

# ***TR 2015/3 - Income tax: matters relating to strata title bodies constituted under strata title legislation***

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## Taxation Ruling

### Income tax: matters relating to strata title bodies constituted under strata title legislation

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#### **① This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this ruling is about

1. This Ruling applies to strata title bodies and persons that own strata title lots in a strata scheme. It explains specific income tax issues that affect strata schemes. In particular, it explains:

- that a strata title body is treated as a public company for income tax purposes
- that the principle of mutuality applies to amounts received by a strata title body by way of levies imposed on proprietors, and
- when other types of amounts are assessable to a strata title body.

2. It further sets out how common property is treated for tax purposes. It explains that notwithstanding differences in the strata title legislation which govern strata schemes, generally proprietors can claim deductions relating to common property (where used for an income producing purpose) and return any income derived from the common property.

3. This Ruling consolidates a number of other Income Tax Rulings and Taxation Determinations.

## Definitions

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### Strata title scheme

4. A strata title scheme is a reference to a scheme registered under and governed by the legislation set out in Appendix 2 of this Ruling (collectively referred to as 'the State or Territory Acts' or 'the strata title legislation').
5. A strata title scheme is a legally recognised arrangement whereby a building and the land upon which it is erected is subdivided into lots or lots and common property. The lots have separate title, the transfer of which is not inherently restricted. The plan of strata subdivision defines the boundaries of the lots. Lots are used for residential, commercial, professional or industrial purposes. A common example is a block of residential flats which may also include professional suites and shops.

### Strata title body

6. The term 'strata title body' is a reference to a body corporate created on registration of the strata scheme under the relevant State and Territory Acts.
7. The strata title body is constituted by the proprietors but is a separate legal entity with specified powers, authorities, duties and functions. Though these powers, authorities, duties and functions vary under the different State and Territory Acts, generally they include:
- the power and authority to impose a levy on the proprietors, to make by-laws, to carry out necessary work, to invest and to borrow
  - the duty and function to control, manage and administer the common property, to maintain the common property and keep it in a good state of repair, to effect insurances on the building and common property and to keep records and books of account.
8. A strata title body may also be called a 'strata title body corporate', 'body corporate', 'strata corporation', 'owners corporation' and 'community corporation'.

### Proprietor's lot

9. A proprietor's lot (also known as a proprietor's unit) refers to a part of a parcel of land shown on a strata scheme which can be disposed of separately.

**Proprietor**

10. A proprietor is a reference to a person recorded in the Land Title Register as entitled to an estate in fee simple or leasehold in the lot. A proprietor may also be called an 'owner', 'lot owner' or 'member'.

**Common property**

11. Common property relates to that part of the strata title scheme not comprised in any proprietor's lot and includes both fixtures and fittings intended for common use. Whether property is 'common property' is a question of fact to be determined with reference to the strata title scheme. Usual examples include stairways, lifts, passages, common garden areas, common laundries and other facilities intended for common use. The term also refers to the fixtures and fittings comprised in the common property for example, pool equipment and light fittings. Common property may also include floors of an apartment block used as commercial premises (for example, retail shops or office accommodation) and roof space.

12. Under the strata title legislation legal title to common property will either be held by:

- the strata title body as trustee for the proprietors, or
- the proprietors in their own right.

**Income from common property**

13. Common property that forms part of a strata title arrangement may be used to generate income:

- by the proprietor granting the right to use common property to a tenant of their lot as part of a rental agreement, or
- independently to the proprietor's lot by the common property being separately leased.

14. In this Ruling, the phrase 'income from common property' is referring to income generated independently to the proprietor's lot.

**Personal property of the strata title body**

15. Personal property of the strata title body refers to the property the strata title body as a company is able to own and control in its own right. Under the various State and Territory legislation these items of property must be necessary for the basic purposes of the strata scheme.

16. Personal property is distinct from common property in that it does not form part of the land contained within the strata title scheme. Examples include washing machines, driers, lawnmowers and money.

## Relevant provisions

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17. The relevant provisions dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
  - section 8-1 of the ITAA 1997
  - Division 40 of the ITAA 1997
  - Division 43 of the ITAA 1997.

## Previous rulings

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18. Taxation Ruling IT 2505 and Taxation Determinations TD 92/181, TD 93/7, TD 93/73 and TD 96/22, were withdrawn on and from the issue date of the draft version of this Ruling. To the extent that the Commissioner's views in those Rulings still apply, they have been incorporated in this Ruling.

19. This Ruling contains an approach relating to common property which accepts that, in relation to all proprietors in all strata schemes registered under the State and Territory Acts, the proprietor is the legal and beneficial owner. This is different to the approach under former IT 2505 in respect of certain strata schemes.

