

*Payments in relation to constituent loans treated as payments in relation to amalgamated loan*

- (2) For the purposes of this Subdivision, a payment to the \*non-fixed trust in relation to a constituent loan in an income year after the one in which the constituent loan was made is taken to be a payment in relation to the amalgamated loan that takes account of the constituent loan.

*Minimum yearly repayment*

- (3) The **minimum yearly repayment** of an amalgamated loan for an income year is the amount worked out using the formula in subsection (4). However, the **minimum yearly repayment** of an amalgamated loan for an income year is the amount worked out under the regulations, if they provide for working it out.

*Formula for minimum yearly repayment*

- (4) The formula for the \*minimum yearly repayment for an income year is:

$$\frac{\text{Amount of the loan * remaining unpaid by the end of the previous year of income} \times \text{Current year's *benchmark interest rate}}{1 - \frac{1}{1 + \text{Current year's *benchmark interest rate}}^{\text{Remaining term}}}$$

where:

**current year's benchmark interest rate** is the \*benchmark interest rate for the income year for which the \*minimum yearly repayment is being worked out.

**remaining term** is the difference between:

- (a) the number of years in the longest term of any of the constituent loans that the amalgamated loan takes account of; and
- (b) the number of years between the end of the trust's income year in which the loan was made and the end of

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the trust's income year before the income year for which the \*minimum yearly repayment is being worked out;

rounded up to the next higher whole number if the difference is not already a whole number.

Note: Section 960-190 provides that certain payments relating to a loan are not to be taken into account for the purposes of working out the minimum yearly repayment.

*Benchmark interest rate used to work out how much of a payment relating to amalgamated loan is a repayment*

- (5) Work out the amount of an amalgamated loan \*remaining unpaid at the end of an income year on the basis that interest is payable on the balance of the loan from time to time in an income year at a rate equal to the \*benchmark interest rate for the income year.

## **156-90 Forgiven debts [109F]**

*Forgiven debt treated as distribution*

- (1) A \*non-fixed trust is taken to make a **distribution** to you at the end of an income year of the trust if all or part of a debt you owed the trust is \*forgiven in that year and either:
- (a) the amount is forgiven when you are:
    - (i) a \*member of the trust; or
    - (ii) an \*associate of a member of the trust; or
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the amount is forgiven because you had at some time been:
    - (i) a member of the trust; or
    - (ii) an associate of a member of the trust.

Note: In some cases forgiving a debt does not give rise to a distribution (see section 156-100).

*Amount of distribution*

- (2) The amount of the distribution equals the amount of debt forgiven.

*Forgiveness of amalgamated loan debt*

- (3) If a \*non-fixed trust forgives an amount of debt resulting from a constituent loan taken into account in working out the amount of an amalgamated loan under subsection 156-86(1), the trust is taken to forgive the same amount of the debt resulting from the amalgamated loan.

**156-92 Excessive remuneration or termination payment [109]**

- (1) The \*non-fixed trust is taken to make a **distribution** to you on the last day of an income year of the trust if:
- (a) you are:
    - (i) a \*member, or \*former member, of the trust; or
    - (ii) an \*associate of a member, or former member, of a trust; and
  - (b) the trust provides a \*distribution benefit to you during the year; and
  - (c) the distribution benefit is, or purports to be:
    - (i) remuneration for services you rendered; or
    - (ii) an allowance, gratuity or compensation in consequence of your retirement from employment by the trust, or upon the termination of your employment by the trust; and
  - (d) the amount of the distribution benefit exceeds an amount that in the Commissioner's opinion is reasonable.
- (2) The amount of the \*distribution is the amount of the excess.
- (3) The excess is not an allowable deduction for the trust.

**156-93 Payment in respect of loan from member**

- (1) A \*non-fixed trust is taken to make a **distribution** to you if:
- (a) the trust makes a payment to you, or an \*associate of yours, in respect of a \*loan to the trust; and
  - (b) the loan gave rise to a \*contribution of capital to the trust under section 157-115 or 157-120; and

- (c) the payment is made after the time when the contribution of capital is taken to have occurred.
- (2) The amount of the distribution is the amount of the payment less the consideration (if any) provided to the trust for the payment.
- (3) Making the \*loan, or reducing the loan balance, is not consideration given to the trust for the payment.

### **156-94 Bonus unit issues [6BA(5)]**

- (1) A \*non-fixed trust is taken to make a **distribution** to you if:
  - (a) you hold interests in the trust (the **original units**); and
  - (b) you have a choice whether:
    - (i) to have a \*distribution made to you by the trust; or
    - (ii) to have interests in the trust issued to you in respect of the original units; and
  - (c) you chose to be issued with the interests; and
  - (d) the trust issues the interests to you in respect of the original units.

Note: See Division 158 for the rules on how to work out the consideration for acquiring the units.

- (2) The amount of the \*distribution is the amount of the distribution you would have received if you had chosen not to be issued with the interest.
- (3) If the \*distribution is from \*profits, an amount equal to the amount of the distribution is taken to have been provided for the issue of the units.

Note: This means a credit is made to the trusts contributed capital account under subsections 157-90(1) and 157-150(1).

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## Subdivision 156-D—Exceptions to Subdivision 156-C

### Guide to Subdivision 156-D

#### 156-95 What this Subdivision is about [109H]

This Subdivision sets out rules about when the provision of a distribution benefit, the making of a loan or the forgiving of a debt is not treated as distributions.

#### Table of sections

156-96 Overview of Subdivision 156-D

##### Operative provisions

156-100 When forgiving debt does not give rise to a distribution [109G]

156-105 Payments discharging pecuniary obligations [109J]

156-110 Distribution benefits and loans between non-fixed trusts and companies [109K]

156-115 Distribution benefits otherwise assessed, or not included in assessable income, under other provisions [109L]

156-120 Loans made in the ordinary course of business on arm's length terms [109M]

156-125 Commercial loans [109N]

156-135 Amalgamated loans not treated as distributions in the year they are made [109P]

156-140 Commissioner may allow amalgamated loan not to be treated as distribution [109Q]

#### 156-96 Overview of Subdivision

The following table summarises the broad operation of this Subdivision:

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Over view of Subdivision 156-D		
	Topic	Provision
1	forgiveness of debt owed by non-fixed trust or company	subsection 156-100(1)
2	forgiveness of a loan debt that gave rise to a distribution	subsection 156-100(2)

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**Over view of Subdivision 156-D**

	<b>Topic</b>	<b>Provision</b>
3	Commissioner may treat forgiveness of a debt as not giving rise to distribution	subsection 156-100(3)
4	payment of genuine debts	section 156-105
5	payments to other entities	section 156-110
6	payments that are otherwise assessable or that are specifically excluded from assessable income	section 156-115
7	loans to other entities	section 156-110
8	loans that are otherwise assessable	section 156-115
9	loans made in the ordinary course of business on ordinary commercial terms	section 156-120
10	loans that meet criteria for minimum interest rate and maximum term	section 156-125
11	Commissioner satisfied that treating loan as distribution would cause undue hardship	section 156-140

*[This is the end of the Guide]*

### **156-100 When forgiving debt does not give rise to a distribution [109G]**

*Debt owed by non-fixed trust or company generally not treated as distribution*

- (1) A \*non-fixed trust is not taken under Subdivision 156-C to make a \*distribution because a debt owed to the trust by:
- (a) another non-fixed trust; or
  - (b) a company;
- is forgiven.

*Loan debt does not give rise to distribution if loan did give rise to distribution*

- (2) A \*non-fixed trust is not taken under section 156-90 to make a distribution at the end of an income year because of the forgiveness of an amount of a debt resulting from a \*loan if,

because of the loan, the trust is taken under section 156-80 or 156-85 to make a distribution at the end of that year or an earlier one.

*Commissioner may treat forgiveness as not giving rise to distribution*

- (3) A \*non-fixed trust is not taken under Subdivision 156-C to make a distribution because of the \*forgiveness of a debt owed by you if the Commissioner is satisfied that:
- (a) the debt was forgiven because payment of the debt would have caused you undue hardship; and
  - (b) when you incurred the debt, you had the capacity to pay the debt; and
  - (c) you lost the ability to pay the debt in the foreseeable future as a result of circumstances beyond your control.

#### **156-105 Payments discharging pecuniary obligations [109J]**

- (1) A \*non-fixed trust is not taken under section 156-75 to make a distribution because of providing a \*distribution benefit to the extent that the provision of the distribution benefit:
- (a) discharges an obligation of the trust to pay money to you; and
  - (b) is not more than would have been required to discharge the obligation had you and the trust been dealing with each other at arm's length.
- (2) This section does not apply to a payment covered by section 156-93 (repayment by trust of non-commercial loan).

#### **156-110 Distribution benefits and loans between non-fixed trusts and companies [109K]**

A \*non-fixed trust is not taken under section 156-75 or 156-80 to make a distribution because of the provision of a distribution benefit or the making of a \*loan to:

- (a) another non-fixed trust; or
- (b) a company.

**156-115 Distribution benefits otherwise assessed, or not included in assessable income, under other provisions [109L]**

- (1) A \*non-fixed trust is not taken under section 156-75 or 156-80 to make a distribution because of:
- (a) a \*distribution benefit the trust provides to you; or
  - (b) a \*loan the trust makes to you;
- to the extent that the distribution benefit or loan would be included in your assessable income apart from Subdivision 156-C.
- (2) In addition, a \*non-fixed trust is not taken under section 156-75 or 156-80 to make a distribution because of:
- (a) a \*distribution benefit the trust provides to you; or
  - (b) a \*loan the trust makes to you;
- to the extent that a provision of this Act (other than Subdivision 156-C) has the effect that the distribution benefit or loan is not included in your assessable income even though it would otherwise be included.

**156-120 Loans made in the ordinary course of business on arm's length terms [109M]**

A \*non-fixed trust is not taken under section 156-80 to make a distribution because of a \*loan made:

- (a) in the ordinary course of the trust's business; and
- (b) on the usual terms on which the trust makes similar loans to parties at arm's length.

**156-125 Commercial loans [109N]**

A \*non-fixed trust that makes a \*loan to you in one of the trust's income years is not taken under section 156-80 to make a distribution at the end of the income year because of the loan if the loan is a \*commercial loan.

**156-135 Amalgamated loans not treated as distributions in the year they are made [109P]**

A \*non-fixed trust is not taken under section 156-80 to make a distribution because of an \*amalgamated loan it makes.

Note: An amalgamated loan may be treated as a distribution under section 156-85.

**156-140 Commissioner may allow amalgamated loan not to be treated as distribution [109Q]**

- (1) A \*non-fixed trust is not taken under section 156-85 to make a distribution at the end of one of its income years (the **current year**) because of an \*amalgamated loan to you if:
  - (a) the amount you paid the trust in the current year in relation to the loan is less than the minimum yearly repayment of the loan for the current year worked out under subsection 156-86(3); and
  - (b) you satisfy the Commissioner that:
    - (i) that amount was less than the minimum yearly repayment because of circumstances beyond your control; and
    - (ii) you would suffer undue hardship if the trust were taken under section 156-85 to make a distribution to you at the end of the current year because of the loan.
- (2) In deciding whether he or she is satisfied, the Commissioner must consider:
  - (a) your capacity, at the end of the income year in which the \*amalgamated loan was made, to repay the loan; and
  - (b) any circumstances that have reduced your capacity to repay the loan; and
  - (c) whether you took all reasonable steps to make payments relating to the amalgamated loan during the current year equal to the minimum yearly repayment of the loan for the current year; and

- 
- (d) whether you have made payments relating to the loan as soon as possible after the current year equalling the difference between:
- (i) the minimum yearly repayment for the current year; and
  - (ii) the amount of payments made during the current year relating to the loan.

## **Subdivision 156-E—Distributions (distribution benefits and loans through interposed entities)**

### **Guide to Subdivision 156-E**

#### **156-160 What this Subdivision is about [109S]**

This Subdivision allows a non-fixed trust to be taken under Subdivision 156-C to make a distribution to you if an entity interposed between you and the trust provides a distribution benefit, or makes a loan, to you under an arrangement involving the trust.

#### **Table of sections**

156-161 Overview of Subdivision 156-E

##### **Operative provisions**

- 156-165 Distribution benefits and loans through one or more interposed entities [109T]
- 156-170 Distribution benefits and loans through interposed entities relying on guarantees [109U]
- 156-175 Certain liabilities under guarantees treated as payments [109UA]
- 156-180 Amount of distribution benefit provided to you through one or more interposed entities [109V]
- 156-185 Amount of non-fixed trust's loan to you through one or more interposed entities [109W]
- 156-190 Distribution benefit or loan may give rise to distribution despite Subdivision 156-D [109X]

**156-161 Overview of Subdivision 156-E**

The following table summarises the broad operation of this Subdivision:

<b>Over view of Subdivision 156-E</b>		
	<b>Rules</b>	<b>Provision</b>
1	<p>The non-fixed trust is treated as providing a distribution benefit to you if an entity interposed between you and the non-fixed trust provides a distribution benefit to you under an arrangement involving the trust.</p> <p>The non-fixed trust is treated as making a loan to you if an entity interposed between you and the non-fixed trust makes a loan to you under an arrangement involving the trust.</p> <p>The amount of the distribution benefit or loan is the amount determined by the Commissioner</p>	<p>156-180 (payments)</p> <p>156-185 (loans)</p>
2	<p>The arrangement must involve the non-fixed trust and one or more interposed entities in providing distribution benefits, making loans or giving loan guarantees for the purpose of your receiving a distribution benefit, or loan, from an interposed entity.</p>	<p>156-165</p> <p>156-170</p> <p>156-175</p>
3	<p>If you repay a fraction of the loan made by the interposed entity, you are treated as repaying the same fraction of the loan the non-fixed trust is taken to have made to you.</p>	<p>subsection 156-185(3)</p>
4	<p>Some provisions that prevent distribution benefits or loans from giving rise to distributions do not apply to a distribution benefit or loan that this Subdivision treats the non-fixed trust as providing or making to you.</p>	<p>section 156-190</p>

*[This is the end of the Guide]*

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**156-165 Distribution benefits and loans through one or more interposed entities [109T]**

- (1) Subdivision 156-C operates as if a \*non-fixed trust \*provides a distribution benefit, or makes a \*loan, to you as described in section 156-180 or 156-185 if:
- (a) the trust provides a distribution benefit, or makes a loan, to another entity (the **first interposed entity**) that is interposed between you and the trust; and
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the trust provided the distribution benefit, or made the loan, solely or mainly as part of an arrangement involving a distribution benefit or loan to you; and
  - (c) either:
    - (i) the first interposed entity provides a distribution benefit or makes a loan to you; or
    - (ii) another entity interposed between you and the trust provides a distribution benefit or makes a loan to you; and
  - (d) the trust is not taken under Subdivision 156-C (as it applies apart from this Subdivision) to make a distribution as a result of \*providing the distribution benefit or making the \*loan to the first interposed entity.

The entity that provides the distribution benefit, or makes the loan, to you is the **delivering entity**.

*This section operates regardless of certain factors*

- (2) For the purposes of this section, it does not matter:
- (a) whether the delivering entity \*provided the distribution benefit or made the loan to you before, after or at the same time as the first interposed entity received the distribution benefit or loan from the \*non-fixed trust; or
  - (b) whether or not the delivering entity provided a distribution benefit to you or lent you an amount equal to the distribution benefit provided or the loan made by the trust to the first interposed entity.

**156-170 Distribution benefits and loans through interposed entities relying on guarantees [109U]**

- (1) This section deals with the situation in which:
- (a) during an income year a \*non-fixed trust guarantees a \*loan made by an entity (the **first interposed entity**); and
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the trust gave the guarantee solely or mainly as part of an arrangement involving a distribution benefit or loan to you; and
  - (c) either:
    - (i) the first interposed entity is a non-fixed trust or a \*private company and makes a loan to you; or
    - (ii) another entity that is a non-fixed trust or a private company interposed between you and the trust provides a distribution benefit to you or makes a loan to you.

The entity that provides the distribution benefit, or makes the loan, to you is the **delivering entity**.

- (2) Subdivision 156-C operates as if the \*non-fixed trust \*provides a distribution benefit to you, or makes a \*loan to you, as described in section 156-180 or 156-185.

*This section operates regardless of certain factors*

- (3) For the purposes of this section, it does not matter:
- (a) whether the delivering entity \*provides the distribution benefit or makes the \*loan to you before, after or at the same time as the first interposed entity received the guarantee from the \*non-fixed trust; or
  - (b) whether or not the delivering entity provides a distribution benefit to you, or lends you an amount, equal to the amount the trust guaranteed.

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**156-175 Certain liabilities under guarantees treated as payments [109UA]**

- (1) Section 156-165 operates as if a \*non-fixed trust \*provides a distribution benefit to an entity if:
- (a) the trust guarantees a \*loan made to you by the entity;  
and
  - (b) as a result of the guarantee, the trust has a liability (other than a contingent liability) to make a payment to the entity.

Example: A non-fixed trust that you are a member of guarantees a loan that a bank makes to you and you default on the loan. As a result, the trust has a presently existing liability to make a payment to the bank. Section 156-165 operates as if the trust had provided a distribution benefit to the bank, so the trust is treated by section 156-180 as providing a distribution benefit to you (because the bank is interposed between trust and you).

- (2) The amount of the distribution benefit (as worked out under section 156-180) is to be reduced by any amount treated as a distribution as a result of the operation of section 156-170 in relation to the loan the entity made to you.
- (3) A \*non-fixed trust is not taken under Subdivision 156-C to make a distribution because of the operation of subsection (1) in relation to a guarantee if the Commissioner is satisfied that:
- (a) you would suffer undue hardship if the trust were taken to make a distribution to you because of the liability;  
and
  - (b) when you entered into the loan, you had the capacity to pay the loan.
- (4) This section does not the limit the operation of section 156-165.

**156-180 Amount of distribution benefit provided to you through one or more interposed entities [109V]**

*Amount of distribution benefit non-fixed trust is taken to provide*

- (1) If the delivering entity \*provides a distribution benefit to you, Subdivision 156-C operates as if the \*non-fixed trust had provided a distribution benefit to you of the amount (if any) determined by the Commissioner when the delivering entity provided the distribution benefit to you.

*Determining the amount of the non-fixed trust's payment*

- (2) In determining the amount of the distribution benefit the \*non-fixed trust is taken to have provided, the Commissioner must take account of:
  - (a) the amount of the distribution benefit the delivering entity provided to you; and
  - (b) how much (if any) of that amount the Commissioner believes represented consideration payable to you by the trust or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

**156-185 Amount of non-fixed trust's loan to you through one or more interposed entities [109W]**

*Amount of loan non-fixed trust is taken to make*

- (1) If the delivering entity makes a \*loan to you, Subdivision 156-C operates as if the \*non-fixed trust had made a \*loan (the **notional loan**) to you of the amount (if any) determined by the Commissioner when the delivering entity made the loan to you.

Note: Subsection 156-80(3) specifies the time at which a loan is made.

*How big is the notional loan?*

- (2) In determining the amount of the notional loan, the Commissioner must take account of:
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- (a) the amount the delivering entity lent you; and
  - (b) how much (if any) of that amount the Commissioner believes represented consideration payable to you by the \*non-fixed trust or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

*Notional repayments of notional loan*

- (3) When working out whether the \*non-fixed trust is taken under section 156-80 to make a distribution as a result of the notional loan, and the amount of the distribution, assume that you repay an amount of the notional loan equal to the amount worked out using the formula:

$$\text{Repayment made by you to lender} \times \frac{\text{Amount of notional loan}}{\text{Amount actually lent to you}}$$

where:

**amount actually lent to you** is the amount the delivering entity lent to you.

**repayment made by you to lender** is the amount of any repayment made by you of the loan the delivering entity made to you.

**156-190 Distribution benefit or loan may give rise to distribution despite Subdivision 156-D [109X]**

*Distribution benefit or loan not affected by being made through interposed entity*

- (1) Despite sections 156-110 and 156-115, a \*non-fixed trust may be taken under section 156-75 or 156-80 to make a distribution as a result of this Subdivision treating the trust as the provision of a distribution benefit or the making of a loan to you, even if:
  - (a) the trust is treated that way because it makes a payment or loan to an entity that is:
    - (i) a non-fixed trust; or
    - (ii) a private company;

- interposed between you and the trust; or
- (b) some or all of the distribution benefit provided or the amount lent by a non-fixed trust to an entity interposed between you and the trust is included in the interposed entity's assessable income for an income year.

*Some provisions preventing loan giving rise to distribution do not apply to notional loan*

- (2) Sections 156-120 and 156-125 do not apply to a notional loan under section 156-185 (so it must generally be taken into account for the purposes of working out whether the \*non-fixed trust is taken under section 156-80 to have made a distribution).

