





# **New Business Tax System (Imputation) Act 2002**

**No. 48, 2002**

**An Act to amend the taxation law to implement a  
simplified imputation system, and for related  
purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **New Business Tax System (Imputation) Act 2002**

**No. 48, 2002**

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**An Act to amend the taxation law to implement a  
simplified imputation system, and for related  
purposes**

[Assented to 29 June 2002]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *New Business Tax System  
(Imputation) Act 2002*.

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## **2 Commencement**

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

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

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

#### **1 After Part 3-5**

Insert:

### **Part 3-6—The imputation system**

#### **Division 200—Guide to Part 3-6**

#### **Guide to Division 200**

##### **200-1 What this Division is about**

This Division provides an overview of the imputation system.
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##### **Table of sections**

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

##### **200-5 The imputation system**

The \*imputation system partially integrates the income tax liabilities of an Australian corporate tax entity and its members by:

- (a) allowing the entity, when distributing profits to its members, to pass to those members credit for income tax paid by the entity on those profits; and

- (b) allowing the entity's Australian members to claim a tax offset for that credit; and
- (c) allowing the entity's Australian members to claim a refund if they are unable to fully utilise the tax offset in reducing their income tax.

### **200-10 Franking a distribution**

When an Australian corporate tax entity distributes profits to its members, the entity has the option of passing to those members credit for income tax paid by the entity on the profits. This is done by franking the distribution.

### **200-15 The franking account**

- (1) A franking account is used to keep track of income tax paid by the entity, so that the entity can pass to its members the benefit of having paid that tax when a distribution is made.
- (2) Each corporate tax entity has a franking account.
- (3) Typically, a corporate tax entity receives a credit in the account if the entity pays income tax or receives a franked distribution. A credit in the franking account is called a franking credit.
- (4) Typically, a corporate tax entity receives a debit in the account if the entity receives a refund of tax or franks a distribution to its members. A debit in the franking account is called a franking debit.

### **200-20 How a distribution is franked**

- (1) A corporate tax entity franks a distribution by allocating a franking credit to it.
- (2) The amount of the franking credit on the distribution is the amount specified in a statement that accompanies the distribution.
- (3) Only some kinds of distribution can be franked. These are called frankable distributions.

**200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid**

- (1) A corporate tax entity must not frank a distribution from profits with a franking credit that exceeds the maximum amount of income tax that could have been paid by the entity on the profits distributed.
- (2) If a distribution is franked in excess of this limit, the entity will be taken to have franked the distribution with the maximum franking credit for the distribution.

**200-30 Benchmark rule**

- (1) All frankable distributions made within a particular period must be franked to the same extent. This is the benchmark rule.
- (2) It is designed to ensure that one member of a corporate tax entity is not preferred over another by the manner in which distributions are franked.

**200-35 Effect of receiving a franked distribution**

- (1) Under Division 207, if an Australian member of a corporate tax entity receives a franked distribution, the member can usually offset, against the member's own income tax liability, income tax paid by the entity on the profits underlying the distribution.
- (2) The tax offset to which the member is entitled is equal to the franking credit on the distribution.

Note 1: A member may be entitled to a refund under Division 67 if the sum of the tax offset and certain other tax offsets exceeds the amount of income tax that the member would have to pay if the member had not got those tax offsets.

Note 2: If the member is not a resident, the tax effects of receiving a distribution will be dealt with under Division 11A of Part III of the *Income Tax Assessment Act 1936*, and Subdivision 207-D of this Part.

**200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members**

If an Australian corporate tax entity receives a franked distribution, it can pass the benefit of having received a franking credit on the

distribution to its own members by franking distributions to those members.

### **200-45 Special rules for franking by some entities**

There are special rules to deal with:

- (a) venture capital franking by a pooled development fund; and
- (b) franking by life insurance companies; and
- (c) franking by exempting companies and former exempting companies.

## **Division 201—Objects and application of Part 3-6**

### **Table of sections**

201-1	Objects
201-5	Application of this Part

### **201-1 Objects**

- (1) The main object of this Part is to allow certain \*corporate tax entities to pass to their \*members the benefit of having paid income tax on the profits underlying certain \*distributions.
- (2) The other objects of this Part are to ensure that:
  - (a) the imputation system is not used to give the benefit of income tax paid by a \*corporate tax entity to \*members who do not have a sufficient economic interest in the entity; and
  - (b) the imputation system is not used to prefer some members over others when passing on the benefits of having paid income tax; and
  - (c) the \*membership of a corporate tax entity is not manipulated to create either of the outcomes mentioned in paragraphs (a) and (b).

### **201-5 Application of this Part**

Subject to the rules on the application of this Part set out in the *Income Tax (Transitional Provisions) Act 1997*, this Part applies to events that occur on or after 1 July 2002.

## **Division 202—Franking a distribution**

### **Table of Subdivisions**

202-A	Franking a distribution
202-B	Who can frank a distribution?
202-C	Which distributions can be franked?
202-D	Amount of the franking credit on a distribution
202-E	Distribution statements

### **Subdivision 202-A—Franking a distribution**

#### **Guide to Subdivision 202-A**

##### **202-1 What this Subdivision is about**

An entity can only frank a distribution if certain conditions are met. These conditions are set out in this Subdivision.

##### **Table of sections**

###### **Operative provisions**

202-5	Franking a distribution
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*[This is the end of the Guide.]*

#### **Operative provisions**

##### **202-5 Franking a distribution**

An entity *franks* a \*distribution if:

- (a) the entity is a \*franking entity that satisfies the \*residency requirement when the distribution is made; and
- (b) the distribution is a \*frankable distribution; and
- (c) the entity allocates a \*franking credit to the distribution.

Note 1: Division 205 deals with a corporate tax entity's franking account and sets out when credits, known as franking credits, and debits, known as franking debits, arise in that account.

Note 2: The mechanism by which an entity allocates a franking credit to a distribution (for example, whether it is done by resolution or some other means) is determined by the entity.

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

### Guide to Subdivision 202-B

#### 202-10 What this Subdivision is about

Generally, a corporate tax entity that is resident at the time a distribution is made, can frank the distribution.

There are some exceptions.

#### Table of sections

##### Operative provisions

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

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

### Operative provisions

#### 202-15 Franking entities

An entity is a **franking entity** at a particular time if:

- (a) it is a \*corporate tax entity at that time; and
- (b) it is not a \*life insurance company that is a \*mutual insurance company at that time; and
- (c) in a case where the entity is a \*company that is a trustee of a trust—it is not acting in its capacity as trustee of the trust at that time.

## **202-20 Residency requirement when making a distribution**

An entity satisfies the *residency requirement* when making a \*distribution if:

- (a) in the case of a \*company—the company is an \*Australian resident at that time; and
- (b) in the case of a \*corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and
- (c) in the case of a \*corporate unit trust—the corporate unit trust is a \*resident unit trust for the income year in which that time occurs; and
- (d) in the case of a \*public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

## **Subdivision 202-C—Which distributions can be franked?**

### **Guide to Subdivision 202-C**

#### **202-25 What this Subdivision is about**

Generally, distributions that are made out of realised profits can be franked.

Those distributions that are not frankable are identified.

#### **Table of sections**

202-30 Frankable distributions

##### **Operative provisions**

202-35 Object

202-40 Frankable distributions

202-45 Unfrankable distributions

#### **202-30 Frankable distributions**

Distributions and non-share dividends are frankable unless it is specified that they are unfrankable.

[This is the end of the Guide.]

## Operative provisions

### 202-35 Object

The object of this Subdivision is to ensure that only distributions equivalent to realised taxed profits can be franked.

### 202-40 Frankable distributions

- (1) A \*distribution is a *frankable distribution*, to the extent that it is not unfrankable under section 202-45.
- (2) A \*non-share dividend is a *frankable distribution*, to the extent that it is not unfrankable under section 202-45.

### 202-45 Unfrankable distributions

The following are *unfrankable*:

- (a) a distribution by a co-operative company as defined in section 117 of the *Income Tax Assessment Act 1936* for which a deduction is allowable under section 120 of that Act;
- (b) a distribution to which paragraph 24J(2)(a) of that Act applies that is taken under section 24J of that Act to be derived from sources in a prescribed Territory, as defined in paragraph 24BB(a) of that Act (distributions by certain \*corporate tax entities from sources in Norfolk Island);
- (c) where the purchase price on the buy-back of a \*share by a \*company from one of its \*members is taken to be a dividend under section 159GZZZP of that Act—so much of that purchase price as exceeds what would be the market value (as normally understood) of the share at the time of the buy-back if the buy-back did not take place and were never proposed to take place;
- (d) a distribution in respect of a \*non-equity share;
- (e) a distribution that is taken under subsection 46M(3) or paragraph 46M(4)(a) of that Act not to be a \*frankable dividend (dividends paid from certain accounts such as \*share capital accounts);

- (f) an amount that is taken to be an unfrankable distribution under section 160APAAAA or 160APAAAB of that Act;
- (g) an amount that is taken to be a dividend for any purpose under any of the following provisions:
  - (i) Division 7A of Part III of that Act (distributions to entities connected with a \*private company);
  - (ii) section 108 of that Act (loans to shareholders and associates);
  - (iii) section 109 of that Act (excessive payments to shareholders, directors and associates);
  - (iv) section 47A of that Act (distribution benefits—CFCs);
- (h) an amount that is taken to be an unfranked dividend for any purpose:
  - (i) under section 45 of that Act (streaming bonus shares and unfranked dividends);
  - (ii) because of a determination of the Commissioner under section 45C of that Act (streaming dividends and capital benefits).