## Ruling

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### Status for taxation purposes

20. A strata title body is a company for income tax purposes.
21. The Commissioner has a discretion to treat a company as a public company for the purposes of subsection 103A(5) of the *Income Tax Assessment Act 1936* (ITAA 1936). This discretion will be exercised in circumstances where the strata title body is in substantial compliance with its obligations and responsibilities as set out in the applicable governing legislation.
22. A strata title body will not be taxed as a non-profit company even if it includes non-profit clauses in its by-laws.

### Amounts contributed by proprietors – application of the mutuality principle

23. An amount that is otherwise assessable to the strata title body will not be included in its assessable income under section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) where the principle of mutuality applies.

24. Amounts levied on proprietors by a strata title body in accordance with the State or Territory Acts which form part of a fund used for the day to day expenses, general maintenance and repair of common property or for the establishment of special purpose funds as set out under those Acts are mutual receipts and are not assessable to the strata title body.

25. Whether other receipts from members are mutual receipts depends on the nature of the transaction and must be decided on the facts and circumstances of each dealing by a process of evaluating and weighing a range of factors. Relevant considerations include:

- The relationship between an amount received by the strata title body and the common fund – that is, whether it is within matters that govern the mutual relationship between members such that it has the requisite link to the common fund.
- The purpose for which the payment is made – that is, whether the payment of an amount by a member to the strata title body is to meet the member's proportion of their mutual liabilities.
- The capacity in which an amount is paid – that is, whether the member is dealing with the strata title body in their role as a member.

***Example 1: penalty amounts received by the strata title body – non-mutual receipt***

26. *A strata title body has by-laws governing the behaviour of residents and the use of common property. A proprietor (a member of the strata title body) living in their lot breaches one of these by-laws. The breach of the by-law cannot be resolved by the strata title body – it must be resolved by a statutory tribunal.*

27. *An application is made to an independent tribunal to decide the matter. The tribunal makes a determination imposing a pecuniary penalty on the proprietor and orders that it be paid to the strata title body. The strata title body receives the penalty amount from the proprietor.*

28. *In this case, the principle of mutuality does not apply to the penalty amount received by the strata title body as the proprietor paid the penalty outside their capacity as member so the dealing goes beyond the mutual arrangement. Therefore, it will form part of the strata title body's assessable income under section 6-5 of the ITAA 1997.*

***Example 2: interest payable on late levies – mutual receipt***

29. *A strata title body imposes interest on the late payment of levies by a proprietor. The payment of contributions and levies represent the proprietor's share in the mutual liabilities of the strata title body and are a contribution to the common fund. The imposition of interest is calculated so as to compensate the other proprietors for a measurable detriment suffered by the common fund.*

30. *In this case, the principle of mutuality applies to the interest received by the strata title body and is not assessable income of that strata title body.*

## **Access fees**

31. Access fees charged by the strata title body for the inspection of records, including the books of account, all insurance policies, the strata role, the strata plan and the minutes of meetings are assessable income of the strata title body except where they are received from a proprietor and mutuality applies.

## **Distributions to members**

32. As the principle of mutuality applies to proprietors' contributions, any distributions to proprietors that are a return of surplus contributions are not assessable income.

33. Any distributions to proprietors out of profits derived by the strata title body constitute dividends which are assessable income of the proprietors and are able to be franked.

## **Apportionment**

34. Expenses related to earning both assessable income (non-mutual) and non-assessable income (mutual) need to be apportioned using a method that is fair and reasonable.

## **Carry forward losses**

35. As mutual receipts are not income, they do not form part of 'exempt income' in the context of general domestic current year losses and undeducted prior year losses.

## **Income and deductions relating to personal property of the strata title body**

36. To the extent they are necessary for operation of the strata scheme, the money raised by a strata title body through levies on proprietors, in accordance with the relevant strata scheme legislation, is owned by the strata title body. Any interest, dividends or interest income derived by the strata title body from the investment of moneys held in its fund represents assessable income of the strata title body unless specifically exempted by the ITAA 1936 or ITAA 1997.

37. Income derived from the ownership and use of other personal property (for example, moveable goods and chattels) owned by the strata title body is also assessable to the strata title body except where it is received from a proprietor and mutuality applies.

38. The strata title body is the holder of depreciating assets that are its personal property and is entitled to claim deductions under Division 40 of the ITAA 1997 providing the remaining requirements in that Division are met.

### **Income and deductions relating to common property**

39. How 'income from common property'<sup>1</sup> is assessed and which entity is entitled to deductions in respect of common property depends on whether the common property is owned by the strata title body as a trustee or by the proprietors. Where legal title to the common property is owned by the strata title body as trustee, the eligibility for deductions is determined by reference to the trustee's use of the property. The income and deductions form part of 'net income' which is then assessed in accordance with Division 6 of the ITAA 1936. Where legal and beneficial title to the common property is owned by the proprietors, the proprietors return the income and claim any deductions.