### **Subdivision 156-F—General rules applying to amounts treated as distributions under Subdivision 156-C**

#### **Table of sections**

156-195	Distributions this Subdivision applies to
156-200	No distribution taken to be paid for withholding tax purposes [109ZA]
156-205	Amount treated as distribution is not a fringe benefit [109ZB]
156-210	Treatment of distribution that is reduced on account of an amount taken under this Subdivision 156-C to be a distribution [109ZC]

*[This is the end of the Guide]*

#### **156-195 Distributions this Subdivision applies to**

This Subdivision applies to distributions that a \*non-fixed trust is taken to make to you under Subdivision 156-C (including that Subdivision as affected by the operation of Subdivision 156-E).

#### **156-200 No distribution taken to be paid for withholding tax purposes [109ZA]**

If a \*non-fixed trust is taken to have make a \*distribution to you, disregard the distribution for the purposes of:

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- (a) Division 11A of Part III (which deals with withholding tax on distributions paid to non-residents and some other people); and
  - (b) Division 4 of Part VI (which deals with collection of withholding tax); and
  - (c) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* (which deals with PAYG withholding).

**156-205 Amount treated as distribution is not a fringe benefit [109ZB]**

- (1) Subdivision 156-C applies to a \*loan to you of an amount by a \*non-fixed trust, even if the loan is made:
  - (a) to you in your capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
  - (b) in respect of the employment of an employee (as defined in that Act).

Note: This ensures that a loan is not a fringe benefit for the purposes of that Act.

- (2) Subdivision 156-C applies to a \*non-fixed trust's \*forgiveness of a debt you owed to the trust, even if:
  - (a) you owed the debt in your capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
  - (b) the forgiveness occurs in respect of the employment of an employee (as defined in that Act).

Note: This ensures that the forgiveness of a debt is not a fringe benefit for the purposes of that Act.

- (3) However, Subdivision 156-C does not apply to a distribution benefit provided to a member, or an associate of a member, in their capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee.

**156-210 Treatment of distribution that is reduced on account of an amount taken under this Subdivision 156-C to be a distribution [109ZC]**

- (1) This section sets out special rules for dealing with a \*distribution (the *later distribution*) made by a \*non-fixed trust if some or all of the later distribution is set off against some or all of an amount taken under Subdivision 156-C to be a distribution previously made by the trust.

Example: Some or all of a distribution made by a non-fixed trust to a member might be set off to reduce a loan the trust had previously made to the member that was treated as a distribution under Subdivision B.

- (2) The amount of the later distribution set off is taken not to be a distribution. However, if the amount set off exceeds the amount of the later distribution that has not been franked, the excess is still a distribution.

Note: This prevents double taxation by ensuring that your assessable income does not include the amount of the later distribution that is not paid to you (except to the extent that that amount is franked).

- (3) Subsection (2) does not cause the amount taken not to be a distribution to be exempt income for the purposes of subsection 161-210(4).

**Division 157—Non-fixed trust rules (source of distribution)**

**Table of Subdivisions**

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**Guide to Division 157**

- 157-A Object of this Division
- 157-B Profits first rule
- 157-C Exceptions to the profits first rule
- 157-D Available profits and contributed capital
- 157-E The slice rule
- 157-F Timing of distributions made under a single scheme

**Guide to Division 157****157-1 What this Division is about**

The tax effect of a distribution to you by a non-fixed trust depends on the source of the distribution. This Division tells you how to work out how much of the distribution is made from:

- (a) profits (whether available or anticipated profits); and
- (b) contributed capital; and
- (c) a prior taxed amount.

It shows the non-fixed trust how to work out the balance of those amounts.

To work out the balance of those amounts, the non-fixed trust must keep:

- (a) an account of its contributed capital; and
- (b) accounts of the contributed capital of each class of membership interest that it has.

**Table of sections**

- 157-5 Outline of rules on source of distribution

## 157-5 Outline of rules on source of distribution

The following table gives you an outline of this Division:

Outline of rules on source of distribution		
Item	Rules	Provisions
1	The profits first rule (available realised and unrealised profits generally have to be exhausted before a distribution from contributed capital can be made). If both available profits and contributed capital are exhausted, the distribution is treated as a distribution of anticipated profits	Subdivision 157-B
2	There are exceptions to the profits first rule for: (a) prior taxed amounts; and (b) the termination or reduction of membership interests; and (c) certain distributions from CGT advantaged assets held by trusts.	Subdivision 157-C
3	Rules for identifying available profits and contributed capital	Subdivision 157-D
4	Rules about maintaining a contributed capital account and sub-accounts	sections 157-145 to 157-205
5	The slice rule (working out how much of a distribution is from profits, contributed capital and prior taxed amounts when the membership interest is being terminated or reduced)	Subdivision 157-E
6	Rules on the timing of distributions for the purposes of applying the source rules	Subdivision 157-F

## Subdivision 157-A—Object of this Division

### Table of sections

157-10 Object of this Division

### 157-10 Object of this Division

- (1) The object of this Division is to tax *all* \*distributions by a \*non-fixed trust on the basis of their economic substance.

- 
- (2) To this end, the \*profits first rule is designed to ensure that the tax effect of \*distributions does *not* depend on their legal form. That rule is designed to achieve these results:
- (a) \*members cannot avoid or defer paying income tax on the profits of a \*non-fixed trust by arranging the legal form of a distribution so that it comes out of \*contributed capital rather than profits; and
  - (b) non-fixed trusts cannot treat their \*members preferentially by making a distribution in which one member receives a distribution from \*profits and another from contributed capital, resulting in different tax effects.
- (3) The \*profits first rule applies unless there is a specific exception.

## **Subdivision 157-B—Profits first rule**

### **Guide to Subdivision 157-B**

#### **157-15 What this Subdivision is about**

A distribution is taken to come:

- (a) first from a non-fixed trust's available profits; and
- (b) then from its contributed capital; and
- (c) then from unfrankable profits if there is any excess.

This is known as the ***profits first rule***. Subdivision 157-C sets out the 3 exceptions to that rule.

#### **Table of sections**

157-20	Profits first rule
157-25	How to deal with multiple distributions

*[This is the end of the Guide]*

### 157-20 Profits first rule

A \*distribution by a \*non-fixed trust:

- (a) is **from profits** to the extent to which the trust has \*available profits immediately before the distribution is made; and
- (b) is **from contributed capital** to the extent to which the trust does not have available profits immediately before the distribution is made (up to the balance in the trust's \*contributed capital account); and
- (c) is **from profits** to the extent to which the distribution is not from profits under paragraph (a) and not from contributed capital under paragraph (b).

This rule is the **profits first rule**.

Note 1: The distribution is only frankable to the extent to which it is from profits under paragraph (a).

Note 2: Subsection 157-40(2) requires the distribution of a prior taxed amount before distributing from profits under paragraph (c) of this section.

### 157-25 How to deal with multiple distributions

(1) If:

- (a) a \*non-fixed trust makes 2 or more \*distributions at the same time; and
- (b) immediately before the distributions are made, the trust's \*available profits are less than the total amount to be distributed;

the proportion of each distribution that is from \*profits under paragraph 157-20(a) is:

$$\frac{\text{*Available profits}}{\text{Total amount of *distributions}}$$

Note: Section 157-245 provides that in certain circumstances distributions made under a single decision are treated as being made when the first of those distributions is made.

(2) If:

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- (a) a \*non-fixed trust makes 2 or more \*distributions at the same time; and
- (b) immediately before the distributions are made, the balance of the trust's \*contributed capital account is less than the difference between the total amount to be distributed and the tax entity's \*available profits;
- the proportion of each distribution that is from \*contributed capital under paragraph 157-20(b) is:

$$\frac{\text{Balance of * contributed capital account}}{\text{Total amount of * distributions}}$$

## **Subdivision 157-C—Exceptions to the profits first rule**

### **Guide to Subdivision 157-C**

#### **157-30 What this Subdivision is about**

This Subdivision sets out 3 exceptions to the profits first rule. These relate to the following distributions:

- (a) a distribution by a trust of prior taxed amounts;
- (b) a distribution subject to the slice rule;
- (c) a distribution of certain trust capital gains.

#### **Table of sections**

157-35 Exceptions to the profits first rule

##### **Operative provisions**

157-40 First exception—prior taxed amounts

157-45 Second exception—termination or reduction of membership interest

157-55 Third exception—other distributions from CGT-advantaged assets held by trusts

#### **157-35 Exceptions to the profits first rule**

The table shows the 3 exceptions to the profits first rule.

<b>Exceptions to profits first rule</b>		
<b>Case where exception applies</b>	<b>Effect of the exception</b>	<b>Section</b>
1 Distribution of a prior taxed amount	The trust has an option to distribute that amount first even if it has available profits	157-40
2 Distribution to a member: (a) resulting from a termination of a fixed membership interest (except as part of a proportionate reduction) for at least market value; or (b) resulting from an overall decrease in the rights attaching to a fixed membership interest for at least market value; or (c) resulting from a termination of a non-fixed membership interest because the trust ceases to exist.	The distribution is treated as being made up of the membership interest's share of contributed capital, then of its share of taxed (and frankable) profits and then of untaxed (and unfrankable) profits. This is known as the <b>slice rule</b>	157-45
3 Distribution of capital gains made on assets if: (a) certain capital gains tax exemptions apply; and (b) the exempt amounts are distributed within 12 months after the end of the income year in which the gains were made	Profits first rule does not apply	157-55

*[This is the end of the Guide]*

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## Operative provisions

### 157-40 First exception—prior taxed amounts

#### *Distribution of prior taxed amount exception to profits first rule*

- (1) The \*profits first rule does not apply to a \*distribution to you of a \*prior taxed amount. A distribution of a prior taxed amount may be made whether or not the \*non-fixed trust has \*available profits immediately before the distribution is made.

#### *Other rules about distributions of prior taxed amounts*

- (2) A \*non-fixed trust:
- (a) may make a \*distribution from \*contributed capital if the \*profits first rule allows it to do so (even if the \*non-fixed trust has a \*prior taxed amount it could distribute); and
  - (b) must distribute a prior taxed amount if the trust:
    - (i) makes a distribution; and
    - (ii) has a prior taxed amount it could distribute; and
    - (iii) has no \*available profits, or contributed capital, from which it could make the distribution.

### 157-45 Second exception—termination or reduction of membership interest

#### *Fixed membership interest*

- (1) The \*profits first rule does not apply to a \*distribution to you if the distribution:
- (a) is made as part of a process that results directly in:
    - (i) a \*fixed membership interest of yours in the \*non-fixed trust ceasing to exist (whether by the interest being cancelled or redeemed, the trust being dissolved, an obligation being satisfied or otherwise); or
    - (ii) proportional rights attaching to a \*fixed membership interest of yours in the trust in relation to distributions by the trust being reduced; and

(b) is not consideration for a \*proportionate rearrangement of membership interests; and

(c) is for not less than market value consideration.

The distribution is dealt with under the slice rule in Subdivision 157-E instead unless it is a distribution of a \*prior taxed amount.

Note: You can have a fixed interest in a non-fixed trust if the trust is a hybrid trust (that is, has both fixed interests and discretionary elements).

(2) The ***membership interest in relation to which the distribution is made*** is taken to be:

(a) the membership interest that ceases to exist (see subparagraph (1)(a)(i)); or

(b) so much of the membership interest whose rights are proportionally reduced by the reduction.

*Non-fixed membership interest*

(3) The \*profits first rule does not apply to a \*distribution to you by a \*non-fixed trust if the distribution is made as part of a process that results directly in a \*non-fixed membership interest of yours in the trust ceasing to exist because the trust terminates. The distribution is dealt with under the slice rule in Subdivision 157-E instead unless it is a distribution of a \*prior taxed amount.

### **157-55 Third exception—other distributions from CGT-advantaged assets held by trusts**

(1) This section deals with the situation in which:

(a) a \*distribution is made to you by a \*non-fixed trust; and

(b) the distribution is in whole or in part a distribution of an amount that was credited to the trust's \*contributed capital account under item 1, 2, 4 or 5 of the table in subsection 157-150(2) (which deals with \*capital gains from various \*CGT events); and

(c) the distribution is made within 12 months after the end of the income year in which the capital gain concerned was made.

- 
- (2) To the extent to which the \*distribution is a distribution of an amount of that kind referred to in subsection (1):
- (a) the \*profits first rule does not apply to the distribution; and
  - (b) the distribution is taken to be a distribution from \*contributed capital.

Note: Although the distribution from contributed capital reduces the cost base for CGT purposes of your membership interest, there was a compensating credit to the non-fixed trust's contributed capital account under the table in subsection 157-150(2).

- (3) The reduction to the \*non-fixed trust's \*contributed capital account that occurs because of subsection (2) must be taken into account before applying the \*profits first rule to:
- (a) the \*distribution to the extent (if any) to which it is not a distribution of an amount of that kind; and
  - (b) other distributions made on the same day.

### **Subdivision 157-D—Available profits and contributed capital**

#### **Guide to Subdivision 157-D**

##### **157-65 What this Subdivision is about**

This Subdivision:

- (a) provides rules for determining the available profits of a non-fixed trust; and
- (b) reduces compliance costs by allowing non-fixed trusts to rely on accounting records if they indicate that a distribution would be entirely from profits; and
- (c) provides rules for determining the contributed capital of a non-fixed trust; and
- (d) includes rules for the maintenance of contributed capital accounts.

## Table of sections

- 157-70 Available profits
- 157-75 Contributed capital
- 157-80 Contributed capital account and sub-accounts

### Operative provisions

#### Available profits

- 157-85 Available profits

#### Contributing capital (general rules)

- 157-90 Contributing capital to a non-fixed trust (general rule)
- 157-95 Rearrangement of membership interests
- 157-110 Contributing capital in relation to a particular class of membership interests

#### Contributing capital (loans)

- 157-115 Non-commercial loan to non-fixed trust
- 157-120 Commercial loan not fully repaid (contribution of capital)
- 157-125 Commercial loan not fully repaid (Commissioner's discretion)
- 157-135 Forgiveness of commercial loan
- 157-140 Special rules for membership interests that arise because of the loan

#### Contributed capital account and sub-accounts

- 157-145 Non-fixed trust to maintain contributed capital account and sub-accounts
- 157-150 Credits
- 157-155 Debits
- 157-160 Opening balance on commencement of non-fixed trust rules
- 157-165 Valuation method
- 157-170 Alternative opening balance calculation
- 157-175 Opening balance of trust entering the non-fixed trust regime after 1 July 2001
- 157-180 Opening balance for contributed capital sub-accounts
- 157-190 What happens if balance in contributed capital account, or sub-account, is less than nil
- 157-200 Spreading certain credits across sub-accounts
- 157-205 Spreading certain debits across sub-accounts

**157-70 Available profits**

Available profits are determined at the time a distribution is made. They include the excess of unrealised gains over unrealised losses.

**157-75 Contributed capital**

Contributed capital consists of amounts provided to a non-fixed trust to create, or to increase the value of, membership interests in the trust. In limited cases other amounts are taken to be contributed capital.

**157-80 Contributed capital account and sub-accounts**

Non-fixed trusts are required to maintain a contributed capital account and sub-accounts for each class of membership interests.

*[This is the end of the Guide]*

**Operative provisions****Available profits****157-85 Available profits**

- (1) A \*non-fixed trust's **available profits** at a particular time are:

$$\text{Net market value of assets} - \text{Accounting provisions} - \text{Contributed capital} - \text{Prior taxed amounts}$$

where:

**accounting provisions** means the following provisions (according to the \*non-fixed trust's accounts):

- (a) provisions for depreciation;
- (b) provisions for annual leave and long service leave;
- (c) provisions for the amortisation of intellectual property and trademarks;
- (d) other provisions prescribed under regulations made for the purposes of this paragraph.

**contributed capital** is the balance of the \*non-fixed trust's \*contributed capital account at that time.

**net market value of assets** is the difference between the market value of the \*non-fixed trust's assets and the amount of the trust's liabilities at that time.

**prior taxed amounts** is the sum of the \*non-fixed trust's \*prior taxed amounts at that time.

*Valuation of assets and liabilities*

- (2) Subject to subsection (3), if the \*non-fixed trust's accounting records and statements indicate that the non-fixed trust has sufficient profits at a particular time to fund the \*distribution, the non-fixed trust is taken to have \*available profits at that time at least equal to the amount of the distribution unless the non-fixed trust proves the contrary.
- (3) If the Commissioner considers that the \*non-fixed trust's accounting records significantly undervalue the net market value of its assets, the Commissioner may substitute a value that the Commissioner considers is appropriate.

*In calculating assets and liabilities, ignore certain assets and liabilities*

- (4) In calculating the net market value of the \*non-fixed trust's assets under subsection (1), disregard the following assets and liabilities of the trust:

<b>Assets and liabilities to be disregarded</b>	
<b>Item</b>	<b>Assets and liabilities</b>
<b>1</b>	<b>Assets</b>
1.1	a right that the *non-fixed trust has to a *contribution of capital to the trust
1.2	rights that the *non-fixed trust has under a *loan by the trust that is a *distribution
<b>2</b>	<b>Liabilities</b>
2.1	an obligation the *non-fixed trust has to make a *distribution

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**Assets and liabilities to be disregarded**


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<b>Item</b>	<b>Assets and liabilities</b>
2.2	an obligation the *non-fixed trust has under a *loan to the trust that is a *contribution of capital to the trust
2.3	an obligation that is not a present legal obligation

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**Contributing capital (general rules)****157-90 Contributing capital to a non-fixed trust (general rule)**

*General rule—amounts paid for issue of, or to meet liability attaching to, membership interest*

- (1) You **contribute capital** to a \*non-fixed trust if you:
- (a) make a payment to, or transfer an asset to, the trust as consideration for the issue or granting of a \*membership interest in the trust; or
  - (b) make a payment to, or transfer an asset to, the trust with the sole purpose of:
    - (i) allowing membership interests in the trust to be created; or
    - (ii) allowing the trust to be created; or
    - (iii) enhancing the value of existing membership interests in the trust; or
    - (iv) enhancing the value of the assets in respect of which a discretion may be exercised in favour of \*members of the trust.

The amount contributed is the amount of the payment or the market value of the asset.

- (2) A payment, or transfer of an asset, may be made as consideration for the issue of a \*membership interest whether it is made before, at the same time as, or after the membership interest is issued.
- (3) You **contribute capital** to a \*non-fixed trust by transferring an asset to the trust only if the market value of the asset exceeds the amount of the liabilities transferred with it.

### **157-110 Contributing capital in relation to a particular class of membership interests**

You **contribute capital** to a \*non-fixed trust in relation to \*membership interests of a particular \*class to the extent to which the \*contribution of capital is made in relation to:

- (a) membership interests of that class; or
- (b) assets in respect of which a discretion may be exercised in favour of members of the trust who hold membership interests of that class.

### **Contributing capital (loans)**

#### **157-115 Non-commercial loan to non-fixed trust**

- (1) You **contribute capital** to a \*non-fixed trust if:
  - (a) you are a \*member, or an \*associate of a member, of the trust; and
  - (b) you make a \*loan to the trust in an income year (the **loan year**); and
  - (c) the loan is a \*non-commercial loan both:
    - (i) at the time when it is made; and
    - (ii) at the end of the period of 12 months starting at the end of the loan year; and
  - (d) the whole or a part of the loan \*remains unpaid at the end of the period of 12 months starting at the end of the loan year; and
  - (e) you do not make the loan in the ordinary course of a business and on the usual terms on which you make similar loans to parties you deal with at \*arm's length.

The contribution is taken to occur at the end of the period of 12 months starting at the end of the loan year and the amount contributed is the amount of the principal that remains unpaid at the end of that period.

Note: See section 156-90 for the treatment of repayments of the loan.

- (2) This section does not apply to a \*loan if:
  - (a) the loan is made:

- 
- (i) by one \*non-fixed trust to another non-fixed trust;  
or
  - (ii) by one non-fixed trust to an \*associate of another non-fixed trust; or
  - (iii) by an associate of one non-fixed trust to an associate of another non-fixed trust; and
- (b) each of the non-fixed trusts is a \*member of the other.

Note: A non-commercial loan in these circumstances may be dealt with as a distribution by the non-fixed trust making the loan rather than being dealt with as a contribution of capital to the borrowing entity under this section.

### **157-120 Commercial loan not fully repaid (contribution of capital)**

- (1) You **contribute capital** to a \*non-fixed trust if:
- (a) you are a \*member, or an \*associate of a member, of the trust; and
  - (b) you make a \*loan to the trust; and
  - (c) the loan is a \*commercial loan; and
  - (d) the trust:
    - (i) does not pay the required interest payment for the loan for an income year that occurs after the income year in which the loan is made by the end of the income year; or
    - (ii) does not fully repay the principal of the loan before the end of the term of the loan.
- (2) The contribution is taken to occur at the earlier of:
- (a) the end of the first income year for which the \*non-fixed trust does not make the required interest payments; or
  - (b) the end of the term of the loan.
- (3) The amount of the contribution is the amount of the principal that \*remains unpaid at the time when the contribution is made.
- (4) The **required interest payment** for the \*loan for an income year is:

Principal \* remaining unpaid  
at the end of the previous × Interest rate provided  
income year for in the \* loan

**157-125 Commercial loan not fully repaid (Commissioner's discretion)**

- (1) You do not **contribute capital** to a \*non-fixed trust under section 157-120 if the Commissioner determines that the loan is not a contribution of capital.
- (2) In exercising his or her discretion under subsection (1), the Commissioner must have regard to:
  - (a) the \*non-fixed trust's capacity, at the end of the term of the \*loan, to repay the loan; and
  - (b) any circumstances that have reduced the trust's capacity to repay the loan; and
  - (c) whether the trust took all reasonable steps to make payments in relation to the loan during the term of the loan.