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

### **Guide to Subdivision 202-D**

#### **202-50 What this Subdivision is about**

The amount of the franking credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution.

In that case, the amount of the franking credit on the distribution is taken to be the maximum franking credit for the distribution, worked out under this Subdivision.

#### **Table of sections**

202-55 What is the maximum franking credit for a frankable distribution?

#### **Operative provisions**

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

**202-55 What is the maximum franking credit for a frankable distribution?**

The maximum franking credit for a distribution is equivalent to the maximum amount of income tax that the entity making the distribution could have paid, at the current corporate tax rate, on the profits underlying the distribution.

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

**Operative provisions**

**202-60 Amount of the franking credit on a distribution**

- (1) The amount of the \*franking credit on a \*distribution is that stated in the \*distribution statement for the distribution, unless that amount exceeds the \*maximum franking credit for the distribution.  
(2) The *maximum franking credit* for a \*distribution is worked out using the formula:

$$\text{Amount of the *frankable distribution} \times \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}}$$

**202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution**

If the amount of a \*franking credit stated in a \*distribution statement for a \*distribution exceeds the \*maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to be the amount of the maximum franking credit for the distribution, and not the amount stated in the distribution statement.

## **Subdivision 202-E—Distribution statements**

### **Guide to Subdivision 202-E**

#### **202-70 What this Subdivision is about**

An entity that makes a frankable distribution must give the recipient a statement setting out details of the distribution.

#### **Table of sections**

##### **Operative provisions**

202-75	Obligation to give a distribution statement
202-80	Distribution statement
202-85	Changing the franking credit on a distribution by amending the distribution statement

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

#### **Operative provisions**

##### **202-75 Obligation to give a distribution statement**

- (1) An entity that makes a \*frankable distribution must give the recipient a \*distribution statement.
- (2) The statement must be given:
  - (a) if the entity is not a \*private company for the income year in which the \*distribution is made—on or before the day on which the distribution is made; or
  - (b) if the entity is a private company for the income year in which the distribution is made:
    - (i) where the Commissioner has not made a determination under subsection (3)—before the end of 4 months after the end of the income year in which the distribution is made; or
    - (ii) where the Commissioner makes a determination under subsection (3) that the statement may be given before a later time—before that time.

## Schedule 1 The simplified imputation system

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Note: A consequence of the rule in paragraph (2)(b) is that private companies can, in effect, frank retrospectively.

- (3) The Commissioner may determine in writing that a \*private company may give the statement before a time that is later than 4 months after the end of the income year in which the distribution is made.

### 202-80 Distribution statement

- (1) A ***distribution statement*** is a statement made in accordance with this section.
- (2) The statement must be in the \*approved form.
- (3) The statement must:
  - (a) identify the entity making the distribution; and
  - (b) state the date on which the distribution is made; and
  - (c) state the amount of the distribution; and
  - (d) state that there is a \*franking credit of an amount specified on the distribution; and
  - (e) state the \*franking percentage for the distribution; and
  - (f) state the amount of any \*withholding tax that has been deducted from the distribution by the entity; and
  - (g) include any other information required by the \*approved form that is relevant to imputation generally or the distribution.

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

### 202-85 Changing the franking credit on a distribution by amending the distribution statement

#### *Changing the franking credit on a specified distribution*

- (1) The Commissioner may, on application by an entity, determine in writing that the entity may change the \*franking credit on a specified \*distribution by amending the \*distribution statement for the distribution.

- (2) In deciding whether to make a determination under subsection (1), the Commissioner must have regard to:
- (a) whether the date for lodgment of an \*income tax return by the recipient of the specified \*distribution for the income year in which the distribution was made has passed; and
  - (b) whether, if the \*franking credit on the specified distribution were changed in accordance with the entity's application, there would be any difference in the \*withholding tax liability of the recipient; and
  - (c) whether amending the distribution statement as requested by the entity would lead to a breach of the \*benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and
  - (d) whether amending the distribution statement as requested by the entity would lead to a new \*benchmark franking percentage being set for the entity for the \*franking period in which the distribution was made; and
  - (e) any other matters that the Commissioner considers relevant.

*Changing the franking credits on a specified class of distributions*

- (3) The Commissioner may, on application by an entity, determine in writing that the entity may change the \*franking credits on \*distributions of a specified class by amending the \*distribution statements for the distributions.
- (4) In deciding whether to make a determination under subsection (3), the Commissioner must have regard to:
- (a) the number of recipients to whom an amended \*distribution statement would be made; and
  - (b) whether the date for lodgment of \*income tax returns by recipients of \*distributions of the specified class for the income year in which the distributions were made has passed; and
  - (c) whether, if the \*franking credit on the specified distributions were changed in accordance with the entity's application, there would be any difference in the \*withholding tax liability of the recipients; and
  - (d) whether amending the distribution statements as requested by the entity would lead to a breach of the \*benchmark rule, or

any of the rules in Division 204 (the anti-streaming rules);  
and

- (e) whether amending the distribution statements as requested by the entity would lead to a new \*benchmark franking percentage being set for the entity for the \*franking period in which the distributions were made; and
- (f) any other matters that the Commissioner considers relevant.

*Applying to the Commissioner*

- (5) The entity must:
  - (a) make its application under this section in writing; and
  - (b) include in the application all information relevant to the matters to which the Commissioner must have regard under:
    - (i) subsection (2), if the application relates to a \*distribution; or
    - (ii) subsection (4), if the application relates to a class of distributions.

*Review*

- (6) If the entity or a \*member of the entity is dissatisfied with a determination under subsection (3), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## **Division 203—Benchmark rule**

### **Guide to Division 203**

#### **203-1 What this Division is about**

Distributions within a particular period must all be franked to the same extent.

#### **Table of sections**

203-5	Benchmark rule
203-10	Benchmark franking percentage

**Operative provisions**

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

**203-5 Benchmark rule**

- (1) A corporate tax entity must frank all frankable distributions made within a particular period at a franking percentage set as the benchmark for that period. This is the benchmark rule.
- (2) The benchmark rule does not apply to some corporate tax entities. Those entities are identified in section 203-20.

**203-10 Benchmark franking percentage**

- (1) The benchmark franking percentage for an entity is set by reference to the franking percentage for the first frankable distribution made by the entity during the relevant period.
- (2) An entity has a benchmark franking percentage, even if it is not subject to the benchmark rule.

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

**Operative provisions**

**203-15 Object**

The object of this Subdivision is to ensure that one \*member of a \*corporate tax entity is not preferred over another when the entity \*franks \*distributions.

### 203-20 Application of the benchmark rule

- (1) The \*benchmark rule does not apply to a company in a \*franking period if:
  - (a) at all times during the franking period, the company is a \*listed public company that, under its constituent documents, must \*frank all \*distributions made to its \*members under a single resolution at the same \*franking percentage; and
  - (b) any distributions made by the company during the period are made to all members of the company.
- (2) The \*benchmark rule does not apply to a company in a \*franking period if, at all times during the franking period, the company is a \*listed public company with a single \*class of \*membership interest.

### 203-25 Benchmark rule

An entity must not make a \*frankable distribution whose \*franking percentage differs from the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made. This is the *benchmark rule*.

Note: If a corporate tax entity franks a distribution in breach of this rule, the distribution will still be a franked distribution, although consequences will flow under section 203-50.

### 203-30 Setting a benchmark franking percentage

The *benchmark franking percentage* for an entity for a \*franking period is the same as the \*franking percentage for the first \*frankable distribution made by the entity within the period.

Note: If no frankable distribution is made during the period, there is no benchmark franking percentage for the period.

### 203-35 Franking percentage

- (1) Subject to subsection (2), the *franking percentage* for a \*frankable distribution is worked out using the formula:

$$\frac{\text{*Franking credit allocated to the *frankable distribution}}{\text{*Maximum franking credit for the distribution}} \times 100$$

- (2) If the \*franking percentage for a \*frankable distribution would exceed 100% if it were worked out under subsection (1), it is taken to be 100%.

**203-40 Franking periods—where the entity is not a private company**

- (1) Use this section to work out the franking periods for an entity in an income year where the entity is not a \*private company for the income year.
- (2) If the entity's income year is a period of 12 months, each of the following is a *franking period* for the entity in that year:
- (a) the period of 6 months beginning at the start of the entity's income year;
  - (b) the remainder of the income year.
- (3) If the entity's income year is a period of 6 months or less, the *franking period* for the entity in that year is the same as the income year.
- (4) If the entity's income year is a period of more than 6 months and less than 12 months, each of the following is a *franking period* for the entity in that year:
- (a) the period of 6 months beginning at the start of the entity's income year;
  - (b) the remainder of the income year.
- (5) If the entity's income year is a period of more than 12 months, each of the following is a *franking period* for the entity in that year:
- (a) the period of 6 months beginning at the start of the entity's income year (the *first franking period*);
  - (b) the period of 6 months beginning immediately after the end of the first franking period;
  - (c) the remainder of the income year.

### 203-45 Franking period—private companies

The *franking period* for an entity that is a \*private company for an income year is the same as the income year.