40. Each strata title legislation is different in its description of how common property is held. Notwithstanding these differences, the Commissioner will accept, in relation to strata schemes registered under all the State and Territory Acts, that it is the proprietors, rather than the strata title body, that are entitled to the deductions under Division 40 and Division 43 of the ITAA 1997 and who are assessable on any income from common property under section 6-5 of the ITAA 1997.<sup>2</sup>

41. Accordingly, and in respect of all strata schemes, Income Tax Returns can be prepared on the following basis:

- the income from common property is not assessable income of the strata title body in its capacity as trustee (and is assessable income of the individual proprietors)
- the strata title body is not entitled to any deductions under section 8-1 of the ITAA 1997 in respect of common property (and proprietors will be entitled to deductions in proportion to their lot entitlements to the extent they otherwise meet the remaining requirements in that provision.)
- the strata title body is not entitled to any deductions under Division 40 and Division 43 of the ITAA 1997 in respect of common property (and proprietors will be entitled to deductions in proportion to their lot entitlements to the extent they otherwise meet the remaining requirements in those Divisions).

<sup>1</sup> See definition in paragraph 14 of this Ruling.

<sup>2</sup> However, if under subsection 23(3) of the *Unit Titles (Management) Act 2011* (ACT) the owner's corporation has, by ordinary resolution, decided to hold 'sustainability infrastructure' installed on common property as trustee, legal title to the sustainability infrastructure is held by the owner's corporation as trustee for income tax purposes and paragraph 41 of this Ruling does not apply to that infrastructure or the income derived from it.



**Example 3: rental income from common property**

42. A strata title body leases the rooftop of a residential rental strata title building to a telephone company to place a mobile phone tower there. The rooftop is common property. It generates \$50,000 per year in rental income.

43. The Commissioner accepts that the proprietor can:

- return the income derived from the mobile phone tower in proportion to their unit entitlement, and
- claim relevant deductions for the common property under Division 40 and/or Division 43 of the ITAA 1997.

**Example 4: rental income from lot**

44. Charlie owns a strata title interest, being a unit in an apartment block. Charlie currently rents out the unit to Karl. Part of the lot entitlements include a right to use or have access to strata title body common property which consists of the garden area, the lifts, stairwells and passageways. It includes depreciating assets. The common property is not used independently of the lot to generate any income.

45. The Commissioner accepts that Charlie is entitled to claim relevant deductions under Division 40 and Division 43 of the ITAA 1997 in his income tax return.

## Date of effect

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46. With the exception of paragraph 21, this Ruling applies to all strata title schemes for the years of income commencing both before and after its date of issue.

47. Paragraph 21 of this Ruling contains a clarification of the circumstances in which the Commissioner will treat a strata title body as a public company. Paragraph 21 of this Ruling applies from the date of issue.

48. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### **Status of a strata title body for income tax purposes**

#### ***A strata title body is treated as a public company***

49. For income tax purposes, a strata title body registered under one of the State and Territory Acts falls within the meaning of 'company' as defined in section 995-1 of the ITAA 1997.

50. It has been the practice of the Commissioner to exercise his discretion under subsection 103A(5) of the ITAA 1936 to treat a strata title body as a public company.<sup>3</sup> The exercise of any discretion requires the Commissioner to have regard to all the facts and circumstances of each particular case.

51. It will be appropriate to exercise the discretion to deem a strata title body to be a public company under subsection 103A(5) of the ITAA 1936 where the strata title body is in substantial compliance with its duties and obligations as set out under the relevant governing legislation. This is on the basis that, given the restrictions placed on such bodies in their governing legislation regarding their use of funds, there is little scope or likelihood of Division 7A or section 109 of the ITAA 1936 applying. Further, if Division 7A was to apply, it may lead to unintended consequences regarding the proprietor's use of the common or personal property of the strata title body. Thus, minor breaches, for example of an administrative nature, should not cause the Commissioner to refuse to exercise the discretion.

#### ***A strata title body will not be treated as a non-profit company***

52. A strata title body will not be taxed as a non-profit company even if it includes non-profit clauses in its by-laws.

53. A non-profit company is defined in subsection 3(1) of the *Income Tax Act 1986* (ITA 1986) and means, among other things, a company that:

- (a) is not carried on for the purposes of profit or gain to its individual members; and
- (b) is, by the terms of its constituent documents, prohibited from making any distribution, whether in money, property or otherwise, to its members.