**157-135 Forgiveness of commercial loan**

- (1) You **contribute capital** to a \*non-fixed trust if:
  - (a) you are a \*member, or an \*associate of a member, of the trust; and
  - (b) you make, or acquire the rights of the lender under, a \*loan to the trust; and
  - (c) the loan is a \*commercial loan; and
  - (d) the whole or a part of the loan is \*forgiven.The amount contributed is the amount forgiven.
- (2) If you \*contribute capital to a \*non-fixed trust under subsection (1), an amount equal to the amount contributed is taken to be received by you in satisfaction of the \*loan.

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**157-140 Special rules for membership interests that arise because of the loan***Membership interest arises*

- (1) Item 5 in the table in subsection 960-120(1) provides that the holder of the rights under a \*loan that gives rise to a \*contribution of capital to the \*non-fixed trust under section 157-115 or 157-120 is a \*member of the trust. The rights under the loan constitute a \*membership interest in the trust.

*Slice rule does not apply*

- (2) Subdivision 157-E (the slice rule) does not apply to a \*distribution made in relation to the \*membership interest. The \*profits first rule applies instead.

*Cost base*

- (3) The cost base of the \*membership interest for CGT purposes at the time it arises is the amount of the \*loan that \*remains unpaid at the time the membership interest arises.

**Contributed capital account and sub-accounts****157-145 Non-fixed trust to maintain contributed capital account and sub-accounts**

A \*non-fixed trust must maintain:

- (a) a \*contributed capital account; and
- (b) a \*sub-account of that account for each \*class of \*membership interest.

**157-150 Credits***Basic rule (contributions of capital create credits)*

- (1) There is a credit to a \*non-fixed trust's \*contributed capital account for each amount of capital any entity \*contributes to the trust.

*Special rules*

- (2) There is a credit to a \*non-fixed trust's \*contributed capital account if the conditions specified in any of the items in the following table are met. The table also shows the amount of the credit and the time at which it occurs.

<b>Special credits to contributed capital account</b>			
<b>Item</b>	<b>Conditions</b>	<b>Amount of credit</b>	<b>When credit occurs</b>
1	<i>Discount capital gain by trust</i> the *non-fixed trust makes a *discount capital gain because of a *CGT event	the amount of the reduction that occurs under step 3 of the method statement in subsection 102-5(1) in relation to the discount capital gain	when the CGT event happens
2	<i>Trust using frozen indexation</i> (a) the *non-fixed trust makes a *capital gain because of a *CGT event that happens in relation to a *CGT asset; and (b) in calculating the capital gain any element of the *cost base of the asset is indexed under subsection 110-25(7)	the difference between the cost base of the asset after indexation under Division 114 and the cost base before indexation	when the CGT event happens
3	<i>Small business 15-year exemption</i> the *non-fixed trust: (a) makes a *capital gain from a *CGT event; and (b) may disregard the gain under Subdivision 152-B	the amount of the gain	when the CGT event happens

<b>Special credits to contributed capital account</b>			
<b>Item</b>	<b>Conditions</b>	<b>Amount of credit</b>	<b>When credit occurs</b>
4	<p><i>Small business 50% active asset reduction</i></p> <p>(a) the *non-fixed trust makes a *capital gain from a *CGT event; and</p> <p>(b) the capital gain is reduced under Subdivision 152-C</p>	the amount of the reduction under that Subdivision that occurs under step 4 of the method statement in subsection 102-5(1)	when the CGT event happens
5	<p><i>Realisation of certain assets by trust</i></p> <p>(a) a *CGT event happens in relation to a *CGT asset of the *non-fixed trust *acquired before 20 September 1985; and</p> <p>(b) the CGT event is not one listed in subsection 115-25(3)</p>	the *capital proceeds from the CGT event less any amount already credited to the *contributed capital account in relation to the asset	when the CGT event happens

### **157-155 Debits**

There is a debit to a \*non-fixed trust's \*contributed capital account for each \*distribution the trust makes from \*contributed capital.

### **157-160 Opening balance on commencement of non-fixed trust rules**

The opening balance of the \*contributed capital account of a \*non-fixed trust to which the \*non-fixed trust rules apply on 1 July 2001 is:

- (a) the amount worked out using section 157-165 (the valuation method); or

- (b) the amount worked out using section 157-170 (the contributions less capital returns method) if the trust chooses to use this section instead.

**157-165 Valuation method**

- (1) The opening balance of the \*non-fixed trust's \*contributed capital account on 1 July 2001 is worked out using the following table if the opening balance is to be worked out using this section:

<b>Valuation method of working out opening balance</b>	
<b>Item</b>	<b>Amounts to be added and deducted</b>
<b>1</b>	<b>Amounts to be added</b>
1.1	the *cost base of any *CGT asset that: (a) was included in the trust estate immediately before 1 July 2001; and (b) is not *trading stock, is not an asset to which item 1.2 applies and is not a *revenue asset
1.2	the *undeducted cost of any *plant included in the trust estate immediately before 1 July 2001
1.3	the value of trading stock that: (a) was included in the trust estate at the end of the most recent income year that ended before 1 July 2001; and (b) has been taken into account in working out the trust's assessable income or deductions under section 70-35
1.4	amounts that would reduce the gross disposal proceeds in calculating the profit on disposal of a *revenue asset included in the trust estate immediately before 1 July 2001
1.5	the amount of any Australian or foreign currency included in the trust estate immediately before 1 July 2001
<b>2</b>	<b>Amounts to be deducted</b>

<b>Valuation method of working out opening balance</b>	
<b>Item</b>	<b>Amounts to be added and deducted</b>
2.1	any amounts that have been deducted for *capital allowances listed in the table in subsection 40-30(2) under this Act for the *CGT assets referred to in item 1.1 in this table (but not to the extent to which the amounts have reduced the *cost base of a CGT asset referred to in that item)
2.2	the market value of the rights or other assets corresponding to the liabilities of the trustee that is held by the persons to whom the liabilities are owed
2.3	any * prior taxed amount in existence immediately before 1 July 2001

- (2) The \*cost base of a \*CGT asset \*acquired before 20 September 1985 should not be added under item 1.1 in the table in subsection (1) if the \*non-fixed trust cannot:
- establish that the asset was acquired before 20 September 1985; and
  - establish the cost base of the asset.
- (3) The \*cost base of an asset covered by item 1.1 in the table in subsection (1) is to be worked out under Subdivision 110-A as modified by Division 112 but excluding the amount of any indexation under Division 114.
- (4) The opening balance is nil if it would otherwise be less than nil.
- (5) For the purposes of item 1.5 in the table in subsection (1), the amount of any foreign currency is worked out by converting it into the equivalent amount of Australian currency according to the applicable exchange rates immediately before 1 July 2001.

### **157-170 Alternative opening balance calculation**

- (1) The opening balance of the \*non-fixed trust's \*contributed capital account on 1 July 2001 is worked out using the following table if the opening balance is to be worked out using this section:

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<b>Alternative method of working out opening balance</b>	
<b>Item</b>	<b>Amounts to be added and deducted</b>
<b>1</b>	<b>Amounts to be added</b>
1.1	the amount or value of each *contribution of capital to the *non-fixed trust made before 1 July 2001
<b>2</b>	<b>Amounts to be deducted</b>
2.1	the amount or value of each *distribution made before 1 July 2001 to members of the *non-fixed trust and their *associates from amounts *contributed as capital to the trust

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- (2) The value of a \*contribution of capital is to be determined as at the time the contribution is made.
- (3) For the purposes of this section, a **contribution of capital** to the \*non-fixed trust is a contribution of capital of the kind referred to in section 157-90 even though the contribution is made at a time when that section was not in force.

### **157-175 Opening balance of trust entering the non-fixed trust regime after 1 July 2001**

The opening balance of the \*contributed capital account of a \*non-fixed trust that becomes subject to the \*non-fixed trust rules after it comes into existence and to which those rules did not apply on 1 July 2001 is:

- (a) if the trust was in existence immediately before 1 July 2001—the amount that would have been the balance of its contributed capital account if the non-fixed trust rules had applied to it at all times since 1 July 2001; or
- (b) if the trust comes into existence after 1 July 2001—the amount that would have been the balance of its contributed capital account if:
- (i) section 157-160 had applied to the trust when it came into existence as if references in that section to the time immediately before 1 July 2001 were references to the time at which the trust came into existence; and

- (ii) the non-fixed trust rules had applied to it at all times since it came into existence.

### 157-180 Opening balance for contributed capital sub-accounts

- (1) This section tells you how to work out the opening balance for a \*contributed capital sub-account for a \*class of \*membership interests in a \*non-fixed trust if the trust:
- is one to which the \*non-fixed trust rules apply on 1 July 2001; or
  - becomes subject to the non-fixed trust rules after it comes into existence and is one to which those rules did not apply on 1 July 2001.
- (2) The opening balance for the sub-account is worked out:
- under subsection (3) if it is possible to work out an opening balance under that subsection; and
  - under subsection (4) if it is not possible to work out an opening balance under subsection (3).
- (3) If the opening balance is to be worked out under this subsection, it is worked out using the formula:

$$\text{Opening balance of the *contributed capital account} \times \frac{\text{Current balance of capital that has been contributed for the benefit of that *class of *membership interest}}{\text{Total current balance of capital that has been contributed for all *classes of *membership interests}}$$

- (4) If the opening balance is to be worked out under this subsection, it is worked out using the formula:

$$\text{Opening balance of the *contributed capital account} \times \frac{\text{The market value of the *membership interests in that *class}}{\text{Total market value of all *membership interests in the *non-fixed trust}}$$

- (5) For the purposes of subsection (4), the **market value** of a \*membership interest is its market value immediately before the \*non-fixed trust rules start to apply to the trust.

**157-190 What happens if balance in contributed capital account, or sub-account, is less than nil**

For the purposes of:

- (a) calculating the \*available profits of a \*non-fixed trust at a particular time; or
- (b) applying the \*slice rule in sections 157-210 to 157-230; the balance of the trust's \*contributed capital account, or a \*sub-account of that account, is taken to be nil if it would otherwise be less than nil.

**157-195 Contributed capital sub-accounts for each class of membership interests**

*Sub-account for each class*

- (1) There is to be a sub-account within a \*non-fixed trust's \*contributed capital account for each \*class of \*membership interest in the trust. If the trust has only one class of membership interests, the contributed capital account is also the sub-account for that class.

*Credits to class sub-account*

- (2) There is a credit to the \*contributed capital sub-account for a \*class of \*membership interests to the extent to which:
  - (a) you \*contribute capital to the \*non-fixed trust in relation to a membership interest in that class; or
  - (b) if the payment of an amount, or the realisation of an asset, is treated under this Act as a \*contribution of capital—membership interests in that class carry rights to \*distributions of amounts or proceeds of that kind; or
  - (c) the balance of the account is increased under section 157-200.

*Debits to class sub-account*

- (3) There is a debit to the \*contributed capital sub-account for a \*class of \*membership interests to the extent to which:
    - (a) a \*distribution from \*contributed capital is made in relation to a membership interest in that class; or
-

- (b) the balance of the account is decreased under section 157-205.

### 157-200 Spreading certain credits across sub-accounts

If an amount of \*contributed capital cannot be fully allocated under subsection 157-195(2), the balance of the \*contributed capital sub-account for each \*class of \*membership interest is to be increased by the amount worked out using the formula:

$$\text{Amount to be allocated} \times \frac{\text{Balance of class sub - account before allocation}}{\text{Balance of *contributed capital account before allocation}}$$

where:

**amount to be allocated** is the amount that cannot be allocated under subsection 157-195(2).

**balance of class sub-account before allocation** is the balance of the sub-account for that \*class immediately before the \*non-fixed trust acquires the amount to be allocated.

**balance of contributed capital account before allocation** is the balance of the \*non-fixed trust's \*contributed capital account immediately before the trust acquires the amount to be allocated.

### 157-205 Spreading certain debits across sub-accounts

If:

- (a) the \*non-fixed trust makes a \*distribution in relation to a \*membership interest of a particular \*class from \*contributed capital; and
- (b) the distribution is greater than the balance of the \*contributed capital sub-account for that class;

the following rules apply:

- (c) the balance of the sub-account for that class is reduced to nil;

- (d) the balance of the sub-account of each other class is reduced by the amount worked out using the formula:

$$\text{Excess distributed} \times \frac{\text{Balance of class sub - account after * distribution}}{\text{Balance of * contributed capital account after * distribution}}$$

where:

**balance of class sub-account after distribution** is the amount that would otherwise be the balance of the sub-account for that \*class immediately after the distribution is made.

**balance of contributed capital account after distribution** is the amount that would otherwise be the balance of the \*non-fixed trust's contributed capital account immediately after the distribution is made.

**excess distributed** is the difference between the amount distributed, or the consideration provided, from \*contributed capital and the balance of the sub-account for the interests in relation to which the distribution is made.

## Subdivision 157-E—The slice rule

### Guide to Subdivision 157-E

#### 157-210 What this Subdivision is about

A distribution to which the slice rule applies may be treated as being made up of the membership interest's share of contributed capital, then of its share of taxed (and frankable) profits and then of untaxed (and unfrankable) profits.

The slice rule applies to distributions because of:

- (a) a termination of membership interests (except as part of a proportionate reduction); or

- (b) a decrease in the member's rights, or in the market value of those rights, relative to those of other members.

## Table of sections

### Operative provisions

- 157-215 Object of this Subdivision  
 157-220 Slice rule—identifying the components  
 157-225 Slice rule—working out the interest's share of contributed capital  
 157-230 Slice rule—working out the taxed profits component of a distribution

*[This is the end of the Guide]*

## Operative provisions

### 157-215 Object of this Subdivision

A \*membership interests in a \*non-fixed trust can normally be seen as carrying an entitlement to the trust's profits and \*contributed capital. So, the compensation for the loss of any part of those entitlements should be treated as coming from those things in appropriate proportions.

### 157-220 Slice rule—identifying the components

- (1) Subsections 157-45(1) and (3) apply this Subdivision to certain \*distributions made in relation to a \*membership interest in a \*non-fixed trust.
- (2) If this Subdivision applies to a \*distribution, this is how the distribution is dealt with:

#### *Method statement*

**Step 1.** Use section 157-225 to work out how much of the balance of the \*non-fixed trust's \*contributed capital account is attributable to the interest in relation to which the distribution is made: this is the ***interest's share of contributed capital***.

*Step 2.* The distribution is wholly **from contributed capital** if the distribution is less than or equal to the interest's share of contributed capital.

*Step 3.* If the distribution is greater than the interest's share of contributed capital, the distribution is:

- (a) **from contributed capital** to the extent of the interest's share of contributed capital; and
- (b) **from profits** to the extent of the excess of the distribution over the interest's share of contributed capital.

*Step 4.* If the distribution is to some extent from profits, use section 157-230 to work out the \*taxed profit component of the distribution.

*Step 5.* The distribution is wholly **from taxed profits** if the distribution from \*profits is less than or equal to the taxed profit component.

*Step 6.* If the distribution from \*profits is greater than the taxed profit component, the distribution is:

- (a) **from taxed profits** to the extent of the taxed profit component; and
- (b) **from untaxed profits** to the extent of the excess of the distribution from profits over the taxed profit component.

(3) If:

- (a) a series of \*distributions are made in relation to \*membership interests in a particular \*class; and
- (b) this Subdivision applies to each of those distributions; and
- (c) the extent to which the first of those distributions is from \*contributed capital, taxed profits and untaxed profits has been worked out under subsection (2);

the contributed capital, taxed profits and untaxed profits components for the later distributions in the series are the same as those for the first distribution until:

- (d) the balance of the \*non-fixed trust's \*franking account changes (otherwise than as a result of one of the distributions in the series); or
- (e) the balance of the trust's \*contributed capital sub-account for interests in that class changes (otherwise than as a result of one of the distributions in the series); or
- (f) there is a change to the amount of the distributions to be made in the series.

### **157-225 Slice rule—working out the interest's share of contributed capital**

#### *Overall calculation*

- (1) To work out how much of the balance of a \*non-fixed trust's \*contributed capital account is attributable to a \*membership interest in relation to which the \*distribution is made, it is necessary to start with the balance of the \*contributed capital sub-account for the \*class to which the interest belongs using section 157-195.
- (2) The ***interest's share of contributed capital*** is worked out using the formula:

$$\text{Balance of * contributed capital sub-account for * class} \times \text{Contributed capital factor for the * membership interest}$$

where:

***contributed capital factor for the membership interest*** is the factor worked out using subsection (3).

#### *Factor for membership interest*

- (3) The ***contributed capital factor*** for the \*membership interest is worked out using the following table:

Contributed capital factor for membership interests		
Item	Circumstances	Contributed capital factor
1	The membership interests in the *class are unitised	$\frac{1}{\text{Number of * membership interests in the * class}}$
2	The membership interests in the *class are fixed but not unitised	Proportion of the interest to all the interests in the class
3	The membership interests in the *class are not unitised or fixed	$\frac{\text{*Distribution in relation to *membership interest}}{\text{*Distribution in relation to all * membership interests in the class}}$

Note: Item 3—Under subsection 157-45(3) membership interests in a trust are taken to cease to exist in certain circumstances.

**157-230 Slice rule—working out the taxed profit component of a distribution**

*Overall calculation*

- (1) The **taxed profit component** for the \*membership interest in relation to which the \*distribution is made is worked out using the formula:

$$\begin{matrix} \text{*Non - fixed trust's} \\ \text{*franking surplus} \\ \text{immediately} \\ \text{before the} \\ \text{*distribution is made} \end{matrix} \times \frac{1 - \text{Franking rate}}{\text{Franking rate}} \times \begin{matrix} \text{Taxed profit} \\ \text{factor for the} \\ \text{*membership interest} \end{matrix}$$

**franking rate** is 30%.

**taxed profit factor for the membership interest** is the factor worked out using subsection (2).

*Taxed profit factor for membership interest*

- (2) The taxed profit factor for the \*membership interest is worked out using the following formula:

\*Distribution in relation to  
the \* membership interest – Interest's share of contributed capital

\*Available profits

## **Subdivision 157-F—Timing of distributions made under a single scheme**

### **Guide to Subdivision 157-F**

#### **157-235 What this Subdivision is about**

Distributions under the same decision are taken to be made at the time of the first distribution if they are actually made within 5 business days of each other.

#### **Table of sections**

157-240 Objects of this Subdivision  
157-245 The 5 day rule

*[This is the end of the Guide]*

### **Operative provisions**

#### **157-240 Objects of this Subdivision**

- (1) An object of this Subdivision is to limit a \*non-fixed trust's ability to treat \*members differently, by \*distributing \*profits to one member and \*contributed capital to another. This could be achieved by timing the payment of distributions to use up profits for the first payment, leaving only contributed capital for the rest. Taking the distributions to happen on the same day stops this.
- (2) The other object of this Subdivision is to avoid the compliance costs that could arise from having to determine \*available profits many times when a large number of \*distributions are made within a short period.

## 157-245 The 5 day rule

- (1) If:
  - (a) a \*non-fixed trust makes 2 or more \*distributions; and
  - (b) the distributions are made:
    - (i) pursuant to the same decision by the trust; and
    - (ii) within a period of 5 business days;all the distributions are taken to be made at the time when the first of those distributions is made for the purposes of:
    - (c) working out the trust's \*available profits when applying the \*profits first rule in section 157-20; and
    - (d) applying section 157-20 to work out the proportion of each distribution that is from the trust's available profits; and
    - (e) working out whether a \*rearrangement of membership interests is proportionate under section 960-135.
- (2) If the \*distributions are made from \*contributed capital, the \*non-fixed trust's \*contributed capital account is reduced for all the distributions when the first distribution is made.
- (3) Subsections (1) and (2) may apply to 2 or more periods during which distributions are made pursuant to the one decision but a day can be included in only one 5 business days period.

## Division 158—Special rules on bonus unit issues

### Guide to Division 158

#### 158-1 What this Division is about

This Division contains special rules for working out the consideration for acquiring bonus units in a non-fixed trust.
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#### Table of sections

158-5	Consideration for acquiring bonus issue of units
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- 158-10 Consideration if issue of bonus units is a non-rebatable distribution from profits
- 158-15 Consideration if issue of bonus units is not a distribution from profits or is a rebatable distribution from profits

*[This is the end of the Guide]*

### **158-5 Consideration for acquiring bonus issue of units [6BA(1)]**

This Division tells you how to work out for the purposes of this Act how much consideration you provided for acquiring interests in a \*non-fixed trust if:

- (a) you hold interests in the trust (the **original units**); and
- (b) the trust issues you with other interests in the trust (the **bonus units**) in respect of the original units.