### 203-50 Consequences of breaching the benchmark rule

- (1) If an entity makes a \*frankable distribution in breach of the \*benchmark rule:
  - (a) the entity is liable to pay over-franking tax imposed by the *New Business Tax System (Over-franking Tax) Act 2002* if the \*franking percentage for the \*distribution exceeds the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made; and
  - (b) a \*franking debit arises in the entity's \*franking account if the franking percentage for the distribution is less than the entity's benchmark franking percentage for the franking period in which the distribution is made.
- (2) Use the following formula to work out:
  - (a) in a case dealt with under paragraph (1)(a)—the amount of the \*over-franking tax; and
  - (b) in a case dealt with under paragraph (1)(b)—the amount of the \*franking debit:

$$\text{Franking \% differential} \times \text{Amount of the *frankable distribution} \times \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}}$$

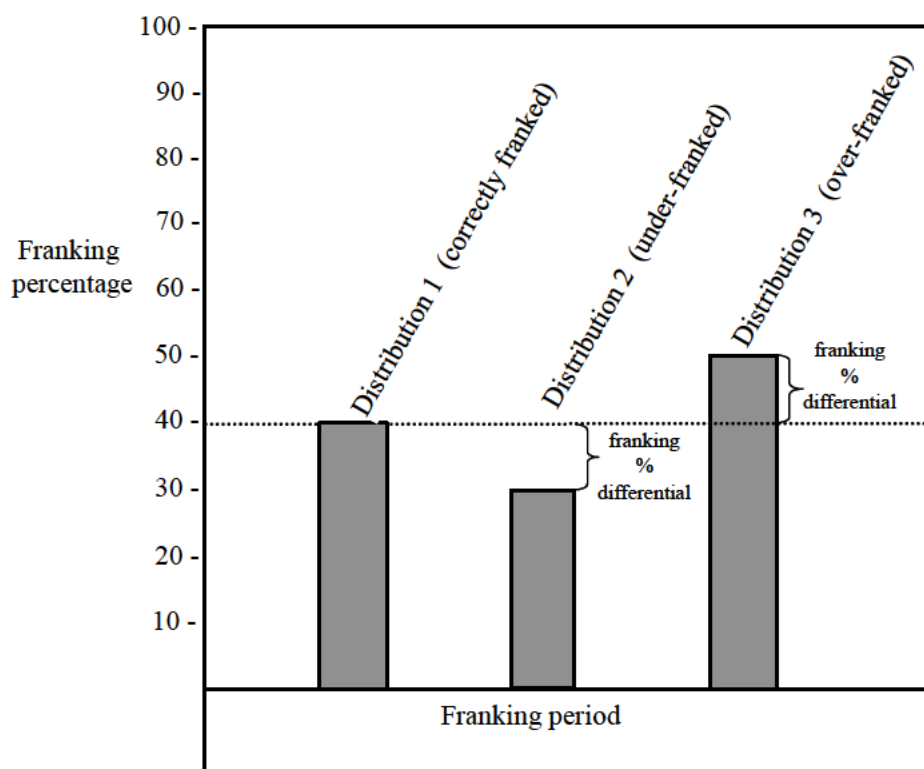
where:

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

- (a) the \*franking percentage for the \*frankable distribution; and
- (b) either:
  - (i) if subparagraph (ii) does not apply—the entity's \*benchmark franking percentage for the \*franking period in which the \*distribution is made; or
  - (ii) if the Commissioner in the exercise of the Commissioner's powers under subsection 203-55(1), permits the entity to frank the distribution at a different franking percentage—that percentage.

Example: An entity makes 3 successive frankable distributions in a franking period. Each of those distributions is represented in the following

diagram. The franking percentage for the first distribution is 40%, and so the entity's benchmark franking percentage for the period is 40%.



Note: Distribution 2 is under-franked to the extent of the franking % differential. This is used to work out the amount of the under-franking debit under subsection (2).

Distribution 3 is over-franked to the extent of the franking % differential. This is used to work out the amount of over-franking tax on the distribution under the *New Business Tax System (Over-franking Tax) Act 2002*. The amount of the tax is calculated using the same formula as that set out in subsection (2).

- (3) A \*franking debit arising under paragraph (1)(b) is in addition to any franking debit that would otherwise arise for the entity because of the \*distribution.
- (4) The \*franking debit arises on the day on which the \*frankable distribution is made.

**203-55 Commissioner's powers to permit a departure from the benchmark rule**

*Powers of the Commissioner*

- (1) The Commissioner may, on application by an entity, make a determination in writing permitting the entity to \*frank a \*distribution at a \*franking percentage that differs from the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made.
- (2) Because the \*benchmark rule is an integral part of the imputation system, the Commissioner's powers under this section may only be exercised in extraordinary circumstances.

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

- (3) In deciding whether there are extraordinary circumstances justifying the exercise of the Commissioner's power to make a determination under subsection (1), the Commissioner must have regard to:
  - (a) the entity's reasons for departing, or proposing to depart, from the \*benchmark rule; and
  - (b) the extent of the departure, or proposed departure, from the benchmark rule; and
  - (c) if the circumstances that give rise to the entity's application are within the entity's control, the extent to which the entity has sought the exercise of the Commissioner's powers under this section in the past; and
  - (d) whether a \*member of the entity has been or will be disadvantaged as a result of the departure, or proposed departure, from the benchmark rule; and
  - (e) whether a \*member of the entity will receive greater \*imputation benefits than another member of the entity because a distribution \*franked at a \*franking percentage that differs from the \*benchmark franking percentage for the \*franking period is made to one of them; and
  - (f) any other matters that the Commissioner considers relevant.

*When may the powers be exercised?*

- (4) The Commissioner may make a determination under subsection (1) either before or after the \*frankable distribution is made.

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

- (5) An allocation of a \*franking credit at a percentage specified by the Commissioner in a determination under subsection (1) is taken to comply with the \*benchmark rule.

*Applying to the Commissioner*

- (6) The entity must:
- (a) make its application under this section in writing; and
  - (b) include in the application all information relevant to the matters to which the Commissioner must have regard under subsection (3).

*Review*

- (7) If the entity or a \*member of the entity is dissatisfied with the determination under subsection (1), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## **Division 204—Anti-streaming rules**

### **Table of Subdivisions**

204-A	Objects and application
204-B	Linked distributions
204-C	Substituting tax-exempt bonus share for franked distributions
204-D	Streaming distributions
204-E	Disclosure requirements

### **Subdivision 204-A—Objects and application**

#### **Table of sections**

204-1	Objects
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204-5 Application to non-share dividends

### **204-1 Objects**

The objects of this Division are to ensure that:

- (a) an entity and its \*members cannot avoid the effect of the \*benchmark rule by exploiting the \*benchmark franking percentage of another entity; and
- (b) an entity does not stream \*franked distributions and \*tax-exempt bonus shares; and
- (c) an entity does not stream \*distributions to members of the entity who derive a \*greater benefit from franking credits than other members.

### **204-5 Application**

- (1) The rules in this Division will apply to an entity even if it is not subject to the benchmark rule.
- (2) This Division applies to non-share dividends in the same way as it applies to distributions.

### **Subdivision 204-B—Linked distributions**

#### **Guide to Subdivision 204-B**

#### **204-10 What this Subdivision is about**

This Subdivision prevents the exploitation of a corporate tax entity's benchmark franking percentage by another corporate tax entity, or that other entity's members, by imposing a franking debit where there is exploitation.

#### **Table of sections**

##### **Operative provisions**

204-15 Linked distributions

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

## **Operative provisions**

### **204-15 Linked distributions**

*Franking debit arises where a distribution by one entity is substituted for a distribution by another*

- (1) This section gives rise to a \*franking debit if:
- (a) the exercise of a choice or selection by a \*member of an entity (the **first entity**); or
  - (b) the member's failure to exercise a choice or selection; has the effect of determining (to any extent) that another entity makes to one of its members a \*distribution (the **linked distribution**) that is:
    - (c) in substitution (in whole or in part) for a distribution by the first entity to that member or any other member of the first entity; and
    - (d) unfranked, or \*franked at a \*franking percentage that differs from the first entity's \*benchmark franking percentage for the \*franking period in which the linked distribution is made.

Note: Division 205 deals with a corporate tax entity's franking account and sets out when a debit, known as a franking debit, arises in that account.

*Franking account in which the debit arises*

- (2) The debit arises in the \*franking account of the entity with the higher \*benchmark franking percentage for the \*franking period in which the linked distribution is made.

*Amount of the debit*

- (3) The debit is equal to the one that would arise in that \*franking account if the entity had made a \*franked distribution, equal to the linked distribution, with a \*franking percentage equal to the \*benchmark franking percentage for that entity.

*When does the debit arise*

- (4) The debit arises on the day on which the linked distribution is made.

*Debit is in addition to any other franking debit arising because of the linked distribution*

- (5) The debit is in addition to any other debit that arises in an entity's \*franking account because of the linked distribution.

*Where an entity has no benchmark franking percentage*

- (6) If an entity has no \*benchmark franking percentage for the \*franking period in which the linked distribution is made, this section applies as if:
- (a) in a case where the linked distribution has a \*franking percentage of less than 50%—the entity had a benchmark franking percentage of 100% for that period; and
  - (b) in a case where the linked distribution has a franking percentage equal to or greater than 50%—the entity had a benchmark franking percentage of 0% for that period.

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

### **Guide to Subdivision 204-C**

#### **204-20 What this Subdivision is about**

This Subdivision prevents the substitution of a tax-exempt bonus share for a franked distribution by imposing a franking debit on the issue of the share as if it were a franked distribution.

#### **Table of sections**

##### **Operative provisions**

204-25 Substituting tax-exempt bonus shares for franked distributions

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

## **Operative provisions**

### **204-25 Substituting tax-exempt bonus shares for franked distributions**

*Franking debit arises if tax-exempt bonus shares are issued in substitution for a franked distribution*

- (1) This section gives rise to a \*franking debit in an entity's \*franking account if:
  - (a) the exercise of a choice or selection by a \*member of the entity; or
  - (b) the member's failure to exercise a choice or selection;has the effect of determining (to any extent) that the entity issues one or more \*tax-exempt bonus shares, to that member or another member of the entity, in substitution (in whole or in part) for one or more \*franked distributions by the entity to that member or another member.