54. In the context of a strata title body, the prohibition refers to the capacity, measured on an annual basis, of a strata title body to distribute to its members both in the current year and in future years.

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<sup>3</sup> See former Income Tax Ruling IT 2505.

55. Even though a strata title body is not carried on for the purposes of profit or gain to its individual members, a non-profit company must also be prohibited from making any distribution to its members.

56. A strata title body does not satisfy this second requirement because, under the various State and Territory strata title legislation governing its operation, a strata title body can make distributions to its members in certain circumstances, for example, on winding up. The by-laws of a strata title body are made under, and are subject to the operation of, its governing State or Territory legislation. Consequently, a by-law to prohibit any distribution to members cannot be created to override or limit the ability of a strata title body to distribute to members in the circumstances permitted by the legislation. The practical effect of the State and Territory legislation is to 'set at nought' any conflicting by-law.<sup>4</sup>

57. As strata title bodies are able to make distributions to proprietors in certain circumstances, for example, on winding up, such entities do not qualify as non-profit companies as defined in subsection 3(1) of the ITA 1986.<sup>5</sup>

58. Therefore, the assessable income derived by a strata title body is taxed at the rate applicable to a company.

### **Application of the mutuality principle**

59. The principle of mutuality is based on the premise that you cannot derive income from yourself. The principle provides that where a number of people contribute to a common fund created and controlled by them for a common purpose, any surplus arising from the use of that fund for the common purpose is not income.<sup>6</sup>

60. The principle of mutuality requires that contributors to a common fund are entitled to a share in any surplus and any recipients of a surplus must have been contributors to the common fund.<sup>7</sup> A distribution of any surplus need not be based on respective contributions, as long as the contributors, as a class, are entitled to the surplus.<sup>8</sup>

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<sup>4</sup> See *Nadir Pty. Ltd. v. FC of T* (1973) 129 CLR 595; 73 ATC 4074; (1973) 3 ATR 655 at CLR 603; ATC 4079; ATR 660.

<sup>5</sup> *AAT Case 44*; *AAT Case U5787* ATC 370; (1987) 18 ATR 3279.

<sup>6</sup> See *The Bohemians Club v. Acting Commissioner of Taxation* (1918) 24 CLR 334; [1918] HCA 16.

<sup>7</sup> See *Municipal Mutual Insurance Ltd v. Hills (HM Inspector of Taxes)* (1930) 16 TC 430 at 448.

<sup>8</sup> See *Jones v. South-West Lancashire Coal Owners' Association Ltd* [1927] 1 KB 33; affirmed (1927) 11 TC 790, *The Social Credit Savings & Loans Society Ltd v. FC of T* (1971) 125 CLR 560; 71 ATC 4232; (1971) 2 ATR 612, and *Sydney Water Board Employees' Credit Union Ltd v. FC of T* 73 ATC 4129.

61. Mutuality will apply provided that there is 'a reasonable relationship' between what a member contributes and what they may be expected or entitled to receive from the fund.<sup>9</sup>

62. Mutuality is limited in its application. It does not include 'any contributions to the fund derived from sources other than the contributors' payments, such as interest from the investment of part of the fund, or income from a business activity conducted by the members'.<sup>10</sup>

63. Each transaction needs to be examined to determine whether a particular dealing is mutual.<sup>11</sup>

64. Whether a particular dealing is mutual will be decided on the facts and circumstances of each case by a process of evaluating and weighing a range of factors for the particular circumstance. Relevant considerations may include:

- The relationship between an amount received by the strata title body and the common fund. The principle of mutuality will apply to an amount received by the strata title body that is within matters that govern the mutual relationship between members such that it has the requisite link to the common fund. The principle will not apply to an amount received by the strata title body that is beyond matters that govern the mutual relationship between members as it will not have the requisite link to the common fund.
- The purpose for which the payment is made – the principle of mutuality will apply to the payment of an amount by a member to the strata title body to meet the member's proportion of the mutual liabilities<sup>12</sup> and it will not apply to the payment of an amount by a member to the strata title body to discharge their individual legal obligation.
- The capacity in which an amount is paid – the principle of mutuality will not apply where the member is dealing with the strata title body as a 'stranger' that is, the payment of the amount by the member is done outside their capacity as a member and therefore puts them in the same position as a non-member.<sup>13</sup>

<sup>9</sup> See *Sydney Water Board Employees' Credit Union Ltd v. FC of T* 73 ATC 4129 at 4136.

<sup>10</sup> See *Revesby Credit Union Co-operative Ltd v. Federal Commissioner of Taxation* (1965) 112 CLR 564; (1965) 13 ATD 449; (1965) 9 AITR 459 at CLR 574.