### **158-10 Consideration if issue of bonus units is a non-rebatable distribution from profits [6BA(2)]**

- (1) This section applies if:
  - (a) the issue of the \*bonus units is a \*distribution to you from \*profits; and
  - (b) the distribution is not rebatable.
- (2) The consideration you are taken to have provided for acquiring the \*bonus units is so much of the \*distribution as is included in your assessable income.

### **158-15 Consideration if issue of bonus units is not a distribution from profits or is a rebatable distribution from profits [6BA(3)]**

- (1) This section applies if the issue of the \*bonus units:
  - (a) is not a \*distribution to you from \*profits; or
  - (b) is a distribution to you from profits but is rebatable.
- (2) Subsection (3) applies in determining:
  - (a) the value of those of the original units, and the bonus units, that you elect under section 70-45 to value at cost; and

- (b) if any of the original units, or any of the bonus units, are not articles of your trading stock:
- (i) the amount or value of the consideration paid for acquiring any of those units for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*; or
  - (ii) the amount of any profit or loss arising on the sale of disposal of any of those units.
- (3) Any amounts paid or payable by you in respect of the original units (whether on the purchase of the units or otherwise) are taken to have been paid or to be payable by you:
- (a) in respect of the original units; and
  - (b) in respect of the bonus units;
- in the proportions that the Commissioner considers appropriate in the circumstances.

## Division 159—Applying Act to non-fixed trusts

### Guide to Division 159

#### 159-1 What this Division is about

This Division contains the rules that are necessary for a non-fixed trust (which is not a legal person) to be treated as a separate entity.

These rules explain:

- what are the assets of a non-fixed trust; and
- who can act on behalf of a non-fixed trusts (they are called **representatives**); and
- what things a representative *must* do on behalf of a non-fixed trust it represents; and

- 
- the things a representative does, or that are done to the representative, that are taken to be done by, or to, the non-fixed trust; and
  - how representatives keep their own tax affairs separate from the tax affairs of a non-fixed trust they represent.

### **Table of sections**

159-5	Object of this Division
159-10	Actions, assets and liabilities of the non-fixed trust
159-15	Working out the net income of the representative

*[This is the end of the Guide]*

### **Operative provisions**

#### **159-5 Object of this Division**

- (1) The object of this Division is to ensure that the \*non-fixed trust rules and other provisions in this Act can be applied to \*non-fixed trusts even though they are not legal persons.
- (2) It does that by:
  - (a) identifying the assets of \*non-fixed trusts; and
  - (b) ensuring that there is a legal person who can act, and take responsibility, for non-fixed trusts for the purposes of this Act.

#### **159-10 Actions, assets and liabilities of the non-fixed trust**

- (1) For the purposes of applying this Act to a \*non-fixed trust:
  - (a) anything done by, to or in relation to a \*representative of the trust as a representative of the trust is taken to be done by, to or in relation to the trust; and
  - (b) the state of mind of a representative of the trust is taken to be the state of mind of the trust; and
  - (c) a liability owed by or to a representative of the trust as a representative of the trust is taken to be a liability owed by or to the trust; and

- (d) each representative of the trust is responsible for the performance of the trust's obligations under this Act; and
  - (e) each representative of the trust may exercise powers (including a power to make an election) conferred on the trust by this Act; and
  - (f) any asset that forms part of the trust estate, or that is otherwise held by the trustee in the trustee's capacity as trustee of the trust, are taken to be assets held by the trust.
- (2) Each trustee of a \*non-fixed trust, acting as trustee, is a **representative** of the trust.
- (3) If there are 2 or more \*representatives of a \*non-fixed trust, their liabilities and obligations as representatives are joint and several.

### 159-15 Working out the net income of the representative

When working out the assessable income of a \*representative of a \*non-fixed trust in his or her personal capacity:

- (a) disregard any losses or outgoings that are losses or outgoings of the trust; and
- (b) disregard any income that is income of the trust; and
- (c) disregard as an asset anything that is an asset of the trust.

Note: The purpose of this provision is to avoid double counting as between the non-fixed trust and the representative.

## **Schedule 2—The imputation system**

### **1 After Part 3.5 of Chapter 3**

Insert:

## **Part 3.6—The imputation system**

### **Division 160—Franking a distribution**

#### **Table of Subdivisions**

	Guide to Division 160
160-A	Object of Division 160
160-B	Franking a distribution
160-C	Limits on allocating franking credits
160-D	Anti-streaming rules
160-E	Statements on distribution
160-F	Franking accounts
160-G	Credits for foreign withholding tax

#### **Guide to Division 160**

##### **160-1 What this Division is about**

<p>This Division establishes the mechanisms for giving an Australian resident member of an Australian corporate tax entity credit for tax paid by the entity.</p>
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#### **Table of sections**

160-5	The imputation system
160-6	The mechanics of the system
160-7	Special rules for franking by some entities

### **160-5 The imputation system**

- (1) The imputation system:
  - (a) allows most Australian resident members of Australian corporate tax entities to offset tax paid by the entity on profits against the member's tax liability when those profits are distributed; and
  - (b) allows some Australian resident members of an Australian corporate tax entity to get a refund where the tax paid by the entity on the distributed profits exceeds the member's tax liability.
- (2) A member that is itself an Australian corporate tax entity is usually allowed to pass on the benefit of the tax offset to its own members.

### **160-6 The mechanics of the system**

- (1) Each entity that is, or has ever been, a corporate tax entity, has a franking account. Income tax paid and refunded is tracked as franking credits and debits in that account.
- (2) Most Australian corporate tax entities are allowed to frank distributions. This is done by allocating franking credits to the distribution.
- (3) Not all distributions made by an Australian corporate tax entity are frankable distributions.
- (4) There is a requirement that the Australian corporate tax entity give a member key information when a frankable distribution is made to the member so that the member's tax liability can be established. This is called a distribution statement.
- (5) On receiving a franked distribution, a capped credit on the distribution is usually included in the assessable income of a member if the member is an Australian resident at the time the distribution is made. A tax offset can then be calculated and, in certain circumstances, will result in a refund being made to the member.

### **160-7 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 entities and former exempting entities.

*These rules are not included in the Exposure Draft.*

### **Subdivision 160-A—Object of Division 160**

#### **Table of sections**

160-8 Object

#### **160-8 Object**

- (1) The main object of this Division is:
  - (a) to give an \*Australian corporate tax entity credit for income tax it has paid, or for credits it has received with \*distributions from other Australian corporate tax entities; and
  - (b) to allow the entity to allocate those credits to the \*frankable distributions it makes to its \*members so that:
    - (i) profits distributed to members who are \*Australian residents are usually taxed at the members' marginal rates of tax; and
    - (ii) profits distributed to members who are not Australian residents are usually taxed at the company tax rate or at dividend withholding tax rates.
- (2) This partially integrates the taxation of \*Australian corporate tax entities and their \*members by recognising income tax paid by the entity when the member's tax liability is determined. Because there is only a partial integration, \*franking credits may be wasted to some extent.

- (3) It is also an object of this Division to pursue the main object in a way that denies any tax benefit for:
- (a) \*members that do not have a sufficient economic interest in the entity; and
  - (b) \*arrangements that might otherwise:
    - (i) give \*franking credits to members in accordance with their tax preferences; or
    - (ii) allow the manipulation of membership for that purpose.

## Subdivision 160-B—Franking a distribution

### Guide to Subdivision 160-B

#### 160-8A What this Subdivision is about

Most Australian corporate tax entities can frank a distribution.

This is done by:

- determining that a franking credit is to be allocated to the distribution; and
- making the distribution.

#### Table of sections

- 160-9 Which entities can frank a distribution?  
160-10 What sort of distribution can be franked?  
160-11 How is a distribution franked?

#### Operative provisions

- 160-19 Object  
160-20 Which entities may frank a distribution?  
160-26 Franking a distribution  
160-31 Frankable distributions by companies  
160-32 Frankable distributions by trusts covered by the non-fixed trust rules  
160-33 Frankable distributions by corporate unit trusts and public trading trusts
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- 160-34 Frankable distributions by corporate limited partnerships
- 160-35 Allocating franking credits
  - 160-35AA Specific allocation determination
  - 160-35AB Standing allocation determination
- 160-35A Distributions dealt with under the slice rule
- 160-36 Franked distributions

### **160-9 Which entities can frank a distribution?**

All Australian corporate tax entities, except life insurance companies that are mutual insurance companies can frank a distribution.

### **160-10 What sort of distribution can be franked?**

There are limits on the type of distribution that can be franked. In general, distributions that are made out of profits can be franked. There are, however, limits to this principle.

### **160-11 How is a distribution franked?**

- (1) A corporate tax entity franks a distribution by allocating a franking credit to it.
- (2) Generally, the entity determines in writing that a franking credit is to be allocated to a distribution. Then, when the distribution is made, the franking credit is allocated in accordance with the determination.
- (3) The entity can make a standing allocation determination, setting the franking percentage for future distributions, to avoid having to make a specific allocation determination for each distribution.

*[This is the end of the Guide.]*

## **Operative provisions**

### **160-19 Object**

The object of this Subdivision is to provide a mechanism for those \*Australian corporate tax entities that make \*frankable

distributions to pass to their \*members credits for income tax paid by the entity.

### 160-20 Which entities may frank a distribution?

- (1) An entity may frank a frankable distribution if it is a \*franking entity when the distribution is made.
- (2) An entity is a **franking entity** at a particular time if:
  - (a) it is an \*Australian corporate tax entity at that time; and
  - (b) it is not a life insurance company that is a \*mutual life insurance company at that time.

### 160-26 Franking a distribution

To frank a distribution, a corporate tax entity must allocate a \*franking credit to the distribution.

### 160-31 Frankable distributions by companies

#### *General*

- (1) A company makes a **frankable distribution** to one of its \*members if it makes a \*distribution of any of these kinds:
  - (a) a dividend within the meaning of section 6 of the *Income Tax Assessment Act 1936*;
  - (b) the issue of \*shares that is taken to be a dividend under subsection 6BA(5) of that Act;
  - (c) a distribution that is taken to be a dividend by subsection 47(1) of that Act, otherwise than by operation of subsection 47(2A) of that Act;unless the distribution is \*unfrankable because of subsection (4).

#### *Purchase price for a buy-back*

- (2) A company makes a **frankable distribution** to the extent that the purchase price for the buy-back of a \*share by the company from one of its \*members:
  - (a) is taken by section 159GZZZP of the *Income Tax Assessment Act 1936* to be a \*dividend; and

- 
- (b) is not \*unfrankable because of subsection (4).
- (3) However, if the purchase price exceeds what would be the market value of the share at the time of the buy-back if the buy-back did not take place and was never proposed to take place, the amount of the frankable distribution is reduced by that excess.

*Unfrankable distributions*

- (4) The following \*distributions are **unfrankable**:
- (a) a dividend for which a deduction is allowable under section 120 of the *Income Tax Assessment Act 1936*; and
  - (b) a \*dividend to which paragraph 24J(2)(a) of that Act applies that is taken by section 24J of that Act to be derived from sources in a prescribed Territory (as defined in paragraph 24BB(a) of that Act); and
  - (c) a dividend that, apart from section 45Z of that Act is a debt dividend for the purposes of section 46D of that Act; and
  - (d) a dividend that is taken by subsection 46M(3) or paragraph 46M(4)(a) of that Act not to be a frankable distribution; and
  - (e) an amount taken to be a dividend under Division 7A of Part III of that Act.

**160-32 Frankable distributions by trusts covered by the non-fixed trust rules**

- (1) A distribution by a trust covered by the \*non-fixed trust rules to one of its \*members is a **frankable distribution** to the extent that:
- (a) it is a \*distribution from \*profits; and
  - (b) it is not unfrankable under this section.
- (2) A \*distribution from \*profits is **unfrankable** to the extent that it is a distribution from profits under paragraph 157-20(c) (a distribution from profits under the \*profits first rule that is not from \*available profits).

- (3) A \*distribution that is dealt with under the slice rule in Subdivision 157-E is **unfrankable** to the extent that it is a distribution from untaxed profits under that Subdivision.
- (4) A \*distribution is **unfrankable** to the extent that it is taken to be a distribution under Subdivision 156-C (except section 156-94, which deals with bonus unit issues).

Note: Subdivision 156-C deals with certain loans, the forgiveness of certain debts and excessive payments to certain members.

### **160-33 Frankable distributions by corporate unit trusts and public trading trusts**

A \*distribution by a \*corporate unit trust or \*public trading trust to one of its \*members is a **frankable distribution**, unless it would be \*unfrankable if made by a \*company to its members.

### **160-34 Frankable distributions by corporate limited partnerships**

A \*distribution by a \*corporate limited partnership to one of its \*members is a **frankable distribution**, unless it would be \*unfrankable if made by a \*company to its members.

### **160-35 Allocating franking credits**

Sections 160-35AA and 160-35AB deal with the allocation of \*franking credits to \*frankable distributions, other than \*distributions by trusts covered by the \*non-fixed trust rules dealt with under the slice rule in Subdivision 157-E.

Note: See section 160-35A for the allocation of franking credits to distributions by trusts covered by the \*non-fixed trust rules dealt with under the slice rule.

### **160-35AA Specific allocation determination**

- (1) A \*corporate tax entity may determine in writing that a specified frankable distribution is to have a \*franking credit allocated to it.

- (2) The determination must state the \*franking percentage for the \*distribution or sufficient information for the franking percentage for the distribution to be worked out.

Note 1: To work out the franking percentage, use subsection 160-45(1). The franking percentage is arrived at by identifying the maximum credit that can be allocated to a frankable distribution and expressing the amount of the franking credit actually allocated to it as a percentage of that maximum.

Note 2: The maximum credit that can be allocated to a frankable distribution is worked out under subsection 160-45(2).

- (3) The determination must be made either when the \*distribution is made, or before the distribution is made.
- (4) The determination may be revoked or varied at any time before the specified \*distribution is made.
- (5) A determination in accordance with this section is a **specific allocation determination**.
- (6) If a \*specific allocation determination is made and is in force at the time a \*distribution specified in the determination is made, the distribution has a \*franking credit allocated to it in accordance with the determination.

### **160-35AB Standing allocation determination**

- (1) A \*corporate tax entity may determine in writing that:
- (a) a \*frankable distribution made by the entity; or
  - (b) a \*frankable distribution of a particular kind made by the entity;

is to have a \*franking credit allocated to it.

Note: A franking credit of zero may be allocated to a frankable distribution.

- (2) The determination must state the \*franking percentage for the \*distribution.

Note 1: To work out the franking percentage, use subsection 160-45(1). The franking percentage is arrived at by identifying the maximum credit that can be allocated to a frankable distribution and expressing the amount of the franking credit actually allocated to it as a percentage of that maximum.

Note 2: The maximum credit that can be allocated to a frankable distribution is worked out under subsection 160-45(2).

- (3) The determination must be made either when the \*distribution is made, or before the distribution is made.
- (4) A determination in accordance with this section is a ***standing allocation determination***.
- (5) If a \*standing allocation determination is made, then, at the time a \*frankable distribution covered by the determination is made, a \*franking credit is allocated to it in accordance with the determination if:
  - (a) the distribution is made while the determination is in force; and
  - (b) a franking credit is not allocated to the distribution under a \*specific allocation determination.

### **160-35A Distributions dealt with under the slice rule**

If a trust covered by the \*non-fixed trust rules makes a \*frankable distribution that is dealt with under the slice rule in Subdivision 157-E, the trust is taken to allocate a \*franking credit to that part of the distribution that is from taxed profits under that Subdivision at a \*franking percentage of 100%.

### **160-36 Franked distributions**

A \*distribution is a ***franked distribution*** if:

- (a) the entity making the distribution is a \*franking entity at the time the distribution is made; and
- (b) the distribution is a \*frankable distribution; and
- (c) a \*franking credit (other than a franking credit of nil) has been allocated under section 160-35AA, 160-35AB or 160-35A to the distribution.

Note: A distribution may be a franked distribution, even if the rule in section 160-40, and the benchmark rules in sections 160-55 and 160-80 are breached. There are, however, consequences for breaching those rules.

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## **Subdivision 160-C—Limits on allocating franking credits**

### **Guide to Subdivision 160-C**

#### **160-37 What this Subdivision is about**

The franking credit that can be allocated to a frankable distribution by a corporate tax entity cannot exceed an amount based on the maximum amount of income tax that could have been paid by it on the underlying profits.

There are also benchmark rules to ensure that one member of a corporate tax entity is not preferred over another when the entity allocates franking credits.

#### **Table of sections**

- 160-38 What is the maximum franking credit that can be allocated?  
 160-38A The benchmark rules

##### **Operative provisions**

- 160-39 Object  
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 160-55 Benchmark rule 1—franking percentage not to differ from the benchmark for the franking period  
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#### **160-38 What is the maximum franking credit that can be allocated?**

- (1) The maximum credit that can be allocated to a frankable distribution is calculated on the basis of the franking rate. That rate is currently 30%.

- (2) A frankable distribution has been franked at a franking percentage of 100% if it has had allocated to it the maximum credit that can be allocated to it.
- (3) The franking percentage expresses the franking credit that is allocated to a frankable distribution as a percentage of the maximum credit that can be allocated to the distribution.

### **160-38A The benchmark rules**

- (1) The benchmark rules are designed to ensure that one member of a corporate tax entity is not preferred over another when franking credits are allocated.
- (2) A corporate tax entity must frank all frankable distributions made within a franking period at the benchmark franking percentage for that period. This is benchmark rule 1.
- (3) A corporate tax entity can determine its own benchmark franking percentage for a franking period.
- (4) The benchmark franking percentage for a franking period cannot be more than 20 percentage points higher or lower than the benchmark for the immediately preceding franking period. This is benchmark rule 2.
- (5) A corporate tax entity can apply to the Commissioner to be allowed to frank at a franking percentage that differs from the entity's benchmark for the relevant period. The entity can also apply to set a benchmark that would otherwise breach benchmark rule 2. However, the Commissioner will only exercise these powers in extraordinary circumstances.
- (6) The benchmark rules do not apply to some companies.

*[This is the end of the Guide]*

## **Operative provisions**

### **160-39 Object**

The object of this Subdivision is:

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- (a) to limit the amount of the \*franking credit that can be allocated to a \*frankable distribution; and
- (b) to ensure that one \*member of a \*corporate tax entity is not preferred over another when the entity allocates franking credits.

#### **160-40 Franking percentage not to exceed 100%**

The \*franking percentage for a \*frankable distribution must not exceed 100%.

Note: If a corporate tax entity breaches this rule by allocating a franking credit at a franking percentage in excess of 100%:

- (a) the entity's franking account is debited to the extent of the allocation (see item 1 of the table in section 160-130); and
- (b) any additional amount included in the assessable income of the recipient of the distribution under section 161-215 for the relevant income year will not exceed the maximum credit that can be allocated to the distribution; and
- (c) any tax offset to which the recipient of the distribution is entitled under section 161-220 will not exceed the maximum credit that can be allocated to the distribution.

#### **160-45 Franking percentage**

- (1) The **franking percentage** for a \*frankable distribution is an expression of the extent to which the distribution has been franked. It is worked out using the formula:

$$\frac{\text{*Franking credit allocated to the frankable distribution}}{\text{Maximum credit that can be allocated to the frankable distribution}} \times 100$$

where:

**maximum credit that can be allocated to a frankable distribution** has the meaning given in subsection (2).

- (2) The **maximum credit that can be allocated to a frankable distribution** is the amount worked out using the formula:

$$\text{Amount of the } * \text{frankable distribution} \times \frac{\text{Franking rate}}{\text{Franking rate} - 1}$$

where:

*franking rate* is 30%.

**160-50 Application of benchmark rules 1 and 2**

- (1) \*Benchmark rule 1 does not apply to a \*company if:
  - (a) the company makes a \*frankable distribution during a \*franking period; and
  - (b) at all times during the franking period, the company is \*widely-held and has only one \*class of \*membership interest.
- (2) \*Benchmark rule 2 does not apply to a \*company if:
  - (a) it sets a \*benchmark franking percentage (either by declaration under section 160-65 or by default under 160-70) for a \*franking period; and
  - (b) at all times during the franking period, the company is \*widely-held and has only one \*class of \*membership interest.
- (3) \*Benchmark rule 1 does not apply to a \*frankable distribution made by a trust covered by the \*non-fixed trust rules that is dealt with under the slice rule in Subdivision 157-E.

**160-55 Benchmark rule 1—franking percentage not to differ from the benchmark for the franking period**

- (1) The \*franking percentage for a \*frankable distribution made by a \*corporate tax entity in a \*franking period must not differ from the entity's \*benchmark franking percentage for the period. This is **benchmark rule 1**.