*Amount of the debit*

- (2) The debit is equal to the one that would arise in the entity's \*franking account if the entity made a \*distribution, equal to the \*franked distributions referred to in subsection (1), franked at the entity's \*benchmark franking percentage for the \*franking period in which the shares are issued.

*When does the debit arise*

- (3) The debit arises on the day when the shares are issued.

*Meaning of tax-exempt bonus share*

- (4) For a \*company whose \*shares have no par value, **tax-exempt bonus share** means a share issued by the company in the circumstances mentioned in subsection 6BA(6) of the *Income Tax Assessment Act 1936*.
- (5) For any other \*company, **tax-exempt bonus share** means a \*share issued by the company to a \*shareholder in the company where:

- (a) the amount or value of the share is debited against an amount standing to the credit of a share premium account of the company; and
- (b) no part of the paid-up value of the share is a dividend; and
- (c) the share is issued:
  - (i) as a bonus share; or
  - (ii) in the circumstances mentioned in subsection 6BA(1) of the *Income Tax Assessment Act 1936*, as in force immediately before 1 July 1998.

*Where a company has no benchmark franking percentage for the franking period*

- (6) If a \*company has no \*benchmark franking percentage for the \*franking period in which the \*tax-exempt bonus share is issued, this section applies as if the entity had a benchmark franking percentage of 100% for that period.

## **Subdivision 204-D—Streaming distributions**

### **Guide to Subdivision 204-D**

#### **204-26 What this Subdivision is about**

This Subdivision prevents the streaming of imputation benefits to one member of a corporate tax entity in preference to another by either imposing a franking debit or denying an imputation benefit where there is streaming.

#### **Table of sections**

##### **Operative provisions**

204-30	Streaming distributions
204-35	When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)
204-40	Amount of the franking debit
204-45	Effect of a determination under paragraph 204-30(3)(b)
204-50	Assessment and notice of determination
204-55	Right to review where a determination made

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

## **Operative provisions**

### **204-30 Streaming distributions**

*Commissioner's power to make a determination when distributions or distributions and other benefits are streamed*

- (1) This section empowers the Commissioner to make determinations if an entity streams one or more \*distributions (or one or more distributions and the giving of other benefits), whether in a single \*franking period or in a number of franking periods, in such a way that:
  - (a) an \*imputation benefit is, or apart from this section would be, received by a \*member of the entity as a result of the distribution or distributions; and
  - (b) the member would derive a \*greater benefit from franking credits than another member of the entity; and
  - (c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits.

The member that derives the greater benefit from franking credits is the ***favoured member***. The member that receives the lesser imputation benefits is the ***disadvantaged member***.

*Examples of other benefits*

- (2) These are examples of the giving of other benefits:
  - (a) issuing bonus \*shares;
  - (b) returning paid-up share capital;
  - (c) forgiving a debt;
  - (d) the entity or another entity making a payment of any kind, or giving any property, to a \*member or to another person on a member's behalf.

*Nature of the determination that the Commissioner may make*

- (3) The Commissioner may make one or more of these determinations:

- (a) that a specified \*franking debit arises in the \*franking account of the entity, for a specified \*distribution or other benefit to a disadvantaged member;
- (b) that no \*imputation benefit is to arise in respect of a distribution that is made to a favoured member and specified in the determination.

A determination must be in writing.

- (4) The Commissioner may specify the \*franking debit under paragraph (3)(a) by specifying the \*franking percentage to be used in working out the amount of the debit.
- (5) The Commissioner may specify the \*distribution under paragraph (3)(a) or (b) by specifying:
  - (a) the date on which the distribution was made, or the period during which the distribution was made; and
  - (b) the member, or class of members, to whom the distribution was made.

*What is an imputation benefit?*

- (6) A \*member of an entity receives an **imputation benefit** as a result of a distribution if:
  - (a) the member is entitled to a \*tax offset under Division 207 as a result of the distribution; or
  - (b) an amount would be included in the member's assessable income as a result of the distribution because of the operation of section 207-40; or
  - (c) a \*franking credit would arise in the \*franking account of the member as a result of the distribution; or
  - (d) the member would not be liable to pay \*withholding tax on the distribution, because of the operation of paragraph 128B(3)(ga) of the *Income Tax Assessment Act 1936*.

*When does a favoured member derive greater benefit from franking credits?*

- (7) The following subsection lists some of the cases in which a \*member of an entity derives a **greater benefit from franking credits** than another member of the entity. It is not an exhaustive list.

- (8) A \*member of an entity derives a *greater benefit from franking credits* than another member of the entity if any of the following circumstances exist in relation to the other member in the income year in which the distribution giving rise to the benefit is made, and not in relation to the first member:
- (a) the other member is not an Australian resident;
  - (b) the other member would not be entitled to any \*tax offset under Division 207 because of the distribution;
  - (c) the amount of income tax that, apart from this Division, would be payable by the other member because of the distribution is less than the tax offset to which the other member would be entitled;
  - (d) the other member is a \*corporate tax entity at the time the distribution is made, but no \*franking credit arises for the entity as a result of the distribution;
  - (e) the other member is a \*corporate tax entity at the time the distribution is made, but cannot use \*franking credits received on the distribution to \*frank distributions to its own members because:
    - (i) it is not a \*franking entity; or
    - (ii) it is unable to make \*frankable distributions.

**204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)**

If the Commissioner makes a determination giving rise to a \*franking debit in the \*franking account of an entity under paragraph 204-30(3)(a), the debit arises in the franking account of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.

**204-40 Amount of the franking debit**

- (1) The amount of the \*franking debit arising because of a determination by the Commissioner under paragraph 204-30(3)(a) must not exceed:
- (a) if the specified \*distribution has been \*franked—the difference between the amount of the \*franking credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest \*franking

- percentage at which a distribution to a favoured member is franked; or
- (b) if the specified distribution, although \*frankable, has not been franked—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or
  - (c) if the specified distribution is \*unfrankable—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or
  - (d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest franking percentage at which a distribution to a favoured member is franked; or
  - (e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest franking percentage at which a distribution to a favoured member is franked.
- (2) In specifying the \*franking debit, the Commissioner must have regard to:
- (a) any \*franking debit already arising in the \*franking account of the entity under paragraph 203-50(1)(b) because the entity franked the specified \*distribution in breach of the \*benchmark rule; and
  - (b) any franking debit already arising in the franking account of the entity, because of the specified distribution or benefit, under section 204-15 (about linked distributions) or section 204-25 (about substituting \*tax-exempt bonus shares for \*franked distributions).

#### **204-45 Effect of a determination under paragraph 204-30(3)(b)**

If the Commissioner makes a determination denying an \*imputation benefit under paragraph 204-30(3)(b), the determination has effect according to its terms.

## **204-50 Assessment and notice of determination**

- (1) A determination under subsection 204-30(3) does not form part of an assessment.
- (2) The Commissioner must give notice in writing of the determination:
  - (a) in a case where the Commissioner determines that a \*franking debit is to arise in the \*franking account of an entity under paragraph 204-30(3)(a)—to the entity; and
  - (b) in a case where a favoured member is denied an \*imputation benefit under paragraph 204-30(3)(b)—to the favoured member.
- (3) If the Commissioner makes a determination denying an \*imputation benefit under paragraph 204-30(3)(b) on a \*distribution made by a \*listed public company, the Commissioner is taken to have served notice in writing of the determination on the favoured member if the Commissioner causes a notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.
- (4) A notice under this section may be included in a notice of assessment.

## **204-55 Right to review where a determination made**

If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## **Subdivision 204-E—Disclosure requirements**

### **Guide to Subdivision 204-E**

#### **204-65 What this Subdivision is about**

<p>This Subdivision requires an entity to notify the Commissioner where there is a significant difference in its benchmark franking</p>
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percentage over time, so that the Commissioner can assess whether there is streaming.

## Table of sections

### Operative provisions

204-70	Application of this Subdivision
204-75	Notice to the Commissioner
204-80	Commissioner may require information where the Commissioner suspects streaming

## Operative provisions

### 204-70 Application of this Subdivision

This Subdivision does not apply to an entity to whom the benchmark rule does not apply.

Note: Section 203-20 identifies the entities to whom the benchmark rule does not apply.

### 204-75 Notice to the Commissioner

- (1) An entity must notify the Commissioner in writing if the \*benchmark franking percentage for the entity for a \*franking period (the *current franking period*) differs significantly from the benchmark franking percentage for the entity for the last franking period in which a \*frankable distribution was made (the *last relevant franking period*).
- (2) An entity's \*benchmark franking percentage for the current franking period *differs significantly* from its benchmark franking percentage for the last relevant franking period if it has increased or decreased by an amount that is greater than the amount worked out using the following formula:  
$$\frac{\text{Number of *franking periods starting immediately after the last relevant franking period and ending at the end of the current franking period}}{\text{Number of *franking periods starting immediately after the last relevant franking period and ending at the end of the current franking period}} \times 20 \text{ percentage points}$$
- (3) The notice must also state:

- (a) the \*benchmark franking percentage for the current franking period; and
  - (b) the benchmark franking percentage for the last relevant franking period.
- (4) The notice must be in the \*approved form.