<sup>11</sup> See *Royal Automobile Club of Victoria RACV v. Federal Commissioner of Taxation* 73 ATC 4153; (1974) 4 ATR 567; [1974] VR 651.

<sup>12</sup> See *Sydney Water Board Employees Credit Union Ltd v. Federal Commissioner of Taxation* (1973) 129 CLR 446; 73 ATC 4129; (1973) 4 ATR 157; and *Federal Commissioner of Taxation v. Australian Music Traders Association* 90 ATC 4536; (1990) 21 ATR 471.

<sup>13</sup> See *Liverpool Corn Trade Association Limited v. Monks* (HM Inspector of taxes) [1926] 2 KB 110 and *Municipal Mutual Insurance Ltd v. Hills* (HM Inspector of Taxes) (1930) 16 TC 430.

65. Application of these principles in Example 1 of this Ruling shows that mutuality will not apply to a penalty amount received by the strata title body because:

- The by-laws of a strata title body that govern the behaviour of residents and the use of common property apply irrespective of membership of the strata title body. Their application is beyond matters that govern the mutual relationship between members and therefore any penalty imposed for a breach of the by-laws does not have the requisite link to the common fund.
- The payment of the pecuniary penalty by a proprietor, to the strata title body is undertaken in discharge of their individual legal obligation. The penalty is a deterrent and is in no sense a pre-estimate of the amount required to meet the proprietor's proportion of the mutual liabilities.
- It is considered that the proprietor is dealing with the strata title body as a 'stranger'. The payment of a pecuniary penalty by the proprietor is done outside their capacity as a proprietor and therefore puts them in the same position as a non-member (for example, a tenant).
- It is the tribunal, who is a third party, that makes a determination on whether the penalty applies, the amount of the penalty and who receives it.

66. In contrast, Example 2 of this Ruling shows circumstances where mutuality does apply. In this instance as the payment of contributions and levies represent the proprietor's share in the mutual liabilities of the strata title body they are a contribution to the common fund. The imposition of interest for late payment of levies by the strata title body compensates the other proprietors for a measurable detriment suffered by the common fund and is therefore part of that proprietor's contribution to the common fund.

67. It is considered that the obligation arises as a consequence of being a proprietor and is in a sense part of the estimate of the amount which is required to meet the proprietor's proportion of their mutual liabilities. Such a receipt is a contribution by that proprietor for the common benefit of all the proprietors. As a mutual receipt, it is not assessable income of that strata title body.

68. Having regard to these principles, the Commissioner considers that the principle of mutuality applies to the following amounts paid by proprietors to the strata title body:

- Proprietors' levy – which is directed to for example, an administrative fund, or a sinking, reserve or special purpose fund.

- Payments for their use of personal property of the strata title body for example, washing machines.<sup>14</sup>
- Fees paid for the collection of rents from the common property.
- Access fees paid for the inspection of records held by the strata title body, including the books of account, insurance policies, the strata roll, the strata plan and the minutes of meetings.

69. Conversely, the principle of mutuality will not apply to the following types of amounts:

- Payments by non-proprietors to the strata title body for their use of personal property of the strata corporation for example, washing machines.
- Access fees paid by non-proprietors for the inspection of records held by the strata title body, including the books of account, insurance policies, the strata roll, the strata plan and the minutes of meetings.
- Fines imposed by the strata corporation on tenants for breaches of by-laws.
- Interest and dividends from invested funds.
- Rental receipts from the leasing of common property set aside for the purposes of carrying on a business of leasing professional suites and shops.

### **Access fees**

70. A strata title body is obliged to make available for inspection to an applicant, whether a proprietor, a mortgagee or their authorised representative, all records held by it, including the books of account, all insurance policies, the strata roll, the strata plan and the minutes of meetings. Access fees charged are assessable income except where they are received from a proprietor.

<sup>14</sup> This is the case even though some proprietors may choose to use the goods and chattels of the strata title body and others may not: see *Royal Automobile Club Victoria RACV v. Federal Commissioner of Taxation* 73 ATC 4153; (1973) 4 ATR 567.

**Distributions to members**

71. Under the principle of mutuality, where proprietors have contributed to any administration, reserve or special purpose fund to meet common expenses, and any surplus contributions are returned to those proprietors in their capacity as contributors, such surpluses are not assessable income. However, any distributions to proprietors out of profits derived by the strata title<sup>15</sup> constitute dividends which are assessable income of the proprietors under subsection 44(1) of the ITAA 1936 or section 47 of the ITAA 1936 if it is part of winding up or discontinuance of the strata title body.<sup>16</sup>

**Dividends and franking credits**

72. Strata title bodies are subject to Part 3-6 of the ITAA 1997, the imputation system, in the same way as other companies. Thus, to the extent that a strata title body pays tax<sup>17</sup> or otherwise has franking credits, it is able to impute tax paid at the corporate level to its proprietors by franking the dividends it pays in accordance with Part 3-6.