Note: If a corporate tax entity allocates a franking credit in breach of this rule, the distribution may still be a franked distribution, although consequences will flow under subsection (2).

- (2) If a \*corporate tax entity allocates a \*franking credit to a \*frankable distribution in breach of \*benchmark rule 1:

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- (a) the entity is liable to pay over-franking tax if the \*franking percentage for the distribution exceeds the \*benchmark franking percentage for the \*franking period in which the distribution is made; and
  - (b) a debit is made to the entity's \*franking account if the franking percentage for the distribution is less than the benchmark franking percentage for the franking period in which the distribution is made.

Note: A franking debit arising under this section is in addition to any franking debit that would otherwise arise because of the distribution.

- (3) The amount of the \*franking debit is calculated using the formula:

$$\text{Franking \% differential} \times \text{*frankable distribution} \times \frac{\text{Franking rate}}{1 - \text{Franking rate}}$$

where:

**franking % differential** is the difference between:

- (a) the \*franking percentage for the \*frankable distribution; and
- (b) the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made, or if a different percentage is specified by the Commissioner in the exercise of the Commissioner's powers under section 160-85, that percentage.

**franking rate** is 30%.

Note: The amount of over-franking tax is set out in the *New Business Tax System (Over-franking Tax) Act 2000*. The amount of the tax is calculated using the same formula as that set out in subsection (3).

- (4) The \*franking debit arises on the day on which the \*distribution is made.
  - (5) Over-franking tax is payable by a \*corporate tax entity on the last day of the month following the end of the \*franking period in relation to which the entity is liable to pay the tax.
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### 160-65 Declared benchmark franking percentage

- (1) A \*corporate tax entity may declare a specified percentage to be its benchmark franking percentage for a \*franking period.
- (2) The declaration must be made in writing.
- (3) The declaration may be made, varied or revoked at any time before, but not after, a \*frankable distribution is made by the entity in the \*franking period.
- (4) If no such distribution is made by the entity in the \*franking period, the declaration may be made, varied or revoked before, but not after, the end of the franking period.
- (5) If a \*corporate tax entity declares a benchmark franking percentage for a \*franking period in accordance with this section, the **benchmark franking percentage** for the entity for the period is the declared percentage unless:
  - (a) the entity would breach \*benchmark rule 2 if its benchmark franking percentage for the period were the declared percentage; or
  - (b) the Commissioner sets a different benchmark franking percentage for the period under section 160-85.

### 160-70 Default benchmark franking percentage

- (1) If a \*corporate tax entity does not declare a benchmark franking percentage for a \*franking period in accordance with section 160-65, the **benchmark franking percentage** for that period is:
  - (a) the \*franking percentage for a \*frankable distribution (other than a frankable distribution by a trust covered by the \*non-fixed trust rules dealt with under the slice rule in Subdivision 157-E) made in the period and nominated in writing by the entity before the end of the period; or
  - (b) if no distribution is nominated under paragraph (a), the franking percentage for the first frankable distribution that is made in the period and is not a frankable distribution by a trust covered by the non-fixed trust

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rules dealt with under the slice rule in  
Subdivision 157-E;

unless:

- (c) the entity would breach \*benchmark rule 2 if the benchmark franking percentage for the period were that franking percentage; or
  - (d) the Commissioner sets a different benchmark franking percentage for the period under section 160-85.
- (2) If the entity does not make a \*frankable distribution (other than a frankable distribution by a trust covered by the \*non-fixed trust rules dealt with under the slice rule in Subdivision 157-E) in the \*franking period, the **benchmark franking percentage** for the period is the same as the \*benchmark franking percentage for the immediately preceding franking period, unless the Commissioner sets a different benchmark franking percentage for the period under section 160-85.

Note: If a corporate tax entity does not declare a benchmark franking percentage for a franking period in accordance with section 160-65, and no benchmark franking percentage arises under this section, then there is no benchmark franking percentage for the entity for the period, unless the Commissioner sets a benchmark franking percentage under section 160-85.

### **160-75 Franking periods**

- (1) If a \*corporate tax entity's income year is a period of 12 months, a **franking period** for the entity in that year is either:
  - (a) a period of 6 months beginning on the first day of the entity's income year; or
  - (b) a period of 6 months ending on the last day of the entity's income year.
- (2) If a \*corporate tax entity's income year is a period of 6 months or less, a **franking period** for the entity in that year is the same as the income year.
- (3) If a \*corporate tax entity's income year is a period of more than 6 months and less than 12 months, a **franking period** for the entity in that year is:

- (a) a period of 6 months beginning on the first day of the entity's income year; or
  - (b) the remainder of the income year.
- (4) If a \*corporate tax entity's income year is a period of more than 12 months, a **franking period** for the entity in that year is:
- (a) a period of 6 months beginning on the first day of the entity's income year (the **first franking period**); or
  - (b) a period of 6 months beginning immediately after the end of the first franking period; or
  - (c) the remainder of the income year.

**160-80 Benchmark rule 2—benchmarks in consecutive periods not to differ by more than 20 percentage points**

- (1) The \*benchmark franking percentage for a \*corporate tax entity for a \*franking period cannot differ by more than 20 percentage points from the benchmark franking percentage for the entity for the immediately preceding franking period (the **earlier benchmark**). This is **benchmark rule 2**.
- (2) If a \*corporate tax entity's benchmark franking percentage for a \*franking period would be a percentage declared by the entity under section 160-65, or arising under section 160-70, but for the fact that the percentage differs by more than 20 percentage points from the earlier benchmark, the entity's **benchmark franking percentage** for the period is taken to be:
- (a) 20 percentage points higher than the earlier benchmark if the benchmark set by the entity is more than 20 percentage points higher than the earlier benchmark; and
  - (b) 20 percentage points lower than the earlier benchmark if the benchmark set by the entity is more than 20 percentage points lower than the earlier benchmark;
- unless the Commissioner sets a different benchmark franking percentage for the period under section 160-85.

Note: If a benchmark franking percentage arises for a corporate tax entity for a franking period under subsection (2) and the entity allocates a franking credit to a frankable distribution at a franking percentage other than that benchmark, the entity will breach benchmark rule 1.

## **160-85 Commissioner's powers to permit a departure from benchmark rule 1 or 2**

### *Powers of the Commissioner*

- (1) Because \*benchmark rule 1 and \*benchmark rule 2 are an integral part of the imputation system, the Commissioner's powers under this section may only be exercised in extraordinary circumstances.
- (2) The Commissioner may, on application by a \*corporate tax entity, make a determination in writing:
  - (a) permitting the entity to allocate a \*franking credit to a \*frankable distribution at a \*franking percentage that differs from the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made; or
  - (b) setting a benchmark franking percentage for the entity for a franking period that differs by more than 20 percentage points from the benchmark franking percentage for the entity for the immediately preceding franking period.

### *When may the powers be exercised?*

- (3) The Commissioner may make a determination under paragraph (2)(a) either before or after the \*frankable distribution is made.
- (4) The Commissioner may make a determination under paragraph (2)(b) even if a \*frankable distribution has already been made in the \*franking period in relation to which the benchmark is set by the Commissioner.

*Matters to which the Commissioner must have regard in exercising the power*

- (5) In deciding whether to make a determination under subsection (2), the Commissioner must have regard to:
- (a) the entity's reasons for seeking a departure from the relevant benchmark rule; and
  - (b) the extent of the departure, or proposed departure, from the relevant 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 relevant benchmark rule; and
  - (e) whether a member of the entity has received, or will receive, \*imputation benefits in preference to other members of the entity as a result of the departure, or proposed departure, from the relevant benchmark rule; and
  - (f) any other matters that the Commissioner considers relevant.

*Consequence of the Commissioner exercising the power under this section*

- (6) An allocation of a \*franking credit as a percentage specified by the Commissioner in a determination under paragraph (2)(a) is taken to comply with \*benchmark rule 1.
- (7) If the Commissioner sets a benchmark franking percentage for a corporate tax entity for a \*franking period in a determination under paragraph (2)(b), the **benchmark franking percentage** for the entity for the period is taken to be that set by the Commissioner.

*Applying to the Commissioner*

- (8) A \*corporate tax entity must:
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- (a) make any 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 (5).

*Review*

- (9) If a taxpayer to whom a determination under this section 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 160-D—Anti-streaming rules**

### **Guide to Subdivision 160-D**

#### **@160-85AA What this Subdivision is about**

This Subdivision:

- prevents the exploitation of another corporate tax entity's benchmark franking percentage by imposing a franking debit when that happens; and
- 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**

- @160-85A Object
- @160-86 Linked distributions
- @160-86A Substituting tax-exempt bonus shares for franked distributions
- @160-87 Streaming distributions
- @160-88 Consequences where Commissioner makes a determination
- @160-89 Assessment and notice of determination
- @160-90 Right to review where a determination made

*[This is the end of the Guide.]*

## Operative provisions

### @160-85A Object

The object of this Subdivision is to ensure that:

- (a) a \*corporate tax entity and its \*members cannot avoid the effect of the benchmark rules by exploiting the \*benchmark franking percentage of another entity; and
- (b) a corporate tax entity does not stream \*franked distributions and \*tax-exempt bonus shares; and
- (c) a corporate tax entity does not stream distributions so that a member of the entity who would receive a greater benefit from \*imputation credits than another member receives an \*imputation benefit.

### @160-86 Linked distributions

- (1) This section generates a \*franking debit if:
  - (a) the exercise of a choice or selection by a \*member of a \*corporate tax entity; or
  - (b) the member's failure to exercise a choice or selection; has the effect of determining (to any extent) that another corporate tax 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 or any other member of the first entity; and
    - (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.
- (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.
- (3) The debit is equal to the one that would arise in that \*franking account if the entity concerned made a \*distribution, equal to

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the linked distribution, franked at that benchmark franking percentage.

- (4) The debit arises on the day on which the linked distribution is made.
- (5) The debit is in addition to any other debit that arises in an entity's \*franking account because of the linked distribution.
- (6) If the first entity has no \*benchmark franking percentage for the \*franking period in which the linked distribution is made, paragraph (1)(d) and subsections (2) and (3) apply as if a benchmark franking percentage of the first entity for that period had arisen under paragraph 160-70(1)(b) because of the first entity making the \*distribution referred to in paragraph (1)(c) of this section.
- (7) If the other entity has no \*benchmark franking percentage for the \*franking period in which the linked distribution is made, subsection (2) applies as if the other entity had a benchmark franking percentage of 0% for that period.

**@160-86A Substituting tax-exempt bonus shares for franked distributions**

- (1) This section generates a debit in a \*corporate tax 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 or another member of the entity, in substitution (in whole or in part) for one or more \*franked distributions by the entity to that or another member.
- (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.

- (3) The debit arises on the day when the \*shares are issued.
- (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.
- (6) If the entity has no \*benchmark franking percentage for the \*franking period in which the \*shares are issued, subsection (2) applies as if the entity had a benchmark franking percentage for that period equal to the one that would have arisen under paragraph 160-70(1)(b) because of the entity making the \*distribution referred to in that subsection.

### **@160-87 Streaming distributions**

- (1) This section empowers the Commissioner to make determinations if a \*corporate tax 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 (a **targeted recipient**) as a result of a distribution and the targeted recipient would derive a greater benefit from imputation credits than another member of the entity; and
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- (b) the other member will receive lesser \*imputation benefits, or will not receive any imputation benefits, whether or not the other member receives 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.
- (3) The Commissioner may make one or more of these determinations:
- (a) that a specified debit arises in the \*franking account of the entity, for each \*distribution made to a \*member of the entity that is not a targeted recipient and is specified by the Commissioner in the determination; and
  - (b) that a debit arises in the franking account of the entity equal to the \*franking debit that would have arisen if:
    - (i) the entity had made a \*frankable distribution at a \*franking percentage of 100% to a member of the entity that is not a targeted recipient; and
    - (ii) the amount of the distribution were equal to the amount of any consideration provided to that member for an \*on-market buy back of that member's \*membership interest; and
  - (c) that no \*imputation benefit is to arise in respect of a distribution that is made to a targeted recipient and specified in the determination.
- A determination must be in writing.

*What is an imputation benefit?*

- (4) An **imputation benefit** is:
- (a) an entitlement to a \*tax offset under section @161-220; or

- (b) an amount included in the recipient's assessable income because of the operation of section @161-215; or
- (c) an exemption from the liability to pay tax under section 128B of the *Income Tax Assessment Act 1936* (withholding tax) on a \*distribution, or part of a distribution, because of the operation of paragraph 128B(3)(ga) of that Act; or
- (d) a \*franking credit arising under item 5 of the table in section @160-115 or section 160APPA of the *Income Tax Assessment Act 1936*; or
- (e) an exempting credit arising under section 160AQCNF of that Act.

*When does a targeted recipient derive greater benefit from imputation credits?*

- (5) The following subsections list some of the cases in which a targeted recipient **derives a greater benefit from imputation credits** than another \*member. It is not an exhaustive list.
- (6) A targeted recipient **derives a greater benefit from imputation credits** than another \*member 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 targeted recipient:
  - (a) the other member is not an \*Australian resident;
  - (b) the amount of tax (if any) that, apart from this Division, would be payable by the other member is less than the \*tax offset to which the other member would be entitled under section @161-220 and the tax offset is not refundable under section 67-30;
  - (c) the other member is not a \*franking entity at any time during the income year;
  - (d) the other member is an Australian corporate tax entity during the whole or a part of the income year, but is unable to make a \*frankable distribution to its members in the income year;

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- (e) the other member is an Australian corporate tax entity at the time the distribution is made, but no credit arises in the \*franking account of the entity as a result of the distribution.
- (7) A targeted recipient also ***derives a greater benefit from imputation credits*** than another \*member if any of the following circumstances exist in relation to the targeted recipient in the income year in which the \*distribution giving rise to the benefit is made, and not in relation to the other member:
- (a) the targeted recipient receives a \*franking credit under section 160APPA of the *Income Tax Assessment Act 1936*;
  - (b) the targeted recipient receives a franking credit or exempting credit under section 160AQCNF of that Act;
  - (c) subsection 160AQTA(2) or (5) of that Act applies;
  - (d) section 160AQTB of that Act applies.

**@160-88 Consequences where Commissioner makes a determination**

- (1) If the Commissioner makes a determination giving rise to a debit in the \*franking account of an entity under paragraph @160-87(3)(a) or (b), on the day on which the notice of determination is served in writing on the entity, a debit arises in the franking account of the entity.
- (2) The amount of the \*franking debit arising because of a determination by the Commissioner under paragraph @160-87(3)(a) must not exceed:
- (a) the difference between the amount of the \*franking credit allocated to the specified \*frankable distribution and an amount calculated by applying the highest \*franking percentage at which a distribution to a targeted recipient is franked to the \*frankable distribution; or
  - (b) if the specified frankable distribution has not had a franking credit allocated to it, or that credit is zero—an amount calculated by applying the highest franking

- percentage at which a distribution to a targeted recipient is franked to the frankable distribution; or
- (c) if all or part of the specified distribution is \*unfrankable—an amount calculated by applying the highest franking percentage at which a distribution to a targeted recipient is franked to the specified distribution.
- (3) In specifying the \*franking debit, the Commissioner must have regard to:
- (a) any franking debit already incurred by the entity under paragraph @160-55(2)(b) because the entity franked the specified \*frankable distribution in breach of \*benchmark rule 1; and
- (b) any franking debit arising as a result of the specified frankable distribution under section @160-86 (about linked distributions) or section @160-86A (about substituting tax-exempt bonus shares for franked distributions).
- (4) If the Commissioner makes a determination denying an \*imputation benefit under paragraph @160-87(3)(c), the determination has effect according to its terms.

#### **@160-89 Assessment and notice of determination**

- (1) A determination under subsection @160-87(3) does not form part of an assessment.
- (2) The Commissioner must serve notice in writing of the determination:
- (a) in a case where the Commissioner determines that a debit is to arise in the \*franking account of an entity under paragraph @160-87(3)(a) or (b)—on the entity; or
- (b) in a case where a targeted recipient is denied an \*imputation benefit—on the targeted recipient.
- (3) If the Commissioner makes a determination denying an \*imputation benefit under paragraph @160-87(3)(c) on a \*distribution made by a \*widely-held entity, the Commissioner is taken to have served notice in writing of the determination

on the targeted recipient 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.

- (4) A notice under this section may be included in a notice of assessment.

### **@160-90 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 160-E—Statements on distribution**

### **Guide to Subdivision 160-E**

#### **160-193 What this Subdivision about**

Australian corporate tax entities are required to give distribution statements when they make frankable distributions.

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*[This is the end of the Guide.]*

## Operative provisions

### 160-95 Obligation to give a distribution statement

- (1) An entity that makes a \*frankable distribution must give the recipient a \*distribution statement if the entity is a \*franking entity at the time the distribution is made.
- (2) The statement must be given before the end of the period of 3 months after the \*distribution is made.
- (3) The statement may be given before the \*distribution is made.

### 160-100 Distribution statement

- (1) A ***distribution statement*** is a statement that complies with this section.
- (2) The statement must be in the \*approved form.
- (3) The statement must:
  - (a) identify the entity making the \*frankable distribution; and
  - (b) state the date on which the frankable distribution is made; and
  - (c) state the total amount of the frankable distribution; and
  - (d) state the \*franking percentage on the frankable distribution (even if it is zero); and
  - (e) state the \*imputation credit on the frankable distribution; and
  - (f) state the amount (if any) of the \*dividend withholding tax that has been deducted from the frankable distribution by the entity or, if the frankable distribution is part of a larger distribution, that larger distribution; and
  - (g) include any other information required by the \*approved form that is relevant to imputation generally, the frankable distribution and, if the frankable distribution is part of a larger distribution, that larger 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 misleading statement in connection with a distribution (whether frankable or not).

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**160-100A When distributions made to a member will be taken to have been made to someone else**

Sections 160-100B, 160-100C and 160-100D deal with 2 situations in which a \*distribution made by a \*corporate tax entity to one person will be taken to have been made to another person. This will affect whether a distribution statement is made to the first person, or the second person.

**160-100B First situation (on-market with a distribution sale)**

- (1) The first situation is one in which:
  - (a) the \*corporate tax entity makes a \*distribution to a \*member of the entity in respect of a \*membership interest in the entity; and
  - (b) at the \*distribution closing time (see section 160-100D), 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).
- (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 160-100C.

**160-100C Second situation (securities lending arrangement)**

- (1) The second situation is one in which:
  - (a) the \*corporate tax entity makes a \*distribution 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.
- (2) The \*distribution is taken to have been made to the other person as a \*member of the entity (and not to the member).
- (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 160-100B.

#### **160-100D 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.

#### **160-102 On-market sale with a distribution—statement by securities dealer**

If:

- (a) section 160-100B applies in relation to a \*frankable distribution; 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.

Note: Under the *Taxation Administration Act 1953* it is an offence to fail to give a statement required under this Subdivision, or make a misleading statement in connection with a distribution (whether frankable or not).

**160-103 On-market sale with a distribution—statement by party**

If:

- (a) section 160-100B applies in relation to a \*frankable distribution; 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.

Note: Under the *Taxation Administration Act 1953* it is an offence to fail to give a statement required under this Subdivision, or make a misleading statement in connection with a distribution (whether frankable or not).

**160-104 Securities lending arrangements—statement by borrower**

If section 160-100C applies in relation to a \*frankable distribution, 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.

Note: Under the *Taxation Administration Act 1953* it is an offence to fail to give a statement required under this Subdivision, or make a misleading statement in connection with a distribution (whether frankable or not).

**Subdivision 160-F—Franking accounts**

**Guide to Subdivision 160-F**

**160-104A What this Subdivision is about**

This Subdivision:

- creates a franking account for each entity that is, or has been, an corporate tax entity; and

- identifies when 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.

### Table of sections

160-105 The franking account

#### Operative provisions

160-110 Each entity that is or has been a corporate tax entity has a franking account

160-115 Franking credits

160-120 Paying a PAYG instalment or income tax

160-125 Refund of income tax

160-130 Franking debits

160-135 Franking surplus and deficit

160-140 Franking deficit tax

160-145 Deferring franking deficit

160-150 Remission of additional amount of franking deficit tax

### 160-105 The franking account

- (1) The franking account is the mechanism by which income tax paid and refunded is traced through an entity.
- (2) The payment of a PAYG instalment or income tax will generate a credit. The receipt of a franked distribution by the entity from another franking entity will also usually generate a credit, so that the receiving entity can pass the benefit of tax paid to its members. 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 franking entity will result in 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 frankable distributions have been streamed.

- (4) There is franking deficit tax if the franking account of a corporate tax entity is in deficit at the end of the entity's income year, or when the entity ceases to be a franking entity.

*[This is the end of the Guide]*

## Operative provisions

### 160-110 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 opening balance in the franking account will either be nil or, if the entity had a franking surplus or deficit immediately before 1 July 2001 under the imputation scheme existing at that time, an amount calculated under transitional provisions.