**204-80 Commissioner may require information where the Commissioner suspects streaming**

- (1) If the \*benchmark franking percentage for an entity for a \*franking period (the *current franking period*) \*differs significantly from the benchmark franking percentage for the entity for the last franking period in which a \*frankable distribution was made (the *last relevant franking period*), the Commissioner may request the entity to give the Commissioner the following information:
- (a) the entity's reasons for setting a benchmark franking percentage for the current franking period that differs significantly from the benchmark franking percentage for the last relevant franking period; and
  - (b) the \*franking percentages for all \*frankable distributions made in the current franking period and the last relevant franking period; and
  - (c) details of any other benefits given to the entity's \*members, either by the entity or an \*associate of the entity, during the period beginning at the beginning of the last relevant franking period and ending at the end of the current franking period; and
  - (d) whether any member of the entity has derived, or will derive, a \*greater benefit from franking credits than another member of the entity as a result of the variation in the benchmark franking percentage between the current franking period and the last relevant franking period; and
  - (e) any other information required by the \*approved form that is relevant in determining whether the entity is streaming \*distributions.
- (2) The entity must comply with the Commissioner's request.

## Division 205—Franking accounts

### Guide to Division 205

#### 205-1 What this Division is about

This Division:

- creates a franking account for each entity that is, or has been, a corporate tax entity; and
- identifies when franking credits and debits arise in those accounts and the amount of those credits and debits; and
- identifies when there is a franking surplus or deficit in the account; and
- creates a liability to pay franking deficit tax if the account is in deficit at certain times.

#### Table of sections

205-5 The franking account

##### Operative provisions

205-10 Each entity that is or has been a corporate tax entity has a franking account

205-15 Franking credits

205-20 Paying a PAYG instalment or income tax

205-25 Residency requirement for an event giving rise to a franking credit or franking debit

205-30 Franking debits

205-35 Refund of income tax

205-40 Franking surplus and deficit

205-45 Franking deficit tax

205-50 Deferring franking deficit

#### 205-5 The franking account

- (1) Each entity that is, or has ever been, a corporate tax entity has a franking account.

- (2) The payment of a PAYG instalment or income tax will generate a franking credit in that account. The amount of the credit is equal to the amount of tax paid. The receipt of a franked distribution by an entity from another corporate tax entity will also generate a franking credit. There are other circumstances in which a franking credit arises.
- (3) The receipt of a refund of income tax or the payment of a franked distribution by a corporate tax entity will generate a franking debit. There are, however, other cases where a franking debit arises. For example, a franking debit might arise under a determination by the Commissioner because distributions have been streamed.
- (4) An entity must be a franking entity at certain times and satisfy certain residency requirements before a franking credit or debit arises in its account.
- (5) Franking deficit tax is payable if the franking account of an entity is in deficit at the end of the entity's income year, or when the entity ceases to be a franking entity.

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

## **Operative provisions**

### **205-10 Each entity that is or has been a corporate tax entity has a franking account**

There is a *franking account* for each entity that is, or has at any time been, a \*corporate tax entity.

Note: The balance in the franking account on 1 July 2002 will either be nil or, if the entity had a franking surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

### **205-15 Franking credits**

The following table sets out when a credit arises in the \*franking account of an entity and the amount of the credit. The credit is called a *franking credit*.

**Schedule 1** The simplified imputation system

<b>Credits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
1	the entity *pays a PAYG instalment; and the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the entity is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that is attributable to the period during which the entity was a franking entity	on the day on which the payment is made
2	the entity *pays income tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to the period during which the entity was a franking entity	on the day on which the payment is made
3	a *franked distribution is made to the entity; and the entity satisfies the *residency requirement for the income year in which the distribution is made; and the entity is a *franking entity when it receives the distribution; and the entity is entitled to a *tax offset because of the distribution under Division 207	the *franking credit on the distribution	on the day on which the distribution is made

<b>Credits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
4	a *franked distribution *flows indirectly to the entity through a *partnership or trust; and the entity is a *franking entity when the franked distribution is made; and the entity is entitled to a *tax offset because of the distribution under Division 207	the entity's share of the *franking credit on the distribution	at the end of the income year of the last partnership or trust interposed between the entity and the corporate tax entity that made the distribution
5	the entity incurs a liability to pay *franking deficit tax under section 205-45 or 205-50	the amount of the liability	immediately after the liability is incurred

**205-20 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) If an entity:
- (a) is liable to pay a \*PAYG instalment; and
  - (b) has a \*PAYG instalment variation credit;
- the PAYG instalment variation credit must be fully applied to reduce the liability for the PAYG instalment before any other credit or payment can be applied to reduce that liability.
- (3) An entity *pays income tax* if and only if:

- (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).

- (4) Subparagraphs (1)(b)(ii) and (3)(b)(ii) do 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 a varied rate in certain cases).
- (5) The amount of the \*PAYG instalment or income tax paid is equal to:
  - (a) the amount of the liability, if it is satisfied in full; or
  - (b) the amount by which the liability is reduced, if it is not satisfied in full.
- (6) If:
  - (a) a surplus in an \*RBA of an entity is applied to satisfy a liability of the entity to \*pay a PAYG instalment in respect of an income year; and
  - (b) a credit allowable under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of that income year is included in the RBA; and
  - (c) the RBA does not include the liability to pay the \*PAYG instalment; and

(d) the amount of the credit exceeds the income tax assessed to the entity in respect of that income year;  
 the amount of the PAYG instalment paid by virtue of the application of the surplus is reduced by the amount of the excess mentioned in paragraph (d).

**205-25 Residency requirement for an event giving rise to a franking credit or franking debit**

An entity satisfies the *residency requirement* for an income year in which, or in relation to which, an event specified in the table in section 205-15 or 205-30 occurs if:

- (a) where the entity is a \*company:
  - (i) the company is an \*Australian resident for more than one half of the year; or
  - (ii) the company is an Australian resident at all times during the year when the company exists; or
- (b) where the entity is a \*corporate limited partnership:
  - (i) the corporate limited partnership is an Australian resident for more than one half of the year; or
  - (ii) the corporate limited partnership is an Australian resident at all times during the year when the corporate limited partnership exists; or
- (c) the entity is a \*corporate unit trust for the income year; or
- (d) the entity is a \*public trading trust for the income year.

**205-30 Franking debits**

The following table sets out when a debit arises in the \*franking account of an entity and the amount of the debit. The debit is called a *franking debit*.

<b>Debits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
1	the entity *franks a *distribution	the amount of the *franking credit on the distribution	on the day on which the distribution is made

**Schedule 1** The simplified imputation system

<b>Debits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
2	the entity *receives a refund of income tax; and the entity satisfies the *residency requirement for the income year to which the refund relates; and the entity was a *franking entity during the whole or part of the income year to which the refund relates	that part of the refund that is attributable to the period during which the entity was a franking entity	on the day on which the refund is received
3	a *franking debit arises for the entity under paragraph 203-50(1)(b) (the entity *franks a *distribution in contravention of the *benchmark rule)	the franking debit worked out under paragraph 203-50(2)(b)	on the day specified in subsection 203-50(4)
4	the entity ceases to be a *franking entity; and the entity's *franking account is in *surplus immediately before ceasing to be a franking entity	the amount of the *franking surplus	on the day on which the entity ceases to be a franking entity
5	a *franking debit arises for the entity under section 204-15 (linked distributions)	the franking debit specified in subsection 204-15(3)	on the day specified in subsection 204-15(4)
6	a *franking debit arises under section 204-25 (debit for substituting *tax-exempt bonus shares for *franked distributions)	the amount of the debit specified in subsection 204-25(2)	on the day specified in subsection 204-25(3)
7	the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the entity (streaming distributions)	the amount of the debit specified in the determination	on the day specified in section 204-35

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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:</b>
8	the entity is taken to have paid a dividend for the purposes of the <i>Income Tax Assessment Act 1936</i> in an income year under Division 7A of Part III of that Act	an amount equal to the debit that would have arisen if: (a) the dividend that the entity is taken to have paid were a *frankable distribution; and (b) the distribution were *franked 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, at a *franking percentage of 100%	on the last day of the income year
9	an *on-market buy-back by a *company of a *membership interest in the company	an amount equal to the debit that would have arisen if: (a) the purchase of the interest were a *frankable distribution equal to the one that would have arisen if the company had purchased the interest *off-market; and (b) the distribution were *franked at the entity's *benchmark franking percentage for the *franking period in which the purchase was made or, if the entity does not have a benchmark franking percentage for the period, at a *franking percentage of 100%	on the day on which the interest is purchased

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Note: For completeness, the table refers to some franking debits that arise under other sections of the Act. This does not mean that separate franking debits arise both under the relevant section and this table.

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### 205-35 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 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).

### 205-40 Franking surplus and deficit

- (1) An entity's \*franking account is in *surplus* at a particular time if, at that time, the sum of the \*franking credits in the account exceeds the sum of the \*franking debits in the account. The amount of the *franking surplus* is the amount of the excess.
- (2) An entity's \*franking account is in *deficit* at a particular time if, at that time, the sum of the \*franking debits in the account exceeds the sum of the \*franking credits in the account. The amount of the *franking deficit* is the amount of the excess.

### 205-45 Franking deficit tax

#### *Object*

- (1) While recognising that an entity may anticipate \*franking credits when \*franking \*distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its \*franking account at certain times and levying tax if the account is in \*deficit.

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

- (2) An entity is liable to pay franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if its \*franking account is in \*deficit at the end of an income year.

*Corporate tax entity ceases to be a franking entity*

- (3) An entity is liable to pay \*franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if:
- (a) it ceases to be a \*franking entity; and
  - (b) immediately before it ceases to be a franking entity, its \*franking account is in \*deficit.

Note: The tax is imposed in the *New Business Tax System (Franking Deficit Tax) Act 2002* and the amount of the tax is set out in that Act.

**205-50 Deferring franking deficit**

*Object*

- (1) The object of this section is to ensure that an entity does not avoid \*franking deficit tax by deferring the time at which a \*franking debit occurs in its \*franking account.