**Apportionment**

73. Expenses related to earning both assessable income (non-mutual) and non-assessable income (mutual), for example, where management and audit fees can be attributed to investment income, need to be apportioned by using a method of apportionment that is fair and reasonable and accurately reflects the expenses for the year in question.

74. The following formula is an example of a fair and reasonable basis for apportionment in this context.

$$[(\text{Non-Mutual Income}) / (\text{Total Income})] * (\text{Apportionable Expenditure})$$

75. For the purposes of the formula, Total Income comprises contributors' levies plus all Non-Mutual Income and Apportionable Expenditure does not include expenses that relate solely to mutual receipts like insurance, rates and taxes, maintenance and upkeep of the grounds and buildings.

<sup>15</sup> Other than profits derived as trustee – see discussion on income from common property in paragraphs 90 to 98 of this Ruling.

<sup>16</sup> However, the return of surplus contributions may reduce the amount a proprietor could otherwise deduct for their contribution.

<sup>17</sup> Otherwise than in its capacity as trustee.

**Carry forward losses**

76. Subsection 6-20 of the ITAA 1997 defines 'exempt income' as income which is exempt from income tax and includes income which is not assessable income. The principle of mutuality recognises that one cannot make a profit out of oneself and that income can only be derived from sources outside of oneself. A mutual receipt is not income.

77. Consequently, mutual receipts do not form part of 'exempt income' in the context of general domestic current year losses and undeducted prior year losses.

**Income from and deductions relating to property held as part of strata title scheme**

78. There are two types of property in a strata title scheme that may be held by a strata title body:

- personal property, and
- common property.

***Personal property***

79. Income from personal property held by the strata title body will be assessable income of the strata title body. The strata title body will also be entitled to any deductions incurred in gaining or producing this assessable income, including deductions allowable under Division 40 of the ITAA 1997.

80. The main types of personal property in this context are certain funds and moveable chattels.

***Funds***

81. The strata title body is empowered by the State and Territory Acts to levy the proprietors in proportion to their lot entitlements to enable it to carry out its various duties and functions. The moneys so raised are mutual receipts and the personal property of the strata title body. Within a short time of its creation the strata title body must establish one or more funds, depending on the relevant legislation, into which these levies must be paid.

82. The establishment of funds will depend on the legislative requirements of each strata scheme. Some schemes have only one fund for the receipt and disbursement of moneys, others prescribe one or more of the following:

- an administrative fund for the payment of the day to day expenses of administration, insurance premiums, general maintenance and repair of the common property, and



- a sinking or reserve fund for the payment of non-routine expenses such as the painting or replacement of common property.

83. In addition, the strata title body may be empowered by the different State and Territory Acts to levy the proprietors for contributions other than those referred to above, for example, to meet a compensation payment arising out of a negligence suit. These levies are rarely encountered but may necessitate the establishment of other special purpose funds.

84. Interest, dividends or other income derived by a strata title body from the investment of levies are assessable income of the strata title body unless specifically exempted by the Income Tax Assessment Acts.

85. Deductions are allowed in respect of expenses incurred in gaining and producing the above assessable income. Such expenses may include bank fees and fees for preparation of income tax returns.

86. As mutual receipts are not assessable income of a strata title body, the costs incurred in gaining mutual receipts are not deductible to the strata title body (see paragraphs 73 to 75 of this Ruling regarding apportionment).

## *Chattels*

87. A strata title body is also permitted to own certain items of personal property necessary for the basic purposes of the strata scheme. This type of property encompasses movable property or goods and chattels and includes such things as washing machines, driers, lawnmowers, garden hoses and money.

88. Rental fees derived from the use of personal property, for example, a washing machine except where they are received from a proprietor, or profits on the sale of personal property constitute assessable income of the strata title body to the extent provided by the Income Tax Assessment Acts.

89. Where a strata title body holds depreciating assets that are personal property, being moveable property or goods and chattels, necessary for the basic purposes of the strata scheme, it is the holder of such assets under section 40-40 of the ITAA 1997. The cost of such property is determined under Subdivision 40-C of the ITAA 1997. The strata title body uses the personal property for a taxable purpose where the personal property is used to gain or produce assessable income (for example, income derived from a washing machine and dryer). However, the strata title body will not use the personal property for a taxable purpose to the extent that the personal property is used to provide services for which it receives mutual amounts.

**Common property**

90. Common property that forms part of a strata title arrangement may be used to generate income in different ways, such as:

***By a proprietor leasing out the lot***

In this situation the lot owner, in leasing out their lot, also grants the tenant the right to use the common property.