### 160-115 Franking credits

The table sets out when a credit arises in the \*franking account of an entity that is, or has at any time been, a \*corporate tax entity and the amount of the credit. A credit in an entity's franking account is called a **franking credit**.

#### Credits in the franking account

Item	If:	A credit of:	Arises on:
1	the entity *pays a PAYG instalment; and the entity is *sufficiently resident in the income year in which the relevant instalment period occurs; and the entity is a *franking entity for the whole of the relevant instalment period	the amount of the payment	the day on which the payment is made

**Schedule 2** The imputation system

<b>Credits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises on:</b>
2	the entity *pays a PAYG instalment; and the entity is *sufficiently resident in the income year in which the relevant instalment period occurs; and the entity is a *franking entity for part of the relevant instalment period	that part of the payment that is attributable to the period during which the entity was a franking entity	the day on which the payment is made
3	the entity *pays income tax; and the entity is *sufficiently resident in the income year for which tax is paid; and the entity is a *franking entity for the whole of the relevant income year	the amount of the payment	the day on which the payment is made
4	the entity *pays income tax; and the entity is *sufficiently resident in the income year for which tax is paid; and the entity is a *franking entity for only part of the relevant income year	that part of the payment that is attributable to the period during which the entity was a franking entity	the day on which the payment is made
5	a *franked distribution is made to the entity; and the entity is a *franking entity when it receives the distribution; and Division 161 deals with the tax effects for the entity of the distribution	the *imputation credit on the distribution	the day on which the distribution is made
6	the entity incurs a liability to pay *franking deficit tax	the amount of the liability	immediately after the liability is incurred

<b>Credits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises on:</b>
7	a *franking credit arises under section 160-160 (credit for *foreign withholding tax paid on a *distribution that is *equivalent to a frankable distribution)	the amount of the franking credit specified in the section	the day specified in the section
8	a *franking credit arises under section 160-165 (credit for *foreign withholding tax paid by another entity within a *chain of entities)	the amount of the franking credit specified in the section	the day specified in the section
9	<i>[A credit will also be created similar to that created in section 160APQB of the Income Tax Assessment Act 1936.]</i>		

### **160-120 Paying a PAYG instalment or income 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) An entity **pays income tax** if and only if:
- (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).

- (3) Subparagraph (1)(b)(ii) and (2)(b)(ii) does not apply to the application of a credit allowable under or by virtue of:
- (a) Division 18, 18A or 18B of Part III of the *Income Tax Assessment Act 1936* (these Divisions deal with credits in respect of foreign tax, credits in respect of overseas tax paid on certain film income and credits in respect of overseas tax paid on certain shipping income); or
  - (b) the *International Tax Agreements Act 1953* (credit to relieve double taxation); or
  - (c) 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 varied rate in certain cases).
- (4) 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.
- (5) 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
  - (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 referred to in paragraph (d).

**160-125 Refund of income 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 a return to the entity of an amount paid or applied to satisfy the entity's liability to pay the income tax.
- (2) The amount of the refund is so much of the amount refunded or applied as represents the return referred to in paragraph (1)(b).

**160-130 Franking debits**

The table sets out when a debit arises in the \*franking account of an entity that is, or has at any time been, an \*corporate tax entity. A debit in an entity's franking account is called a **franking debit**.

**Debits in the franking account**

<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
1	the entity makes a *frankable distribution; and the entity allocates, or purports to allocate, a *franking credit to the distribution	the amount of the franking credit	the day on which the distribution is made

**Schedule 2** The imputation system

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**Debits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
2	the entity receives a *refund of income tax; and the entity is *sufficiently resident in the income year to which the refund relates; and the entity was a *franking entity during the whole of the income year to which the refund relates	the amount of the refund	the day on which the refund is received
3	the entity receives a *refund of income tax; and the entity is *sufficiently resident in the income year to which the refund relates; and the entity was a *franking entity for only 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	the day on which the refund is received
4	a *franking debit arises for the entity under section 160-55 (the entity allocates a *franking credit to a *frankable distribution in contravention of *benchmark rule 1)	the franking debit worked out under subsection 160-55(3)	the day specified in subsection 160-55(4)

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<b>Debits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
5	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	the entity ceasing to be a franking entity
6	a *franking debit arises for the entity under section 160-86 (linked distributions)	the franking debit worked out under subsection 160-86(3)	the day specified in subsection 160-86(4)
7	the Commissioner makes a determination under paragraph 160-87(3)(a) or (b) giving rise to a *franking debit (streaming distributions)	the amount of the debit specified in the determination	the day specified in subsection 160-88(1)
8	a *franking debit is generated under section 160-86A (debit for substituting tax exempt bonus shares for franked distributions)	the amount of the debit specified in subsection 160-86A(2)	the day specified in subsection 160-86A(3)

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Schedule 2 The imputation system

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<b>Debits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
9	the entity is a *corporate tax entity that is taken to have paid a dividend in an income year under Division 7A of Part III	an amount equal to the debit that would have arisen if: (a) the payment of the dividend were a *frankable distribution; and (b) a *franking credit were allocated to the distribution at the entity's *benchmark franking percentage for the *franking period in which the debit arises or, if the entity does not have a benchmark franking percentage for the period, franked at 100%	the last day of the income year
10	the entity is a trust covered by the *non-fixed trust rules that is taken to have made a distribution in a year of income under Subdivision 156-C, except: (a) section 156-92 (which deals with excessive remuneration or termination payments); and (b) section 156-94 (which deals with bonus unit issues).	an amount equal to the debit that would have arisen if: (a) that part of the distribution that the trust is taken to have made that is from *available profits were a *frankable distribution; and (b) a *franking credit were allocated to that part of the distribution at the entity's *benchmark franking percentage for the *franking period in which the debit arises or, if entity does not have a benchmark franking percentage for the period, franked at 100%	the last day of the income year

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**Debits in the franking account**

<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
11	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 bought interest off-market; and (b) a *franking credit were allocated to the distribution 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, franked at 100%	the day on which the interest is purchased
12	<i>[A debit will also be created similar to that created in section 160APYBB of the Income Tax Assessment Act 1936.]</i>		

**160-135 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.

### 160-140 Franking deficit tax

- (1) The object of this section is to ensure that an entity does not pass to its \*members the benefit of income tax it has not paid by requiring an annual reconciliation of the entity's \*franking account and levying tax if the account is in deficit.

#### *Franking deficit at end of income year*

- (2) An entity (or in the case of a \*corporate unit trust or \*public trading trust, the trustee of that trust) is liable to pay \*franking deficit tax 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 (or in the case of a \*corporate unit trust or \*public trading trust, the trustee of that trust) is liable to pay \*franking deficit tax 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 2000* and the amount of the tax is set out in that Act.

### 160-145 Deferring franking deficit

#### *End of year deficit deferred*

- (1) The purpose 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 account.
- (2) A \*refund of income tax for an income year is taken to have been paid to an entity immediately before the end of that year, for the purposes of subsection 160-140(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.

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*Deficit on ceasing to be a franking entity deferred*

- (3) A \*refund of income tax that is attributable to a period during which an entity was a \*franking entity is taken to have been paid to it immediately before it ceased to be a franking entity, for the purposes of subsection 160-140(3), if:
- (a) the period to which \*income tax is attributable is within the income year in which the entity ceased to be a franking entity; and
  - (b) the refund is paid within 3 months of the entity ceasing 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.
- (4) If an entity is liable to pay \*franking deficit tax, or an increased amount of franking deficit tax, because of subsection (2) or (3), the tax, or the increased amount of tax, is payable:
- (a) before the end of 14 days after the day on which the \*refund of income tax is paid; or
  - (b) if, under this Act, a later day is set for the payment of franking deficit tax for the income year in relation to which the \*refund is paid—on that later day.

**160-150 Remission of additional amount of franking deficit tax**

- (1) The Commissioner may, in his or her discretion, remit the whole or any part of any additional amount of \*franking deficit tax payable under subsection 5(2) of the *New Business Tax System (Franking Deficit Tax) Act 2000*.
- (2) For the purposes of the application of subsection 33(1) of the *Acts Interpretation Act 1901* to the power of remission conferred by this section, nothing in this Act prevents the exercise of the power at a time before the penalty assessment is made.

## Subdivision 160-G—Credits for foreign withholding tax

This Subdivision gives rise to a franking credit where an Australian entity receives a distribution from a foreign corporate tax entity and tax has been withheld by the distributing entity on the distribution.

In some circumstances, franking credits will also arise where an Australian entity is part of a chain of entities and tax has been withheld on a distribution made to a foreign corporate tax entity within the chain.

### Table of sections

160-155	Object
160-160	Credit for foreign tax withheld on a distribution equivalent to a frankable distribution
160-165	Credit for foreign tax withheld within a chain of entities
160-170	Foreign withholding tax credit

*[This is the end of the Guide]*

### 160-155 Object

- (1) The object of this Subdivision is to bring closer together the treatment of:
  - (a) equity investments by \*Australian residents directly in a foreign corporate tax entity; and
  - (b) equity investments that are made indirectly, through an \*Australian corporate tax entity.
- (2) This reduces the disincentive for \*foreign entities to distribute profits to \*Australian corporate tax entities.
- (3) It achieves that by giving an \*Australian corporate tax entity a \*franking credit for \*foreign tax withheld on distributions \*equivalent to frankable distributions made to it by a \*foreign corporate tax entity. In some cases, it is also achieved by giving the Australian entity a franking credit for foreign tax withheld on distributions equivalent to frankable distributions

made to a foreign corporate tax entity that is part of the same \*chain of entities as the Australian entity.

**160-160 Credit for foreign tax withheld on a distribution equivalent to a frankable distribution**

*Franking credit*

- (1) A credit arises in the \*franking account of a \*corporate tax entity (the **Australian entity**) if:
- (a) the Australian entity receives a \*distribution \*equivalent to a frankable distribution from an entity that is a \*foreign corporate tax entity at the time the distribution is made; and
  - (b) the Australian entity is a \*member of the foreign corporate tax entity at the time the distribution is made; and
  - (c) the Australian entity is a \*qualified person in relation to the distribution; and
  - (d) the Australian entity is \*sufficiently resident in the income year in which the distribution is received; and
  - (e) \*foreign tax is withheld by the foreign corporate tax entity on the distribution.

*Meaning of distribution **equivalent to a frankable distribution***

- (2) A distribution is **equivalent to a frankable distribution** if:
- (a) it is made by a \*foreign corporate tax entity; and
  - (b) if that entity were an \*Australian corporate tax entity, the distribution would be a \*frankable distribution.

*Meaning of **foreign corporate tax entity***

- (3) An entity is a **foreign corporate tax entity** at a particular time if:
- (a) it is a \*corporate tax entity at that time; and
  - (b) it is not an \*Australian corporate tax entity at that time.

*When is foreign tax withheld by an entity on a distribution?*

- (4) **Foreign tax is withheld** by an entity on a \*distribution \*equivalent to a frankable distribution if an amount is withheld by the entity on the distribution because:
- (a) the entity is obliged, under the law of the country in which the entity makes the distribution, to withhold the amount on account of the tax liability of the entity to which the distribution is made; and
  - (b) that obligation arises because the entity to which the distribution is made is not a resident of the country in which the distribution is made under the law of that country.

*When does the franking credit arise?*

- (5) A \*franking credit under this section arises on the day on which the tax liability of the Australian entity on account of which \*foreign tax is withheld is satisfied.

*Working out the amount of the franking credit*

- (6) The amount of the franking credit is worked out in this way.

*Method statement*

*Step 1.* Work out the amount of the \*foreign tax withheld by the \*foreign corporate tax entity on the \*distribution \*equivalent to a frankable distribution.

*Step 2.* Work out the extent (if any) to which:

- (a) the \*foreign corporate tax entity's tax liability, or the tax liability of an \*associate of that entity, is reduced in the country in which the distribution is made as a result of the distribution being made; or
- (b) the foreign corporate tax entity receives some other tax advantage, or an associate of that entity receives some other tax advantage, in

the country in which the distribution is made as a result of the distribution being made; or

- (c) an amount referred to in step 1 is returned to the entity to which the distribution is made, or an associate of that entity (by whatever means).

*Step 3.* Reduce the amount referred to in step 1 to the extent referred to in step 2. This amount is the **reduced withholding tax**.

*Step 4.* The franking credit is equal to:

- (a) the reduced withholding tax; or
- (b) if the reduced withholding tax is greater than 15% of the amount of the distribution—15% of the amount of the distribution.

## **160-165 Credit for foreign tax withheld within a chain of entities**

### *Franking credit*

- (1) A credit arises in the \*franking account of a \*corporate tax entity (the **Australian entity**) if:
  - (a) the Australian entity receives a \*distribution \*equivalent to a frankable distribution (the **key distribution**) from an entity that is a \*foreign corporate tax entity at the time the distribution is made; and
  - (b) the Australian entity is \*sufficiently resident in the income year in which the key distribution is received; and
  - (c) the Australian entity is a \*qualified person in relation to the key distribution; and
  - (d) the Australian entity and the foreign corporate tax entity are part of the same \*chain of entities at the time the key distribution is made; and
  - (e) either:

- (i) no foreign tax has been withheld on the key distribution; or
  - (ii) a credit arises in the franking account of the Australian entity under section 160-160 because foreign tax has been withheld on the key distribution, but the credit is less than 15% of the amount of the key distribution; and
- (f) a \*foreign withholding tax credit arises for a foreign corporate tax entity that is part of the chain at the time the key distribution is made; and
- (g) the foreign withholding tax credit is neither:
- (i) a foreign withholding tax credit that gave rise to a \*franking credit for the Australian entity under an earlier application of this section; nor
  - (ii) a foreign withholding tax credit that, but for subsection (3), would have given rise to a franking credit, or a greater franking credit, for the Australian entity under an earlier application of this section.

*Amount of the franking credit*

- (2) Subject to subsection (3), the \*franking credit is equal to the amount of the \*foreign withholding tax credit.

*Cap on franking credits*

- (3) If the sum of all \*franking credits arising under subsection (1) in the \*chain of entities test period would, but for this subsection, exceed:
- (a) in a case where no foreign tax has been withheld on the key distribution—15% of the amount of the key distribution; or
  - (b) in a case where a credit arises in the franking account of the Australian entity under section 160-160 because foreign tax has been withheld on the key distribution—the difference between 15% of the amount of the key distribution and the franking credit that arises under section 160-160;

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then, to the extent of that excess, no franking credit arises under subsection (1).

*When does the franking credit arise?*

- (4) A credit arises in the \*franking account of the Australian entity under subsection (1):
- (a) in a case where no foreign tax has been withheld on the key distribution—on the day on which the key distribution is made; or
  - (b) in a case where a credit arises in the franking account of the entity under section 160-160 because foreign tax has been withheld on the key distribution—on the day on which the credit arises under section 160-160.

*Meaning of **chain of entities***

- (5) There is a **chain of entities** at a particular time if, at that time, there is a group of entities defined by each of the following characteristics:
- (a) the group consists of the Australian entity and one or more \*foreign corporate tax entities; and
  - (b) each foreign corporate tax entity within the group is either:
    - (i) a \*100% subsidiary of one other entity within the group; or
    - (ii) a corporate tax entity all of the \*membership interests in which are held by one or more entities that are 100% subsidiaries of other entities within the group or held by the Australian entity and one or more entities that are 100% subsidiaries of other entities within the group.

*Meaning of **chain of entities test period***

- (6) The **chain of entities test period** means either:
- (a) in a case where no foreign tax has been withheld on the key distribution—a period of 12 months ending on the day on which the distribution is made; or
  - (b) in a case where a credit arises under section 160-160 in the \*franking account of the Australian entity because

foreign tax has been withheld on the key distribution—a period of 12 months ending on the day on which the credit arises.

### 160-170 Foreign withholding tax credit

- (1) A **foreign withholding tax credit** arises for an entity if:
- (a) the entity receives a \*distribution \*equivalent to a frankable distribution in the \*chain of entities test period; and
  - (b) the entity receives that distribution before the key distribution is made; and
  - (c) foreign tax is withheld by the entity distributing that distribution; and
  - (d) after that distribution is received, the entity receiving it makes a distribution equivalent to a frankable distribution (the **flow-on distribution**) to another entity before or at the time the key distribution is made; and
  - (e) either:
    - (i) that entity is the entity making the key distribution; or
    - (ii) a series of distributions equivalent to frankable distributions is made through one or more entities interposed between that entity and the entity making the key distribution; and
  - (f) at all times during the period beginning at the beginning of the day on which the distribution referred to in paragraph (a) is received and ending on the day on which the key distribution is made, the following entities are members of the same chain of entities:
    - (i) the entity receiving the distribution referred to in paragraph (a);
    - (ii) the entity receiving the flow-on distribution;
    - (iii) the entity making the key distribution;
    - (iv) any entity interposed between the entity referred to in subparagraph (ii) and the entity referred to in subparagraph (iii).

*Amount of the foreign withholding tax credit*

- (2) The amount of the \*foreign withholding tax credit is the amount worked out using the formula, unless it is dealt with in subsection (3) or (4):

	Amount of the flow - on distribution		Sum of adjusted withholding tax on those
			× prior equivalent foreign distributions
The sum of the amount of all prior equivalent foreign distributions received in the *chain of entities test period by the entity making the flow - on distribution	The sum of the amounts of *foreign tax withheld on those prior equivalent foreign distributions	Expenses relating to those prior equivalent foreign distributions	
	–	–	

where:

**adjusted withholding tax on a prior equivalent foreign distribution** has the meaning given by subsection (5).

**expenses relating to a prior equivalent foreign distribution** means expenses incurred by the entity making the flow-on distribution in obtaining the prior equivalent foreign distribution.

**prior equivalent foreign distribution** has the meaning given by subsection (5).

- (3) If, but for this subsection, a \*foreign withholding tax credit would exceed the sum of the adjusted withholding tax on all prior equivalent foreign distributions received in the \*chain of entities test period by the entity making the flow-on distribution, the foreign withholding tax credit is equal to the sum of the adjusted withholding tax on those prior equivalent foreign distributions.
- (4) If the denominator in the formula in subsection (2) is zero or less than zero, the foreign withholding tax credit is equal to the sum of the adjusted withholding tax on all prior

equivalent foreign distributions received in the \*chain of entities test period by the entity making the flow-on distribution.

(5) In this section:

**adjusted withholding tax on a prior equivalent foreign distribution** means the amount that:

- (a) is the amount of \*foreign tax withheld by the entity making the prior equivalent foreign distribution on the distribution; and
- (b) is the amount that has been applied within the chain of entities test period to satisfy the tax liability of the entity to which the distribution is made;

reduced to the extent that:

- (c) an amount is withheld in excess of 15% of the amount of the distribution; and
- (d) the tax liability of the entity making the distribution, or the tax liability of an \*associate of that entity, is reduced in the country in which the distribution is made as a result of making the distribution; and
- (e) the entity making the distribution receives some other tax advantage, or an associate of that entity receives some other tax advantage, in the country in which the distribution is made as a result of making the distribution; and
- (f) the amount withheld by the foreign corporate tax entity is returned to the entity to which the distribution is made, or an associate of that entity (by whatever means).

**prior equivalent foreign distribution** means a distribution that is:

- (a) a \*distribution \*equivalent to a frankable distribution; and
- (b) made by an entity that is a \*foreign corporate tax entity at the time the distribution is made; and
- (c) received by the entity making the flow-on distribution before the entity makes the flow-on distribution.

## **Division 161—Effect of receiving a franked distribution**

### **Table of Subdivisions**

- 161-A Effect of receiving a franked distribution (overview)
- 161-B Effect of receiving a franked distribution directly

### **Subdivision 161-A—Effect of receiving a franked distribution (overview)**

#### **161-195 What this Subdivision is about**

This Subdivision gives you an overview of the tax effects for you if an Australian corporate tax entity makes a franked distribution to you.

#### **Table of sections**

- 161-200 Overview
- 161-210 Effect of this Subdivision

#### **161-200 Overview**

- (1) Receiving a franked distribution has the following tax consequences:
  - (a) in addition to the amount of the distribution, your assessable income may include an amount equal to the franking credit allocated to the distribution;
  - (b) you may be entitled to a tax offset equal to the amount of the franking credit allocated to the distribution;
  - (c) you may be entitled to a refund if you cannot fully use the tax offset;
  - (d) you may be entitled to an early refund of the tax offset.

An Australian corporate tax entity that receives a franked distribution from another Australian corporate tax entity may also be able to credit its own franking account with an amount equal to the amount of the franking credit allocated to the distribution.

Note: The franking credits validly allocated to the distribution are imputation credits for you (see section 161-215).

- (2) Similar rules apply where a franked distribution is not paid to you directly but flows indirectly to you through one or more of the following entities:
  - (a) trusts that are not covered by the non-fixed trust rules and are not corporate tax entities;
  - (b) partnerships other than corporate limited partnerships.
- (3) Sometimes you can get the imputation benefits from a franked distribution even if someone else receives the distribution (see sections 160-100B and 160-100C, which deal with the on-market sales of shares or units with a distribution and with certain securities lending arrangements).