*End of year deficit deferred*

- (2) 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 205-45(2), if:
- (a) the refund is paid within 3 months after the end of that year; and
  - (b) the \*franking account of the entity would have been in \*deficit, or in deficit to a greater extent, at the end of that year if the refund had been received in that year.

*Deficit on ceasing to be a franking entity deferred*

- (3) If an entity ceases to be a \*franking entity during an income year, a \*refund of income tax is taken to have been paid to it immediately before it ceased to be a franking entity, for the purposes of subsection 205-45(3), if:
- (a) the refund is attributable to a period in the year during which the entity was a franking entity; and
  - (b) the refund is paid within 3 months after the entity ceases to be a franking entity; and
  - (c) the \*franking account of the entity would have been in \*deficit, or in deficit to a greater extent, immediately before it

ceased to be a franking entity if the refund had been received before it ceased to be a franking entity.

## **Division 207—Effect of receiving a franked distribution**

### **Table of Subdivisions**

	Guide to Division 207
207-A	Effect of receiving a franked distribution generally
207-B	Effect of receiving a franked distribution through certain partnerships and trusts
207-C	Residency requirements for the general rule
207-D	Adjustments where the ultimate recipient of a distribution is not a resident
207-E	No gross-up or tax offset where distribution is not taxed in any case
207-F	No gross-up or tax offset where the imputation system has been manipulated

### **Guide to Division 207**

#### **Table of sections**

207-5	Overview
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#### **207-5 Overview**

- (1) If a corporate tax entity makes a franked distribution to one of its members, then, as a general rule:
  - (a) an amount equal to the franking credit on the distribution is included in the member's assessable income; and
  - (b) the member is entitled to a tax offset equal to the same amount.
- (2) In some cases a residency requirement must be satisfied for the general rule to apply.
- (3) If the distribution is made to certain partnerships or trusts, it will be treated as flowing indirectly to the members of the partnership or trust. Each member's share of the franking credit on the

distribution is included in that member's assessable income. However, it is only the ultimate recipients of the distribution, who are themselves liable for tax on the amount that flows indirectly to them, that are entitled to the tax offset.

- (4) Adjustments are made to the assessable income of the ultimate recipient of the distribution where that entity is not an Australian resident.
- (5) There are exceptions to both the general rule mentioned in subsection (1), and the special rules mentioned in subsection (3). Basically, these exceptions are created:
  - (a) where the relevant entity would not have paid tax on the distribution in any case; and
  - (b) where there is a manipulation of the imputation system in a manner that is not permitted under income tax law.

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

#### **Guide to Subdivision 207-A**

##### **207-10 What this Subdivision is about**

As a general rule, if a member of an entity receives a franked distribution:

- an amount equal to the franking credit on the distribution is included in the member's assessable income; and
- the member is entitled to a tax offset equal to the franking credit on the distribution.

#### **Table of sections**

##### **Operative provisions**

- 207-15 Applying the general rule  
207-20 General rule—gross-up and tax offset

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

## Operative provisions

### 207-15 Applying the general rule

- (1) This Subdivision sets out, as a general rule, the tax effect of receiving a \*franked distribution.
- (2) Where a distribution \*flows indirectly to an entity, this Subdivision does not apply either to the entity to which it flows indirectly or to the entity to whom it is made. Subdivision 207-B applies in those cases.

Note: Subdivision 207-B deals with distributions to an entity through certain interposed partnerships or trusts. A franked distribution will not flow indirectly through some partnerships or trusts, for example, an eligible entity within the meaning of Part IX of the *Income Tax Assessment Act 1936*, or an exempt institution that is eligible for a refund.

- (3) This Subdivision applies subject to:
  - (a) Subdivision 207-C; and
  - (b) Subdivision 207-E; and
  - (c) Subdivision 207-F.

Note 1: Subdivision 207-C sets out the residency requirements which must be satisfied by an individual or a corporate tax entity that receives a franked distribution.

Note 2: Subdivision 207-E sets out cases in which the general rule will not apply because the distribution is exempt income and so would not be taxed in any case. It also replaces the general rule for exempt institutions that are eligible for a refund and, in some cases, for eligible entities within the meaning of Part IX of the *Income Tax Assessment Act 1936* and for life insurance companies.

Note 3: Subdivision 207-F sets out cases in which the general rule will not apply because the imputation system has been manipulated in a way that is not permitted under income tax law, for example by streaming distributions or dividend stripping.

### 207-20 General rule—gross-up and tax offset

- (1) If an entity makes a \*franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the \*franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.

- (2) The receiving entity is entitled to a \*tax offset for the income year in which the distribution is made. The tax offset is equal to the \*franking credit on the distribution.

## **Subdivision 207-B—Effect of receiving a franked distribution through certain partnerships and trusts**

### **Guide to Subdivision 207-B**

#### **207-25 What this Subdivision is about**

A franked distribution to certain partnerships and trusts is treated as flowing indirectly to members of the partnership or trust.

Each member's share of the franking credit on the distribution is included in that member's assessable income.

Each member is then given a tax offset equal to that share of the franking credit, provided the member is not itself a partnership or trust through which the distribution flows indirectly.

Where the trustee, rather than a member, is the taxpayer on a share of the distribution, it is the trustee in that capacity who is given the tax offset under this Subdivision.

#### **Table of sections**

##### **Operative provisions**

- 207-30 Applying this Subdivision  
207-35 When a franked distribution flows indirectly to an entity  
207-40 Effect on assessable income where distribution flows indirectly  
207-45 Adjustment of the amount included in the assessable income of an entity because of a distribution that flows indirectly  
207-50 Tax offset where distribution flows indirectly  
207-55 An entity's share of the franking credit on a franked distribution

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

## Operative provisions

### 207-30 Applying this Subdivision

This Subdivision applies subject to:

- (a) Subdivision 207-E; and
- (b) Subdivision 207-F.

Note 1: Subdivision 207-D also contains adjustments to deal with cases where a distribution flows indirectly to an entity that is not a resident.

Note 2: Subdivision 207-E sets out cases in which the rules in this Subdivision will not apply because the distribution is exempt income and so would not be taxed in any case. It also replaces the rules in this Subdivision where the distribution flows indirectly to exempt institutions that are eligible for a refund and, in some cases, to eligible entities within the meaning of Part IX of the *Income Tax Assessment Act 1936* and to life insurance companies.

Note 3: Subdivision 207-F sets out cases in which the rules in this Subdivision will not apply because the imputation system has been manipulated in a way that is not permitted under income tax law, for example by streaming distributions or dividend stripping.

### 207-35 When a franked distribution flows indirectly to an entity

- (1) This section sets out the only circumstances in which a \*franked distribution is taken to *flow indirectly* to an entity in an income year.

#### *Partners*

- (2) The distribution *flows indirectly* to the entity in the income year if:
  - (a) the entity is a partner in a \*partnership; and
  - (b) either:
    - (i) a share of the \*net income of the partnership is included in the entity's assessable income for the income year under subsection 92(1) of the *Income Tax Assessment Act 1936*; or
    - (ii) a share of the \*partnership loss of the partnership is allowable as a deduction for the income year to the partner under subsection 92(2) of that Act; and
  - (c) the whole or a part of that share of the net income or partnership loss of the partnership is attributable to:

- (i) an amount included in the assessable income of the partnership because the distribution is made to the partnership; or
- (ii) an amount included in the assessable income of the partnership because of the distribution and in circumstances where the distribution flows indirectly to the partnership because of one or more previous applications of this section.

*Beneficiaries of trusts*

- (3) The distribution **flows indirectly** to the entity in the income year if:
  - (a) the entity is a beneficiary of a trust; and
  - (b) a share of the \*net income of the trust is included in the entity's assessable income for the income year under section 97, 98A or 100 of the *Income Tax Assessment Act 1936*; and
  - (c) the whole or a part of that share of the net income of the trust is attributable to:
    - (i) an amount included in the assessable income of the trust because the distribution is made to the trustee of the trust; or
    - (ii) an amount included in the assessable income of the trust because of the distribution and in circumstances where the distribution flows indirectly to the trustee of the trust because of one or more previous applications of this section; or
    - (iii) an amount allowed as a deduction from the assessable income of the trust because of the distribution and in circumstances where the distribution flows indirectly to the trustee of the trust because of one or more previous applications of this section.

*Trustees liable to be assessed under section 98, 99 or 99A of the Income Tax Assessment Act 1936*

- (4) The distribution **flows indirectly** to the entity in an income year if:
  - (a) the entity is a trustee of a trust; and
  - (b) the entity is:

- (i) liable to be assessed under section 98 of the *Income Tax Assessment Act 1936* in respect of a share of the \*net income of the trust for the income year; or
  - (ii) liable to be assessed under section 99 or 99A of the *Income Tax Assessment Act 1936* in respect of the net income, or a part of the net income, of the trust for the income year; and
- (c) the whole or a part of the amount on which the entity is liable to be assessed under that section is attributable to:
- (i) an amount included in the assessable income of the trust because the distribution is made to the trustee of the trust; or
  - (ii) an amount included in the assessable income of the trust because of the distribution and in circumstances where the distribution flows indirectly to the trustee of the trust because of one or more previous applications of this section; or
  - (iii) an amount allowed as a deduction from the assessable income of the trust because of the distribution and in circumstances where the distribution flows indirectly to the trustee of the trust because of one or more previous applications of this section.

**207-40 Effect on assessable income where distribution flows indirectly**

(1) Where:

- (a) a \*franked distribution is made to a \*partnership; and
- (b) the distribution \*flows indirectly to a partner in the partnership;

then, for the purpose of working out the net income of the partnership under subsection 90(1) of the *Income Tax Assessment Act 1936*, the assessable income of the partnership, for the income year in which the distribution is made, includes an amount equal to the \*franking credit on the distribution.