Income generated through a proprietor leasing out their lot will be assessable to the proprietor (irrespective of how the common property is held).

***Independently to a proprietor's lot***

For example:

- roof space designated as common property on the strata title plan may be leased to a telecommunications company to house a mobile phone tower in return for rental income
- lots designated as common property may be let out for use as commercial premises
- the exterior wall of a building may be made available for advertising space.

This type of income is referred to as 'income from common property' in this Ruling.

91. Who is assessed on the income generated directly from using the common property depends on who owns the common property and in what capacity they own it.

92. The State and Territory Acts differ in their description regarding how common property is owned. Broadly, they describe the common property as being owned by the proprietors as 'tenant in common' or by the strata title body, either as 'agent' or 'trustee'. Therefore, it will be the case that income from common property will be either:

- assessable to the proprietor in their own right under section 6-5 of the ITAA 1997 where held by the proprietor, or
- assessable to the proprietor as a beneficiary of a trust under Division 6 of the ITAA 1936 where held by the strata title body as trustee.

93. It will also be the case that:

- Where the proprietor owns the common property and they rent out their lot, they are considered to both 'hold' and 'own' the common property and hence, subject to meeting remaining requirements, qualify for deductions under Divisions 40 and 43 of the ITAA 1997.

- Where the strata title body owns the common property and the only use to which the common property is put is through a proprietor leasing out their lot, neither the proprietor nor the strata title body would be entitled to a deduction under Division 40 or Division 43 of the ITAA 1997.

94. Historically, the Commissioner has treated the proprietors in most jurisdictions as holding both legal and beneficial title to the common property (and hence deriving the assessable income and being entitled to any deductions under Divisions 40 and 43 of the ITAA 1997).<sup>18</sup>

95. In accordance with this practice, and notwithstanding the differences in the State and Territory legislation, the Commissioner will apply a consistent treatment across all strata schemes, such that proprietors in strata schemes registered under all the legislation set out in Appendix 2 of this Ruling can return income and claim deductions on the basis that they hold the legal and beneficial ownership of common property.<sup>19</sup>

96. Accordingly, in respect of all strata schemes, tax returns can be prepared on the following basis:

- The income derived from the use of the common property is not assessable income of the strata title body and is assessable income of the proprietors. This is considered to be so even in those States and Territories where the strata title legislation prevents a proprietor from ever taking physical receipt (other than on winding-up) of the moneys, and where the moneys are paid directly into one of the strata title body's funds. In these cases, proprietors receive a benefit in that the amount needed to be levied on the proprietors by the strata title body as contributions to the administrative or other fund would be reduced by the income applied directly to the fund. To the extent money is applied or dealt with for the benefit of the proprietor, subsection 6-5(4) of the ITAA 1997 would apply to include these amounts as assessable income of the proprietors.
- Expenses attributable to the derivation of the income from the common property, including deductions allowable under Division 40 and Division 43 of the ITAA 1997,<sup>20</sup> would be allowable to the proprietors in proportion to their lot entitlement, relevant costs or expenditure, and to the extent of the income producing use of the individual lots.

<sup>18</sup> See former IT 2505.

<sup>19</sup> Note that a partnership return is not required where income is rent from property held jointly (or in common) – see the *Partnership Tax Return Instructions* (NAT 0659).

<sup>20</sup> Subject to the application of section 40-215 of the ITAA 1997 where the proprietor has already claimed a deduction for a strata levy.

97. In those states where the proprietors were already accepted under former IT 2505 as holding legal and beneficial ownership in the common property, the tax outcomes are the same both before and after the issue of this Ruling.

98. Where the proprietors were treated as holding only a beneficial interest in the common property in accordance with former IT 2505<sup>21</sup> the treatment outlined in paragraphs 41 and 96 of this Ruling applies both before and after the issue of this Ruling notwithstanding former IT 2505. Alternatively, should proprietors and strata title bodies in these strata title schemes wish to continue to treat the common property as being held on trust in accordance with former IT 2505, they are able to do so. In that case, the tax treatment of the income and deductions would, on this view of the law, be as follows:

- Any income arising from common property itself is assessable under Division 6 of the ITAA 1936 to the strata title body.<sup>22</sup> Generally, this means that the income (less deductions allowable to the strata title body as trustee) would be taxed to the proprietor as net income of a trust estate under section 97 of the ITAA 1936.<sup>23</sup>
- The strata title body (and not the proprietor) would 'hold' and 'own' the common property under Division 40<sup>24</sup> and Division 43 of the ITAA 1997 respectively. However, the strata title body would only be entitled to claim a deduction under those Divisions where it is 'using' the common property, such as by directly generating income (for example, by leasing out common property).
- A proprietor leasing out their lot would not be entitled to any deductions under Division 40 or Division 43 for common property that was being 'used' to generate lease income under a tenant lease agreement. If this was the only income producing use to which the common property was put, the strata title body would also not be able to claim any deductions.