### **161-201 Effect of this Subdivision**

This Subdivision is a Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

### **Subdivision 161-B—Effect of receiving a franked distribution directly**

#### **Guide to Subdivision 161-B**

#### **161-202 What this Subdivision is about**

If you are an Australian resident when you receive a franked distribution:

- (a) an additional amount is usually included in your assessable income; and
- (b) you usually become entitled to a tax offset.

If you are an Australian corporate tax entity, you may also be able to credit your franking account (see item 5 in the table in subsection 160-115).

---

**Table of sections**

161-209	Object
161-210	Tax effects of receiving a franked distribution directly
161-215	Imputed amount included in assessable income
161-220	Franking tax offset

*[This is the end of the Guide]*

**Operative provisions****161-209 Object**

The object of this Subdivision is to provide a mechanism for recognising a \*franking credit allocated to a \*franked distribution to a \*member of an \*Australian corporate tax entity when the member's tax liability is determined. The rules that serve that object are subject to some exceptions set out in the Subdivision.

**161-210 Tax effects of receiving a franked distribution directly***Receipt of franked distribution*

- (1) This Subdivision deals with the tax effects for you if:
- (a) a corporate tax entity makes a \*franked distribution to you; and
  - (b) you satisfy subsection (2); and
  - (c) the entity satisfies subsection (3); and
  - (d) the distribution satisfies subsection (4).

Note: Paragraph (a)—In some cases (shares and units sold with a distribution and securities lending arrangements), a distribution actually made to one person will be taken to have been made to another (see Subdivision 156-E).

*Conditions to be satisfied by recipient*

- (2) You satisfy this subsection if:
- (a) you are:

- (i) an individual who is an Australian resident when the \*franked distribution is made; or
  - (ii) an \*Australian corporate tax entity when the franked distribution is made; or
  - (iii) a trustee of a trust that is not covered by the \*non-fixed trust rules and is not an Australian corporate tax entity when the franked distribution is made; or
  - (iv) a trustee of an eligible entity within the meaning of Part IX of the *Income Tax Assessment Act 1936* (a \*superannuation fund, \*approved deposit fund or \*pooled superannuation trust); or
  - (v) an exempt institution whose exempt status is disregarded in relation to the franked distribution under section 160ARDAB of the *Income Tax Assessment Act 1936*; or
  - (vi) a \*partnership (other than a partnership that is an Australian corporate tax entity when the distribution is made); and
- (b) you are a \*qualified person in relation to the franked distribution.

*Paragraph (b) will preserve franking credit trading rules. Qualified person is to be defined.*

*Conditions to be satisfied by the entity making the distribution*

- (3) The distributing entity satisfies this subsection if:
- (a) it is not an \*exempting entity; or
  - (b) it is an exempting entity but the \*franked distribution to you is covered by section 160APPA of the *Income Tax Assessment Act 1936* or subsection 160AQT(5) of that Act.

*Conditions to be satisfied by the distribution*

- (4) The \*franked distribution satisfies this subsection if:
- (a) the distribution:

- (i) is not \*exempt income of yours; or
  - (ii) is exempt income of yours only because of the exempting provisions referred to in subsection (5); or
  - (iii) is exempt income of yours but you are an exempt institution whose exempt status is disregarded in relation to the distribution under section 160ARDAB of the *Income Tax Assessment Act 1936*; and
  - (b) the distribution was not made as part of a dividend stripping operation; and
  - (c) paragraph 160-87(2)(c) (franking credit streaming determinations) does not apply to the distribution.
- (5) The exempting provisions for the purposes of subparagraph (4)(a)(ii) are:
- (a) sections 282B and 297B of the *Income Tax Assessment Act 1936* (current pension liabilities); and
  - (b) paragraph 320-35(1)(b) of this Act (segregated exempt assets) and subparagraph 320-35(1)(f)(ii) of this Act (income bonds, funeral policies and scholarship plans).

### **161-215 Imputed amount included in assessable income**

- (1) Your assessable income for the income year in which the \*franked distribution is made includes an amount equal to the amount of the \*imputation credit on the distribution.
- (2) The ***imputation credit*** on a \*franked distribution is an amount equal to so much of the \*franking credit allocated to the distribution as does not exceed the \*maximum credit that can be allocated to the distribution.
- (3) Subsection (1) does not apply if the \*franked distribution is exempt income of yours.
- (4) The amount included in your assessable income under this section is in addition to any other amount included in your assessable income in relation to the \*franked distribution under any other provision of this Act.

## 161-220 Franking tax offset

### *General rule*

You are entitled to a \*tax offset for the income year in which the \*franked distribution is made if you are:

- (a) an individual (other than a trustee); or
- (b) a \*corporate tax entity; or
- (c) a trustee of an eligible entity within the meaning of Part IX of the *Income Tax Assessment Act 1936* (a \*superannuation fund, \*approved deposit fund or \*pooled superannuation trust); or
- (d) an exempt institution whose exempt status is disregarded in relation to the franked distribution under section 160ARDAB of the *Income Tax Assessment Act 1936*.

The amount of the tax offset is equal to the \*imputation credit on the distribution.

Note: Some trustees get a tax offset under the rules dealing with indirect distributions.

*[The next Division is Division 165.]*

## **Part 3.7—Corporate taxpayers and corporate distributions**

## **Schedule 3—Restructure relief (main amendments)**

### ***Income Tax Assessment Act 1997***

#### **1 After Division 124**

Insert:

### **Division 125—Restructure relief**

#### **Table of Subdivisions**

125-A Trust to company or company to trust

#### **Subdivision 125-A—Trust to company or company to trust**

#### **Guide to Subdivision 125-A**

##### **125-5 What this Subdivision is about**

Entities can choose to obtain roll-over relief for restructuring of this kind:

- (a) a fixed trust transferring all its assets to a company and then ceasing to exist;
- (b) a company with at least 300 members transferring all its assets to a fixed trust and then ceasing to exist.

This Subdivision sets out what the relief is, and the conditions for obtaining the relief.

#### **Table of sections**

### Operative provisions

- 125-10 What this Subdivision deals with
- 125-15 Effect on the transferor and transferee
- 125-20 Entities must choose the relief
- 125-25 Effect on units, interests and shares
- 125-30 Conditions for relief

*[This is the end of the Guide.]*

## Operative provisions

### 125-10 What this Subdivision deals with

- (1) This Subdivision deals with a restructuring (the **entity restructuring**) under which:
  - (a) a \*fixed trust (the **transferor**) \*disposes of all of its \*CGT assets to a company limited by \*shares (the **transferee**); or
  - (b) a company that has at least 300 \*members (also the **transferor**) disposes of all of its CGT assets to a fixed trust (also the **transferee**).

Note: The entity restructuring must be done in the period starting on 11 November 1999 and ending on 30 June 2001: see section 125-30. Other conditions are also set out in that section.

- (2) A company that has at least 300 \*members is treated as if it did not if it would be treated in that way under subsections 124-810(3), (5) and (6).

### 125-15 Effect on the transferor and transferee

#### *Capital gains and losses disregarded*

- (1) Any \*capital gain or \*capital loss from a \*CGT event that happens to the transferor under the entity restructuring is disregarded.

#### *Cost base is transferred*

- (2) The first element of the \*cost base and \*reduced cost base (for the transferee) of each \*CGT asset that the transferee

\*acquires under the entity restructuring is the same as the cost base and reduced cost base of that asset (for the transferor) just before the entity restructuring.

Note: For the cost base and reduced cost base of interests in the transferee: see section 125-25.

*Pre-CGT assets retain their status*

- (3) If the transferor \*acquired any of the \*CGT assets \*disposed of to the transferee under the entity restructuring before 20 September 1985, the transferee is taken to have acquired it before that day.

*Trading stock, plant and revenue assets*

- (4) If any of the \*CGT assets \*disposed of to the transferee under the entity restructuring was \*trading stock, \*plant or a \*revenue asset of the transferor, no amount is included in the assessable income of the transferor, and the transferor cannot deduct any amount, as a result of the disposal of the asset.
- (5) If the transferee holds any of the \*CGT assets \*disposed of to the transferee under the entity restructuring as \*trading stock, as \*plant or as a \*revenue asset, this Act applies to the transferee as if it had \*acquired the asset for an amount equal to its \*cost base just before the entity restructuring.

Note: A CGT asset held as trading stock, plant or a revenue asset of the transferor loses that characterisation as a result of the entity restructuring. The transferee will have to decide whether to treat the asset as its trading stock, plant or revenue asset.

- (6) If any of the \*CGT assets \*disposed of to the transferee under the entity restructuring was \*trading stock, \*plant or a \*revenue asset of the transferor:
- (a) that asset cannot generate a \*discount capital gain for the transferee; and
  - (b) Division 152 (about small business relief) does not apply to the asset for the transferee.

### 125-20 Entities must choose the relief

The transferor and transferee must both choose to obtain the relief.

Note: If they do so, the consequences set out in section 125-25 apply for owners of units, interests or shares in the transferor.

### 125-25 Effect on units, interests and shares

- (1) This section deals with the situation where, under the entity restructuring:
    - (a) your units, trust interests or \*shares in the transferor (your **original interests**) end; and
    - (b) you receive shares, units or trust interests (your **replacement interests**) in the transferee.
  - (2) Any \*capital gain or \*capital loss from your original interests ending under the entity restructuring (because of \*CGT event C2) is disregarded.
  - (3) You work out the first element of the \*cost base and \*reduced cost base of your replacement interests by allocating to each of them a reasonable proportion of the total cost bases and reduced cost bases of your original interests.
  - (4) If you \*acquired a proportion of your original interests before 20 September 1985, you are taken to have acquired the same proportion (or as nearly the same proportion as possible) of your replacement interests in the transferee before that day.

Example: Graeme owns 2,000 shares in the transferor. 500 of these (25%) are pre-CGT assets.

He receives 1000 units in the transferee. Graeme is taken to have acquired 250 of them before 20 September 1985.
  - (5) If any of your original interests was \*trading stock or a \*revenue asset, no amount is included in your assessable income, and you cannot deduct any amount, as a result of the asset ending.
  - (6) If you hold any of your replacement interests as \*trading stock or as a \*revenue asset, this Act applies to you as if you
-

had \*acquired the asset for an amount equal to its \*cost base just before the entity restructuring.

Note: A CGT asset held as trading stock or a revenue asset of the transferor loses that characterisation as a result of the entity restructuring. You will have to decide whether to treat such a CGT asset as your trading stock or revenue asset.

- (7) If all or a proportion of your original interests was \*trading stock or \*revenue assets, all or the same proportion (or as nearly the same proportion as possible) of your replacement interests:
- (a) cannot generate a \*discount capital gain for you; and
  - (b) are assets to which Division 152 (about small business relief) does not apply for you.
- (8) This Act applies to you as from just after the entity restructuring as if you had \*acquired your original interests for nil.

### 125-30 Conditions for relief

- (1) All of the \*CGT assets of the transferor must be \*disposed of to the transferee at the same time (the **restructure time**), which must be on or after 1 pm, by legal time in the Australian Capital Territory, on 11 November 1999, and before 1 July 2001.

Example: The transferor enters into contracts all on the same day to dispose of its assets to the transferee.

- (2) The transferor must cease to exist within 6 months after the restructure time or within a longer period allowed by the Commissioner.
- (3) The transferee must be a company or trust that:
- (a) has never carried on commercial activities; and
  - (b) has no \*CGT assets other than small amounts of cash; and
  - (c) has no losses of any kind; and
  - (d) is not an \*exempt entity.

Example: It could be a shelf company.

- (4) Just after the restructure time:

- (a) each entity that owned original interests in the transferor just before that time must own replacement interests in the transferee in the same proportion as it owned in the transferor; and
  - (b) the \*market value of the replacement interests each of those entities owns in the transferee must be at least substantially the same as the market value of the original interests it owned in the transferor just before that time.
- (5) The transferee must be an Australian resident.
- (6) The relief specified in section 125-25 is only available for a non-resident entity whose original interests in the transferor end under the entity restructuring if the replacement interests the entity \*acquires in the transferee have the \*necessary connection with Australia just after the entity restructuring.

## **2 Application of amendment**

The amendment made by this Schedule applies to assessments for the income year in which 11 November 1999 occurs and later income years.

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## Schedule 4—Restructure relief (consequential amendments)

### ***Income Tax Assessment Act 1997***

#### **1 Section 102-20 (note 2)**

After “124”, insert “, 125”.

#### **2 Section 104-5 (After table item J3)**

Insert:

J4 Company or trust fails to cease to exist after a roll-over under Subdivision 125-A [See section 104-195]	when the failure happens	market value of asset less its cost base	reduced cost base less that market value
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#### **3 At the end of Subdivision 104-J**

Add:

#### **104-195 Company or trust failing to cease to exist after roll-over under Division 125: CGT event J4**

- (1) **CGT event J4** happens if:
- (a) there is roll-over relief under Subdivision 125-A for a company or trust \*disposing of a \*CGT asset to another entity (the **transferee**); and
  - (b) a condition for the relief was that the company or trust cease to exist within a period of 6 months after the disposal or within a longer period allowed by the Commissioner; and
  - (c) that condition is not satisfied; and
  - (d) the transferee owns the asset when the failure to satisfy the condition happens.

- (2) The time of the event is when the failure to satisfy the condition happens.
- (3) The transferee makes a **capital gain** if the \*CGT asset's \*market value at the time of the event is more than its \*cost base. The transferee makes a **capital loss** if that market value is less than the asset's \*reduced cost base.
- (4) This Part and Part 3-3 apply to the transferee as if the transferee had \*acquired the asset just after the time of the event for its \*market value.
- (5) An entity that owns a unit, trust interest or share (the **membership interest**) in the transferee at the time of the event makes a **capital gain** if the membership interest's \*market value at that time is more than its \*cost base. The entity makes a **capital loss** if that market value is less than the membership interest's \*reduced cost base.
- (6) This Part and Part 3-3 apply to the entity as if the entity had \*acquired the membership interest just after the time of the event for its \*market value.

Note: If the membership interest was formerly a pre-CGT asset, it stops being one.

#### 4 Subsection 109-5(2) (after table item F2)

Insert:

- J4 Company or trust fails to cease just after the event happens to exist after a roll-over under Subdivision 125-A

#### 5 Section 109-55 (table item 6)

Omit "and 124", substitute ", 124 and 125".

#### 6 Section 109-55 (table item 8)

Omit "and 126", substitute ", 125 and 126".

#### 7 Section 112-45 (after table item G3)

Insert:

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J4	Company or trust fails to cease to exist after a roll-over under Subdivision 125-A	The total cost base	104-195
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**8 Subsection 112-105(3)**

Omit “and 124”, substitute “, 124 and 125”.

**9 Section 112-110 (note 2)**

Omit “Subdivision 124-A”, substitute “Subdivisions 124-A and 125-A”.

**10 Section 112-115 (after table item 14A)**

Insert:

14B	Exchange of interests in a company or trust as a result of entity restructuring	Subdivision 125-A
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**11 Section 112-140**

Omit “and 126”, substitute “, 125 and 126”.

**12 Section 112-145 (note)**

Omit “Subdivision 126-A”, substitute “Division 125 and Subdivision 126-A”.

**13 Section 112-150 (after table item 6)**

Insert:

7	Disposal of a CGT asset as a result of entity restructuring	Division 125
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**14 Section 136-10 (after table item J3)**

Insert:

J4	J4 Company or trust fails to cease to exist after a roll-over under Subdivision 125-A	the CGT asset disposed of or the share or unit	1 to 9
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### 15 Subsection 995-1(1)

Insert:

**revenue asset.** an asset is a **revenue asset** of yours if any profit or loss on disposal or other realisation of the asset would be taken into account in calculating your assessable income otherwise than as:

- (a) a \*capital gain or \*capital loss; or
- (b) \*trading stock; or
- (c) \*plant.

### 16 Application of amendments

- (1) The amendments made by items 2, 3, 7 and 14 apply to assessments for the 2001-02 income year and later income years.
- (2) The other amendments made by this Schedule apply to assessments for the income year in which 11 November 1999 occurs and later income years.

## **Schedule 5—Primary producers' averaging**

### ***Income Tax Assessment Act 1997***

#### **1 After section 392-15**

Insert:

#### **392-19 Members of non-fixed trusts**

- (1) You are taken to carry on a \*primary production business carried on during an income year by a \*non-fixed trust if:
  - (a) you are a \*member of the trust; and
  - (b) the trust makes a \*distribution to you in the income year.
- (2) However, you are not taken to carry on the primary production business if the total of the distributions made to you by the trust in the income year is less than \$1,040, unless the Commissioner is satisfied that your interest in the trust was not acquired or granted wholly or primarily to enable your income tax to be adjusted under this Division.
- (3) You are not taken to carry on a \*primary production business carried on by the trustee of:
  - (a) a corporate unit trust (as defined in section 102J of the *Income Tax Assessment Act 1936*, which deals with corporate unit trusts); or
  - (b) a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

#### **2 Subsection 392-20(1)**

Repeal the subsection, substitute:

- (1) You are taken to carry on a \*primary production business carried on during an income year by a \*fixed trust if you are a beneficiary presently entitled to all or part of the trust income for the income year.

**Schedule 5** Primary producers' averaging

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Note: The heading to section 392-20 is replaced by the heading "**Beneficiaries of fixed trusts**".

**3 Application**

The amendments made by this Schedule apply from 1 July 2001.

## **Schedule 6—Farm management deposits**

### ***Income Tax Assessment Act 1936***

**1 Section 393-25 in Schedule 2G (paragraph (b) of the definition of *depositor*)**

After “beneficiary” (wherever occurring), insert “or member”.

**2 Section 393-25 in Schedule 2G (paragraph (b) of the definition of *depositor*)**

Omit “estate”.

**3 Section 393-25 in Schedule 2G (paragraph (b) of the definition of *owner*)**

Omit “estate”.

**4 Section 393-25 in Schedule 2G (paragraph (b) of the definition of *owner*)**

After “beneficiary” (wherever occurring), insert “or member”.

**5 Section 393-25 in Schedule 2G (paragraph (a) of the definition of *primary producer*)**

Omit “estate”.

**6 Section 393-25 in Schedule 2G (after paragraph (b) of the definition of *primary producer*)**

Insert:

- (ba) a member (not being a company) of a non-fixed trust which carries on in Australia a primary production business, being a member to whom a distribution is made in the income year in which the trust carries on in Australia that business; or

**7 Section 393-25 in Schedule 2G (paragraph (c) of the definition of *primary producer*)**

Omit “trust estate”, substitute “fixed trust”.

**8 Before paragraph 393-35(4)(a) in Schedule 2G**

Insert:

- (aa) on behalf of a member by the trustee of a non-fixed trust, unless a distribution is made to the member in the income year in which the deposit is to be made and the member is under a legal disability; or

**9 Paragraph 393-35(4)(a) in Schedule 2G**

Omit “by the trustee of a trust estate on behalf of a beneficiary”, substitute “on behalf of a beneficiary by the trustee of a fixed trust”.

**10 Paragraph 393-35(4)(a) in Schedule 2G**

Omit “estate” (last occurring).

**11 Application**

The amendments made by this Schedule apply from 1 July 2001.

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## **Schedule 7—Consequential amendments of Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997**

### **1 Section 960-100**

Repeal the link note, substitute:

### **Subdivision 960-F—Non-fixed trusts (general)**

#### **Table of sections**

960-115	Corporate tax entity
960-116	Australian corporate tax entity
960-120	Members of entities
960-125	Membership interest in an entity
960-126	Meaning of distribution
960-130	Rearrangement of membership interests
960-135	Proportionate rearrangement of membership interests

#### **960-115 Corporate tax entity**

An entity is a **corporate tax entity** at a particular time if:

- (a) the entity is a \*company at that time; or
- (b) the entity is a \*corporate limited partnership in relation to the income year in which that time occurs; or
- (c) the entity is a \*corporate unit trust in relation to the income year in which that time occurs; or
- (d) the entity is a \*public trading trust in relation to the income year in which that time occurs; or
- (e) the entity is a trust covered by the \*non-fixed trust rules at that time.

#### **960-116 Australian corporate tax entity**

An entity is an **Australian corporate tax entity** at a particular time if:

- (a) it is a \*corporate tax entity at that time; and
- (b) it is an \*Australian resident at that time.

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## 960-120 Members of entities

(1) The following table sets out who is a **member** of various entities.

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Members		
Item	Corporate tax entity	Member
1	*company	a member of the company, including a shareholder or stockholder
2	*corporate limited partnership	a partner in the partnership
3	*corporate unit trust	a unitholder of the trust
4	*public trading trust	a unitholder of the trust
5	a trust covered by the *non-fixed trust rules	(a) a discretionary object of the trust; (b) a beneficiary of the trust; (c) the holder of a right to participate in the management or control of the trust (otherwise than as a trustee of the trust); (d) the holder of rights under a *loan to the trust that is a contribution of capital to the trust under section 157-115 or 157-120.
6	any other trust	a beneficiary of the trust

---

(2) If 2 or more entities jointly hold interests or rights that give rise to membership of another entity, each of them is a **member** of the other entity.