(2) Where:

- (a) a \*franked distribution is made to a trustee of a trust; and
- (b) the distribution \*flows indirectly to a beneficiary or the trustee of the trust;

then, for the purpose of working out the net income of the trust under subsection 95(1) of the *Income Tax Assessment Act 1936*, the assessable income of the trustee, for the income year in which the distribution is made, includes an amount equal to the \*franking credit on the distribution.

Note 1: An amount included in the assessable income of a partnership under this provision will also affect the assessable income of a partner in the partnership. This is because of Division 5 of Part III of the *Income Tax Assessment Act 1936*.

Note 2: An amount included in the assessable income of a trustee under this provision will also affect the assessable income of a beneficiary of the trust, or the amount on which the trustee of the trust is assessed and liable to pay tax. This is because of Division 6 of Part III of that Act.

### **207-45 Adjustment of the amount included in the assessable income of an entity because of a distribution that flows indirectly**

(1) Where:

- (a) an amount is included in the assessable income of an entity under Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*; and
- (b) the amount is attributable to the \*franking credit on a \*distribution that \*flows indirectly to the entity;

then, despite anything in those Divisions, the amount that is included in the assessable income of the entity is equal to the entity's \*share of the franking credit on the distribution.

(2) Where:

- (a) as trustee of a trust, an entity is liable to be assessed on an amount under Division 6 of Part III of the *Income Tax Assessment Act 1936*; and
- (b) the amount is attributable to the \*franking credit on a \*distribution that \*flows indirectly to the trustee;

then, despite anything in that Division, the amount on which the entity is assessed and liable to pay tax is equal to the entity's \*share of the franking credit on the distribution.

### **207-50 Tax offset where distribution flows indirectly**

(1) If:

- (a) a \*franked distribution \*flows indirectly to an entity; and
- (b) the entity is one of the following:

- (i) an individual;
- (ii) a \*corporate tax entity;
- (iii) a trustee that is liable to be assessed on a share of the \*net income of the trust under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*;
- (iv) a trustee of an eligible entity within the meaning of Part IX of the *Income Tax Assessment Act 1936* (certain superannuation funds, ADFs and PSTs are eligible entities);

the entity is entitled to a \*tax offset for the income year in which the distribution is made.

Note: These are the ultimate recipients of the distribution and so the ultimate taxpayers. For this reason, they are given the benefit of having income tax already paid on the profits underlying the distribution acknowledged when they pay income tax.

- (2) The amount of the \*tax offset is equal to the entity's \*share of the \*franking credit on the distribution.

Note: The entity's share of the franking credit, and so the entity's tax offset, may be nil.

### **207-55 An entity's share of the franking credit on a franked distribution**

- (1) Use the following table to work out an entity's *share* of the \*franking credit on a \*franked distribution that \*flows indirectly to the entity if:
  - (a) the distribution is made to a \*partnership of which the entity is a partner; or
  - (b) the distribution is made to the trustee of a trust of which the entity is a beneficiary and a share of the \*net income of the trust is included in the entity's assessable income under section 97, 98A or 100 of the *Income Tax Assessment Act 1936*; or
  - (c) the distribution is made to the entity as trustee of a trust and the entity is liable to be assessed under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* in respect of the net income, or part of the net income, of the trust.

**The entity's share of franking credit (distribution made to a partnership or trust of which the entity is a member)**

<b>Item</b>	<b>If:</b>	<b>Use this formula:</b>
1	paragraph (1)(a) applies	$\text{*Franking credit on the distribution} \times \frac{\text{So much of the individual interest of the entity in the *net income or *partnership loss of the *partnership as is attributable to the distribution}}{\text{So much of the net income or partnership loss of the partnership as is attributable to the distribution}}$
2	paragraph (1)(b) applies	$\text{*Franking credit on the distribution} \times \frac{\text{So much of the entity's share of the *net income of the trust as is attributable to the distribution}}{\text{So much of the net income of the trust as is attributable to the distribution}}$
3	paragraph (1)(c) applies	$\text{*Franking credit on the distribution} \times \frac{\text{So much of the share of the *net income of the trust on which the entity is liable to be assessed as is attributable to the distribution}}{\text{So much of the net income of the trust as is attributable to the distribution}}$

- (2) Use the following table to work out an entity's *share* of the \*franking credit on a \*franked distribution that \*flows indirectly to the entity if:
- (a) the distribution \*flows indirectly to a \*partnership of which the entity is a \*partner; or
  - (b) the distribution flows indirectly to the trustee of a trust of which the entity is a beneficiary and a share of the \*net income of the trust is included in the entity's assessable

**Schedule 1** The simplified imputation system

income under section 97, 98A or 100 of the *Income Tax Assessment Act 1936*; or

- (c) the distribution flows indirectly to the entity as trustee of a trust and the entity is liable to be assessed under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* in respect of the net income, or part of the net income, of the trust.

Before working out the entity's share of the franking credit, first work out the partnership's or trust's share of the franking credit, by applying this section to each entity to which the distribution flows indirectly on its way to the partnership or trust, starting with the entity whose share is worked out under subsection (1) and following the flow of the distribution from that entity to the partnership or trust.

**The entity's share of franking credit (distribution flows indirectly to a partnership or trust of which the entity is a member)**

<b>Item</b>	<b>If:</b>	<b>Use this formula:</b>
1	paragraph (2)(a) applies	$\frac{\text{The * partnership's *share of the * franking credit on the distribution}}{\text{So much of the net income or partnership loss of the partnership as is attributable to the distribution}} \times \frac{\text{So much of the individual interest of the entity in the * net income or * partnership loss of the partnership as is attributable to the distribution}}{\text{So much of the net income or partnership loss of the partnership as is attributable to the distribution}}$
2	paragraph (2)(b) applies	$\frac{\text{The trust's * share of the * franking credit on the distribution}}{\text{So much of the net income of the trust as is attributable to the distribution}} \times \frac{\text{So much of the entity's share of the * net income of the trust as is attributable to the distribution}}{\text{So much of the net income of the trust as is attributable to the distribution}}$

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**The entity's share of franking credit (distribution flows indirectly to a partnership or trust of which the entity is a member)**

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<b>Item</b>	<b>If:</b>	<b>Use this formula:</b>
3	paragraph (2)(c) applies	$\frac{\text{The trust's * share of the * franking credit on the distribution}}{\text{So much of the net income of the trust as is attributable to the distribution}} \times \frac{\text{So much of the share of the * net income of the trust on which the entity is liable to be assessed as is attributable to the distribution}}{\text{So much of the net income of the trust as is attributable to the distribution}}$

Note: Where reference is made in the tables in subsection (1) and (2) to an amount attributable to a distribution, it is a reference to an amount attributable to the cash amount of the distribution.

**Subdivision 207-C—Residency requirements for the general rule**

**Guide to Subdivision 207-C**

**207-60 What this Subdivision is about**

Some recipients of a franked distribution must satisfy a residency requirement if their assessable income is to include the franking credit on the distribution, and they are to be entitled to a tax offset, under the general rule.

**Table of sections**

207-65 Satisfying the residency requirement

**Operative provisions**

207-70 Gross-up and tax offset under section 207-20

207-75 Residency requirement

## 207-65 Satisfying the residency requirement

- (1) This Subdivision sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a franked distribution, if the franking credit on the distribution is to be included in that entity's assessable income, or the entity is to be entitled to a tax offset, under the general rule.
- (2) It does not impose a residency requirement on other entities, because the significance of residency for those entities is dealt with elsewhere in this Act.
- (3) It does not impose a residency requirement where a distribution flows indirectly to an entity. This is also because the significance of residency is dealt with elsewhere, for the most part in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

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

## Operative provisions

### 207-70 Gross-up and tax offset under section 207-20

If an entity makes a \*franked distribution to an individual or a \*corporate tax entity:

- (a) no amount is included in the receiving entity's assessable income under subsection 207-20(1); and
- (b) the receiving entity is not entitled to a \*tax offset under subsection 207-20(2);

unless the receiving entity satisfies the \*residency requirement at the time the distribution is made.

### 207-75 Residency requirement

An entity that receives a \*franked distribution satisfies the **residency requirement** at the time the distribution is made if:

- (a) in the case of an individual—the individual is an \*Australian resident at that time; and
- (b) in the case of a \*company—the company is an \*Australian resident at that time; and

- (c) in the case of a \*corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and
- (d) in the case of a \*corporate unit trust—the corporate unit trust is a \*resident unit trust for the income year in which that time occurs; and
- (e) in the case of a \*public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

## **Subdivision 207-D—Adjustments where the ultimate recipient of a distribution is not a resident**

### **Guide to Subdivision 207-D**

#### **207-80 What this Subdivision is about**

Adjustments are made where a franked distribution flows indirectly to a non-resident to ensure that the recipient is not taxed inappropriately.

#### **Table of sections**

207-85 Adjustments where an entity to which a distribution flows indirectly is a non-resident

##### **Operative provisions**

207-90 Adjustment for non-resident beneficiaries

207-95 Adjustment where trustee assessed for non-resident beneficiary

207-100 Adjustment for non-resident partners

#### **207-85 Adjustments where an entity to which a distribution flows indirectly is a non-resident**

- (1) Where a franked distribution flows indirectly to an entity who is not a resident, an amount of the distribution, worked out by applying the franking percentage for the distribution to the amount of the distribution that flows indirectly to the entity, is not included in the assessable income of the entity because of section 128D of the *Income Tax Assessment Act 1936*.