<sup>21</sup> This applied to strata schemes registered under the *Strata Titles Act 1988* (SA), the *Unit Titles Act* (NT) and the *Strata Titles Act 1998* (Tas).

<sup>22</sup> Note that this would then require the strata title body to lodge a Trust tax return unless covered by Law Administration Practice Statement PS LA 2000/2.

<sup>23</sup> Less commonly the income might be 'taxable' to the strata title body as trustee where, for example, the proprietor is under a legal disability (see subsection 98(1) of the ITAA 1936) or where the proprietor is a non-resident (see subsections 98(2A) and 98(3) of the ITAA 1936).

<sup>24</sup> Unless the proprietor falls within item 2 or 3 of the table to section 40-40 of the ITAA 1997.

## Taxation obligations – lodgment of return

99. A strata title body must lodge an income tax return for a year of income if required by the Commissioner.<sup>25</sup>

100. As a strata title body is a company for income tax purposes, it is required to lodge an income tax return for any year of income in which it has derived assessable income<sup>26</sup> or when requested by the Commissioner.

101. Generally, where the only income derived by a strata title body is mutual in nature, that is, consists solely of proprietors' levies or contributions, there is no assessable income, so the strata title body is not required to lodge a return. In cases where income is derived from non-mutual sources (for example, interest and dividends from invested funds, fees from non-proprietors for access to books) a return is usually required to be furnished.<sup>27</sup>

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<sup>25</sup> Under section 161 of the ITAA 1936, the Commissioner determines who is required to lodge a return for a year of income. This determination is exercised by a Legislative Instrument published annually.

<sup>26</sup> Otherwise than in its capacity as trustee.

<sup>27</sup> See the *Strata title body corporate tax return and instructions 2015* (NAT 4125-6.2015) for instructions on how to complete the tax return. A strata title body should use a *Strata title body corporate tax return* or Company Form C if required. See also footnote 22 of this Ruling.

## Appendix 2 – Relevant strata title legislation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

| State / Territory                   | Governing Legislation   | Strata Scheme legislation  |
|-------------------------------------|---|--|
| <b>Queensland</b>                   | <i>Body Corporate and Community Management Act 1997 (Qld)</i>   | <i>Body Corporate and Community Management Act 1997 (Qld)</i> (which replaced the <i>Building Units and Group Titles Act 1980 (Qld)</i> except for certain developments as set out in section 326 of the <i>Building Units and Group Titles Act 1980 (Qld)</i> ) |
| <b>New South Wales</b>              | <i>Strata Schemes Management Act 1996 (NSW)</i>   | <i>Strata Schemes (Freehold Development) Act 1973 (NSW)</i> (formerly known as <i>Strata Titles Act 1973 (NSW)</i> and <i>Strata Titles (Freehold Development) Act 1973 (NSW)</i> )  |
| <b>Victoria</b>                     | <i>Owners Corporations Act 2006 (Vic)</i>   | <i>Subdivision Act 1988 (Vic)</i> (which replaced the <i>Strata Titles Act 1967 (Vic)</i> )  |
| <b>South Australia</b>              | <i>Community Titles Act 1996 (SA)</i> , or <i>Strata Titles Act 1988 (SA)</i> , read together with <i>Real Property Act 1886 (SA)</i> | <i>Real Property Act 1886 (SA)</i> read together with either the <i>Strata Titles Act 1988 (SA)</i> or the <i>Community Titles Act 1996 (SA)</i>   |
| <b>Western Australia</b>            | <i>Strata Titles Act 1985 (WA)</i>  | <i>Strata Titles Act 1985 (WA)</i>   |
| <b>Tasmania</b>                     | <i>Strata Titles Act 1998 (Tas)</i>   | <i>Conveyancing and Law of Property Act 1884 (Tas)</i>   |
| <b>Australian Capital Territory</b> | <i>Unit Titles (Management) Act 2011 (ACT)</i>  | <i>Unit Titles Act 2001 (ACT)</i> (replacing the <i>Unit Titles Ordinance 1970 (ACT)</i> )   |
| <b>Northern Territory</b>           | <i>Unit Titles Act (NT)</i>   | <i>Unit Titles Act (NT)</i>  |

## Appendix 3 – Detailed contents list

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### *Related Rulings/Determinations:*

TR 2006/10

### *Previous Rulings/Determinations:*

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- Law Administration Practice Statement PS LA 2000/2
- Partnership Tax Return Instructions (NAT 0659)
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