## 960-125 Membership interest in an entity

If you are a \*member of an entity:

- (a) each interest, or set of interests, in the entity; or
- (b) each right, or set of rights, in relation to the entity;

by virtue of which you are a member of the entity is a **membership interest** of yours in the entity.

## 960-126 Meaning of *distribution*

(1) What constitutes a **distribution** by various entities is set out in the following table.

<b>Distribution</b>		
<b>Item</b>	<b>Corporate tax entity</b>	<b>Distribution</b>
1	*company	a dividend, or something that is taken to be a dividend, under this Act
2	*corporate limited partnership	(a) a *distribution made by the partnership, whether in money or in other property, to a partner in the partnership, other than a distribution, or so much of a distribution, as is attributable to profits or gains arising during a year of income in relation to which the partnership was not a corporate limited partnership (b) something that is taken to be a dividend by the partnership under this Act
3	*corporate unit trust	a unit trust dividend, as defined in subsection 102D(1) of the <i>Income Tax Assessment Act 1936</i>
4	*public trading trust	a unit trust dividend, as defined in section 102M of the <i>Income Tax Assessment Act 1936</i>
5	trust covered by the *non-fixed trust rules	a distribution of the trust under Division 156

- (2) A corporate tax entity **makes a distribution** in the form of a dividend on the day on which the dividend is paid, or taken to have been paid.

### **960-130 Rearrangement of membership interests**

There is a **rearrangement of membership interests** in a trust covered by the \*non-fixed trust rules if the trust does something that changes the number of \*membership

interests of a particular \*class that a particular \*member of the trust holds.

Note: The rearrangement might occur because the trust issues membership interests, splits them, consolidates them, cancels them or redeems them.

### 960-135 Proportionate rearrangement of membership interests

A \*rearrangement of \*membership interests in a trust covered by the \*non-fixed trust rules is a **proportionate** rearrangement if the proportion between:

- (a) the market value of each \*member's parcel of membership interests in the trust; and
- (b) the market value of all membership interests in the trust;

immediately after the rearrangement is the same as it was immediately before the rearrangement.

## Subdivision 960-G—Loans

### Table of sections

960-180	Non-commercial loan and commercial loans
960-185	Benchmark interest rate
960-190	Amount of loan remaining unpaid

### 960-180 Non-commercial loan and commercial loans

#### *Criteria for non-commercial loan*

- (1) A \*loan by or to a trust covered by the \*non-fixed trust rules is a **non-commercial loan** if one or more of the following conditions is satisfied:
    - (a) the loan is not made under a written agreement;
    - (b) the interest rate payable on the loan for an income year after the income year in which the loan is made is less than the \*benchmark interest rate (see section 960-185) for the income year in which the loan is made;
    - (c) the term of the loan exceeds the maximum term worked out under subsection (2).
-

*Maximum term*

- (2) The **maximum term** is:
- (a) 25 years for a \*loan if:
    - (i) 100% of the value of the loan is secured by a mortgage over real property that has been registered in accordance with a law of a State or Territory; and
    - (ii) when the loan is first made, the market value of that real property (less the amounts of any other liabilities secured over that property in priority to the loan) is at least 110% of the amount of the loan; or
  - (b) 7 years for any other loan.

However, the maximum term for a loan is the period worked out under the regulations, if they provide for working out the maximum term for that kind of loan.

- (3) A loan is a **commercial loan** if it is not a \*non-commercial loan under this section.

**960-185 Benchmark interest rate**

- (1) The **benchmark interest rate** for an income year is the Indicator Lending Rates—Bank variable housing loan rate last published by the Reserve Bank of Australia before the start of the income year. However, the **benchmark interest rate** is the rate worked out under the regulations, if they provide for working it out.
- (2) Regulations made for the purposes of this section may apply, adopt or incorporate a rate published in an instrument after they are made or take effect, or a rate contained in an instrument from time to time, despite subsection 49A(1) of the *Acts Interpretation Act 1901*.

**960-190 Amount of loan remaining unpaid**

- (1A) A loan **remains unpaid** at a particular time if it has not been fully repaid at that time.

- (1) Apply subsections (2), (3) and (4) in working out how much of a \*loan by one entity (the **lender**) to another entity (the **borrower**) **remains unpaid** at a particular time for the purposes of Divisions 156 and 157.
- (2) Disregard a payment made in respect of the \*loan if:
  - (a) a reasonable person would conclude (having regard to all the circumstances) that, when the payment was made, the borrower intended to obtain a \*loan from the lender of an amount similar to or larger than the payment; and
  - (b) the payment is not covered by subsection (3) or (4).
- (3) The payment may be taken into account as a repayment of the \*loan if:
  - (a) the payment is made by setting off against an amount payable in relation to the \*loan:
    - (i) a \*distribution payable by the lender to the borrower; or
    - (ii) salary or wages payable by the lender to the borrower; or
  - (b) the payment is made on behalf of the borrower by someone else (the **third party**) paying to the lender an amount that:
    - (i) is payable by the third party to the borrower; and
    - (ii) is assessable income of the borrower for the income year in which the payment was made or an earlier income year.
- (4) If:
  - (a) the payment is made by setting off against an amount payable in relation to the \*loan; and
  - (b) the borrower has transferred property to the lender; the payment may be taken into account as a repayment of the loan to the extent to which it does not exceed the difference between:
    - (c) the amount that a party at \*arm's length from the borrower would have paid for the transfer of the property to the party; and

- (d) the amount that the lender has already paid the borrower (by way of set-off or otherwise) for the transfer.

## **Subdivision 960-GA—Forgiveness of debts**

### **960-195 Forging debts**

- (1) This section tells you when the whole or a part of a debt (including a \*loan) is taken to be **forgiven**.
- (2) The debt, or that part of the debt, is taken to be **forgiven** if the debtor's obligation to pay the debt, or that part of the debt, is released or waived or is otherwise extinguished.
- (3) The debt, or that part of the debt, is taken to be **forgiven** if:
- (a) the period within which the creditor is entitled to sue for recovery of the debt, or that part of the debt, ends because of the operation of a statute of limitations; and
  - (b) when the period ends the debt or that part of the debt has not been paid.
- (4) The debt, or that part of the debt, is taken to be **forgiven** if:
- (a) the debtor and the creditor enter into an \*arrangement; and
  - (b) under the arrangement the debtor's obligations to pay the debt, or that part of the debt, is to terminate at a particular future time; and
  - (c) the debtor's obligation is to terminate at that time without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind).

The debt, or that part of the debt, is taken to be forgiven when the arrangement is entered into.

- (5) The debt, or that part of the debt, is taken to be **forgiven** if:
- (a) the creditor assigns a right to receive payments in relation to the whole or a part of the debt to another person (the **assignee**); and
  - (b) either:

- (i) the assignee is an \*associate of the debtor; or
- (ii) the assignment occurred under an \*arrangement to which the assignee and the debtor were parties; and
- (c) a reasonable person would conclude (having regard to all the circumstances) that the assignee will not exercise the right.

The debt, or that part of the debt, is taken to be forgiven when the assignment is made and the amount of the debt that is forgiven is the amount to be paid by the debtor under the right that has been assigned.

- (6) The debt, or that part of the debt, is taken to be **forgiven** if:
- (a) the debtor is a trust covered by the \*non-fixed trust rules; and
  - (b) the creditor contributes capital to the debtor to enable the debtor to make a payment in or towards discharge of the debt or that part of the debt; and
  - (c) the debtor applies all or any of the money contributed in or towards payment of the debt or that part of the debt.

The debt or that part of the debt is taken to be forgiven when the amount is applied and the debt or that part of the debt is forgiven to the extent of the amount applied towards payment of the debt or that part of the debt.

- (7) The debt, or that part of the debt, is taken to be **forgiven** if:
- (a) the creditor is a trust covered by the \*non-fixed trust rules; and
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the creditor will not insist on, or rely on, the debtor paying the debt or that part of the debt.

The debt, or that part of the debt, is forgiven when a reasonable person would first reach that conclusion and the amount forgiven is the amount that a reasonable person would conclude the creditor will not insist on, or rely on, the debtor's paying the debt or that part of the debt.

- (8) The debt or that part of the debt is taken not to be **forgiven** merely because the obligation to pay the debt or that part of the debt:
- (a) is discharged by the transfer of property to the creditor;  
or
  - (b) is terminated:
    - (i) because the debtor becomes a bankrupt; or
    - (ii) because of the operation of Part X of the *Bankruptcy Act 1966*.
- (9) The debt, or that part of the debt, is taken not to be **forgiven** at a particular time if the debt, or that part of the debt, is taken to have been forgiven at an earlier time.

## 2 Subsection 995-1(1)

Insert:

**amalgamated loan** has the meaning given by subsection 156-86(1)].

## 3 Subsection 995-1(1)

**Australian resident** [to be defined].

## 4 Subsection 995-1(1)

Insert:

**available profits** has the meaning given by section 157-85.

## 5 Subsection 995-1(1)

Insert:

**benchmark franking percentage** is the benchmark franking percentage arising under section 160-65, 160-70, 160-80 or 160-85.

## 6 Subsection 995-1(1)

Insert:

**benchmark interest rate**, in relation to a loan, has the meaning given by section 960-185.

**7 Subsection 995-1(1)**

Insert:

**benchmark rule 1** means the rule in subsection 160-55(1).

**8 Subsection 995-1(1)**

Insert:

**benchmark rule 2** means the rule in subsection 160-80(1).

**9 Subsection 995-1(1)**

Insert:

**borrower**, in relation to a \*loan, means the entity to whom the loan is made.

**10 Subsection 995-1(1)**

Insert:

**chain of entities** has the meaning given by subsection 160-165(5).

**11 Subsection 995-1(1)**

Insert:

**class:**

\*membership interests in a trust covered by the \*non-fixed trust rules form a **class** if they all carry strictly identical rights to \*distributions by the entity (even if they carry different rights in relation to some other matter such as voting rights). It is possible for a trust covered by the \*non-fixed trust rules to have only one class of membership interests.

\*membership interests in a company form a **class** if the interests have the same, or substantially the same, rights.

**12 Subsection 995-1(1)**

Insert:

**commercial loan** has the meaning given by subsection 960-180(3).

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**13 Subsection 995-1(1)**

Insert:

**contributed capital:** a \*distribution by a trust covered by the \*non-fixed trust rules is made from **contributed capital** if Division 157 provides that it is made from contributed capital.

**14 Subsection 995-1(1)**

Insert:

**contributed capital account** means an account of a trust covered by the \*non-fixed trust rules that complies with sections 157-145 to 157-205.

**15 Subsection 995-1(1)**

Insert:

**contributed capital sub-account** means a sub-account of the capital account of a trust covered by the \*non-fixed trust rules that complies with sections 157-195 to 157-205.

**16 Subsection 995-1(1)**

Insert:

**contributes capital** has the meaning given by sections 157-90 to 157-140.

**17 Subsection 995-1(1)**

Insert:

**corporate tax** means income tax paid, or payable, by a trust covered by the \*non-fixed trust rules.

**18 Subsection 995-1(1)**

Insert:

**distribution** has the meaning given by section 960-126.

**19 Subsection 995-1(1)**

Insert:

***distribution statement*** is a statement that complies with section 160-100.

**20 Subsection 995-1(1)**

Insert:

***equivalent to a frankable distribution*** has the meaning given by subsection 160-160(2).

**21 Subsection 995-1(1)**

Insert:

***excluded trust*** [to be defined].

**22 Subsection 995-1(1)**

Insert:

***exempt institution*** means an entity whose ordinary and statutory income are exempt from income tax because of Division 50.

**23 Subsection 995-1(1)(definition of *fixed entitlement*)**

Repeal the definition, substitute:

***fixed entitlement***: an entity has a ***fixed entitlement*** to a share of the income or capital of a trust covered by the \*non-fixed trust rules if the entity has a fixed entitlement to that share within the meaning of Division 272 in Schedule 2F to the *Income Tax Assessment Act 1936*.

**24 Subsection 995-1(1)**

Insert:

***fixed membership interest*** in a trust covered by the \*non-fixed trust rules is a \*membership interest that is a \*fixed entitlement to a share of the income or capital of the trust.

**25 Subsection 995-1(1)(definition of *fixed trust*)**

Repeal the definition, substitute:

**fixed trust:** a trust is a **fixed trust** if entities have fixed entitlements to all of the income and capital of the trust.

**26 Subsection 995-1(1)**

Insert:

**foreign corporate tax entity** has the meaning given by subsection 160-160(3).

**27 Subsection 995-1(1)**

Insert:

**foreign tax credit** means a credit within the meaning of Division 19 of Part III of the *Income Tax Assessment Act 1936*.

**28 Subsection 995-1(1)**

Insert:

**foreign tax is withheld** by an entity on a distribution has the meaning given by subsection 160-160(4).

**29 Subsection 995-1(1)**

Insert:

**foreign withholding tax credit** is a credit arising under subsection 160-170(1).

**30 Subsection 995-1(1)**

Insert:

**forgive** a debt has the meaning given by section 960-195.

**31 Subsection 995-1(1)**

Insert:

**former member** of a trust covered by the \*non-fixed trust rules means an entity that was formerly a \*member of the trust.

**32 Subsection 995-1(1)**

---

Insert:

***frankable distribution*** has the meaning given by section 160-31, 160-32, 160-33 and 160-34.

**33 Subsection 995-1(1)**

Insert:

***franked distribution*** has the meaning given by section 160-36.

**34 Subsection 995-1(1)**

Insert:

***franking account*** means an account that arises under section 160-110. Section 160-115 sets out when a credit arises in that account. Section 160-130 sets out when a debit arises in that account.

**35 Subsection 995-1(1)**

Insert:

***franking account is in deficit*** section 160-135 sets out when a franking account is in deficit.

**36 Subsection 995-1(1)**

Insert:

***franking account is in surplus*** section 160-135 sets out when a franking account is in surplus.

**37 Subsection 995-1(1)**

Insert:

***franking credit*** has the meaning given by section 160-115.

**38 Subsection 995-1(1)**

Insert:

***franking debit*** has the meaning given by section 160-130.

**39 Subsection 995-1(1)**

---

Insert:

***franking deficit*** has the meaning given by subsection  
160-135(2).

#### **40 Subsection 995-1(1)**

Insert:

***franking deficit tax*** means tax imposed under the *New  
Business Tax System (Franking Deficit Tax) Act 2000*.

Note: That Act imposes tax where it is payable under section 160-140  
of this Act.

#### **41 Subsection 995-1(1)**

Insert:

***franking entity*** has the meaning given by subsection  
160-20(2).

#### **42 Subsection 995-1(1)**

Insert:

***franking percentage*** has the meaning given by  
section 160-45.

#### **43 Subsection 995-1(1)**

Insert:

***franking period*** has the meaning given by section 160-75.

#### **44 Subsection 995-1(1)**

Insert:

***franking surplus*** has the meaning given by subsection  
160-135(1).

#### **45 Subsection 995-1(1)**

Insert:

***guarantee***, in relation to a loan, includes providing security  
for the loan.

**46 Subsection 995-1(1)**

Insert:

***imputation benefit*** has the meaning given by subsection 160-87(3).

**47 Subsection 995-1(1)**

Insert:

***imputation credit*** has the meaning given by subsection 161-215(2).

**48 Subsection 995-1(1)**

Insert:

***lender***, in relation to a loan, means the entity making the loan.

**49 Subsection 995-1(1)**

Insert:

***loan*** includes:

- (a) an advance of money; and
- (b) a provision of credit or any other form of financial accommodation; and
- (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

**50 Subsection 995-1(1)**

Insert:

***maximum credit that can be allocated to a distribution*** has the meaning given by subsection 160-45(2).

**51 Subsection 995-1(1)**

Insert:

---

***maximum term*** has the meaning given by subsection 960-180(2).

**52 Subsection 995-1(1) (definition of *member*)**

Repeal the definition, substitute:

***member*** of an entity has the meaning given by section 960-120.

**53 Subsection 995-1(1)**

Insert:

***membership interest*** in an entity has the meaning given by section 960-125.

**54 Subsection 995-1(1)**

Insert:

***minimum yearly repayment*** has the meaning give by subsection 156-86(3).

**55 Subsection 995-1(1)**

Insert:

***money*** means:

- (a) money in hand (whether or not in Australian currency);
- and
- (b) a credit balance in a \*money account.

**56 Subsection 995-1(1)**

Insert:

***non-commercial loan*** has the meaning given by section 960-180.

**57 Subsection 995-1(1)**

Insert:

***non-fixed membership interest*** in a trust covered by the \*non-fixed trust rules is a \*membership interest that is not a

\*fixed entitlement to a share of the income or capital of the trust.

**58 Subsection 995-1(1)**

Insert:

***non-fixed trust*** means a trust that is not a \*fixed trust.

**59 Subsection 995-1(1)**

Insert:

***non-fixed trust rules*** means Divisions 153 to 159.

**60 Subsection 995-1(1)**

Insert:

***pay income tax***: section 160-120 sets out when an entity pays income tax.

**61 Subsection 995-1(1)**

Insert:

***pay a PAYG instalment***: section 160-120 sets out when an entity pays a \*PAYG instalment.

**62 Subsection 995-1(1)**

Insert:

***prior taxed amount*** has the meaning given by section 154-55.

**63 Subsection 995-1(1)**

Insert:

***profits***: a \*distribution by a trust covered by the \*non-fixed trust rules is made from ***profits*** if Division 157 provides that it is made from profits.

**64 Subsection 995-1(1)**

Insert:

---

***profits first rule*** means the rule in section 157-20.

**65 Subsection 995-1(1)**

Insert:

***proportionate rearrangement of membership interests***  
has the meaning given by section 960-135.

**66 Subsection 995-1(1)**

Insert:

***provides a distribution benefit*** has the meaning given by  
subsection 156-75(2).

**67 Subsection 995-1(1)**

Insert:

***qualified person*** [to be defined]

**68 Subsection 995-1(1)**

Insert:

***RBA*** has the same meaning as in Part IIB of the *Taxation  
Administration Act 1953*.

**69 Subsection 995-1(1)**

Insert:

***rearrangement of membership interests*** has the meaning  
given by section 960-130.

**70 Subsection 995-1(1)**

Insert:

***refund of income tax***: section 160-125 sets out when  
income tax is refunded to a \*corporate tax entity.

**71 Subsection 995-1(1)**

Insert:

**remaining term** has the meaning given by subsection 156-86(4).

**72 Subsection 995-1(1)**

Insert:

**remains unpaid**, in relation to a \*loan, has a meaning affected by section 960-190.

**73 Subsection 995-1(1)**

Insert:

**representative** for a trust covered by the \*non-fixed trust rules that is not a legal person has the meaning given by subsection 159-10(2).

**74 Subsection 995-1(1)**

Insert:

**revenue asset**: an asset (including a \*membership interest in a corporate tax entity) is a **revenue asset** if the profit or loss on disposal or other realisation of the asset would be taken into account in calculating your assessable income otherwise than as:

- (a) a \*capital gain; or
- (b) \*trading stock; or
- (c) \*plant.

**75 Subsection 995-1(1)**

Insert:

**securities dealer** has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

**76 Subsection 995-1(1)**

Insert:

**specific allocation determination** is a determination in accordance with section 160-35AA.

**77 Subsection 995-1(1)**

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Insert:

***standing allocation determination*** is a determination in accordance with section 160-35AB.

**78 Subsection 995-1(1)**

Insert:

***tax-exempt bonus share*** has the meaning given by section 160-86A.

**79 Subsection 995-1(1)**

Insert:

***taxed profit component*** has the meaning given by section 157-230.

**80 Subsection 995-1(1)**

Insert:

***tax free recipient***: the tax-free recipient of a \*prior taxed amount is an entity specified as the tax-free recipient for that amount in section 154-55.

**81 Subsection 995-1(1)**

Insert:

***trustee beneficiary*** has the meaning given by section 102UD of the *Income Tax Assessment Act 1936*.

**82 Subsection 995-1(1)**

Insert:

***ultimate beneficiary*** has the meaning given by section 102UE of the *Income Tax Assessment Act 1936*.

**83 Subsection 995-1(1)**

Insert:

***ultimate beneficiary non-disclosure tax*** means tax imposed by:

- (a) the *A New Tax System (Ultimate Beneficiary Non-Disclosure Tax) Act (No. 1) 1999*; or
- (b) the *A New Tax System (Ultimate Beneficiary Non-Disclosure Tax) Act (No. 2) 1999*.

**84 Subsection 995-1(1)**

Insert:

***unfrankable*** a distribution is unfrankable to the extent that it is unfrankable under section 160-31, 160-32, 160-33 or 160-34.

**85 Subsection 995-1(1)**

Insert:

***widely-held*** [to be defined].