- (2) However, unless an adjustment were made, that entity's share of the franking credit on the distribution would be assessed.
- (3) Adjustments are therefore made under this Subdivision to ensure that this does not occur.

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

## **Operative provisions**

### **207-90 Adjustment for non-resident beneficiaries**

Where:

- (a) a \*franked distribution \*flows indirectly to an individual or a \*corporate tax entity as beneficiary of a trust; and
- (b) the distribution does not flow indirectly to the entity as trustee of a trust; and
- (c) a share of the \*net income of the trust is included in the assessable income of the entity, for the income year in which the distribution is made, under section 97, 98A or 100 of the *Income Tax Assessment Act 1936*; and
- (d) but for section 128D of that Act, that share would include income to which section 128B of that Act would apply but for paragraph 128B(3)(ga);

a deduction is allowed from the assessable income of the entity for that income year of an amount worked out under Subdivision 207-J.

### **207-95 Adjustment where trustee assessed for non-resident beneficiary**

Where:

- (a) a \*franked distribution \*flows indirectly to the trustee of a trust; and
- (b) the trustee is liable to be assessed on a share of the \*net income of the trust, for the income year in which the distribution is made, under section 98 of the *Income Tax Assessment Act 1936*; and
- (c) but for section 128D of that Act, that share would include income to which section 128B of that Act would apply but for paragraph 128B(3)(ga);

the share of the net income of the trust on which the trustee is liable to be assessed is reduced by an amount worked out under Subdivision 207-J.

### **207-100 Adjustment for non-resident partners**

Where:

- (a) a \*franked distribution \*flows indirectly to an individual or \*corporate tax entity as partner in a \*partnership; and
- (b) the distribution does not flow indirectly to that entity as trustee of a trust; and
- (c) either:
  - (i) a share of the \*net income of the partnership is included in the entity's assessable income, for the income year in which the distribution is made, under subsection 92(1) of the *Income Tax Assessment Act 1936*; or
  - (ii) a share of the \*partnership loss of the partnership is allowable as a deduction to the entity, for the income year in which the distribution is made, under subsection 92(2) of that Act; and
- (d) but for section 128D of that Act, that share would include income to which section 128B of that Act would apply but for paragraph 128B(3)(ga);

a deduction is allowed from the assessable income of the entity for that income year of the amount worked out under Subdivision 207-J.

### **Subdivision 207-E—No gross-up or tax offset where distribution is not taxed in any case**

#### **Guide to Subdivision 207-E**

#### **207-105 What this Subdivision is about**

If an entity would not in any case pay income tax on a franked distribution:

- no amount is included in the entity's assessable income as a result of the franking credit on the distribution; and

- the entity is not entitled to a tax offset as a result of the distribution.

There are some exceptions to this principle.

## Table of sections

### Operative provisions

207-110	Effect of exempt income on gross up and tax offset
207-115	When a franked distribution flows indirectly through an entity
207-120	Gross-up and tax offset allowed because of the character of the income
207-125	Gross-up and tax offset allowed because entity is an exempt institution that is entitled to a refund
207-130	Which exempt institutions are eligible for a refund?
207-135	Residency requirement

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

## Operative provisions

### 207-110 Effect of exempt income on gross up and tax offset

*Tax effect on the entity to whom the distribution is made—no indirect flow through*

- (1) Where:
  - (a) a \*franked distribution is made to an entity (the *receiving entity*); and
  - (b) the distribution does not \*flow indirectly to another entity; and
  - (c) the distribution is \*exempt income of the receiving entity; and
  - (d) the distribution is not dealt with in section 207-120; and
  - (e) the receiving entity is not an \*exempt institution that is eligible for a refund;then:
  - (f) the \*franking credit on the distribution is not included in the assessable income of the receiving entity under subsection 207-20(1); and

- (g) the receiving entity is not entitled to a \*tax offset under subsection 207-20(2) as a result of the distribution.

*Tax effect on the entity to whom the distribution is made—indirect flow through*

(2) Where:

- (a) a \*franked distribution is made to an entity (the **receiving entity**); and
- (b) the distribution \*flows indirectly to another entity; and
- (c) the distribution is \*exempt income of the receiving entity; and
- (d) the distribution is not dealt with in section 207-120; and
- (e) the receiving entity is not an \*exempt institution that is eligible for a refund;

the assessable income of the receiving entity does not include the \*franking credit on the distribution under section 207-40.

*Tax effect on other entities through which the distribution flows indirectly*

(3) Where:

- (a) a \*franked distribution \*flows indirectly to an entity (the **flow-through entity**); and
- (b) the distribution \*flows indirectly through the flow-through entity to another entity; and
- (c) the distribution is \*exempt income of the flow-through entity; and
- (d) the distribution is not dealt with in section 207-120; and
- (e) the flow-through entity is not an \*exempt institution that is eligible for a refund;

then:

- (f) the flow-through entity is allowed:
  - (i) where the distribution flows indirectly to the flow-through entity as a partner in a \*partnership or a beneficiary of a trust—a deduction from its assessable income; or
  - (ii) where the distribution flows indirectly to the flow-through entity under subsection 207-35(4) as trustee of a trust—a reduction of its assessable income;

- of an amount worked out under Subdivision 207-J; and
- (g) where an entity to whom the distribution flows indirectly through the flow-through entity would, but for this subsection, be entitled to a \*tax offset under subsection 207-50(1) because of the distribution—that entity is not entitled to the tax offset.

*Tax effect of ultimate recipient of indirect flow-through*

- (4) Where:
- (a) a \*franked distribution \*flows indirectly to an entity (the ***ultimate recipient***); and
  - (b) the distribution does not flow indirectly through the ultimate recipient to another entity; and
  - (c) the distribution is \*exempt income of the ultimate recipient; and
  - (d) the distribution is not dealt with in section 207-120; and
  - (e) the ultimate recipient is not an \*exempt institution that is eligible for a refund;
- then:
- (f) the ultimate recipient is allowed:
    - (i) where the distribution flows indirectly to the ultimate recipient as a partner in a \*partnership or a beneficiary of a trust—a deduction from its assessable income; or
    - (ii) where the distribution flows indirectly to the ultimate recipient under subsection 207-35(4) as trustee of a trust—a reduction of its assessable income;
  - (g) the ultimate recipient is not entitled to a \*tax offset under subsection 207-50(1) because of the distribution.

**207-115 When a franked distribution flows indirectly through an entity**

- (1) This section sets out the only circumstances in which a \*franked distribution is taken to ***flow indirectly*** through an entity in an income year.
- (2) A \*franked distribution ***flows indirectly*** through a \*partnership if:

- (a) the distribution is made to the partnership and \*flows indirectly to a partner in the partnership; or
  - (b) the distribution \*flows indirectly to the partnership and to a partner in the partnership.
- (3) A \*franked distribution **flows indirectly** through a trustee of a trust if the distribution is made to the trustee and \*flows indirectly to:
- (a) a beneficiary of the trust, under subsection 207-35(3); or
  - (b) the trustee, under subsection 207-35(4).
- (4) A \*franked distribution **flows indirectly** through a trustee of a trust if:
- (a) the distribution \*flows indirectly to the trustee because the trustee is either:
    - (i) a beneficiary of another trust; or
    - (ii) a partner in a partnership; and
  - (b) the distribution flows indirectly:
    - (i) to a beneficiary of the trust, under subsection 207-35(3); or
    - (ii) to the trustee, under subsection 207-35(4).

**207-120 Gross-up and tax offset allowed because of the character of the income**

- (1) Where:
- (a) an entity makes a \*franked distribution to another entity; and
  - (b) the distribution is \*exempt income of the recipient under:
    - (i) section 282B, 283 or 297B of the *Income Tax Assessment Act 1936* (certain income derived by an eligible entity within the meaning of Part IX of that Act); or
    - (ii) paragraph 320-35(1)(b) of this Act (segregated exempt assets) or subparagraph 320-35(1)(f)(ii) of this Act (income bonds, funeral policies and scholarship plans);
- the recipient is entitled to a \*tax offset equal to the \*franking credit on the distribution.
- (2) Where:
- (a) a \*franked distribution \*flows indirectly to an entity; and
  - (b) the distribution is \*exempt income of the entity under:

- (i) section 282B, 283 or 297B of the *Income Tax Assessment Act 1936* (certain income derived by an eligible entity within the meaning of Part IX of that Act); or
  - (ii) paragraph 320-35(1)(b) of this Act (segregated exempt assets) or subparagraph 320-35(1)(f)(ii) of this Act (income bonds, funeral policies and scholarship plans);
- the entity is entitled to a \*tax offset equal to its \*share of the \*franking credit on the distribution.

**207-125 Gross-up and tax offset allowed because entity is an exempt institution that is entitled to a refund**

- (1) Where an entity makes a \*franked distribution to an \*exempt institution that is eligible for a refund, the institution is entitled to a \*tax offset equal to the \*franking credit on the distribution.
- (2) Where:
  - (a) a \*franked distribution \*flows indirectly to an \*exempt institution that is eligible for a refund; and
  - (b) the distribution does not flow indirectly to the institution as a partner in a partnership; and
  - (c) the distribution does not flow indirectly to the institution through another exempt institution that is eligible for a refund;the institution is entitled to a \*tax offset equal to the amount of the tax offset to which the institution would have been entitled, using Subdivision 207-B, if the exempt status of the institution were ignored.

**207-130 Which exempt institutions are eligible for a refund?**

- (1) This section sets out the only circumstances in which an entity is an *exempt institution that is eligible for a refund*.
- Income tax exempt charitable institutions*
- (2) An entity is an *exempt institution that is eligible for a refund* if it:
    - (a) is covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5; and

- (b) is endorsed as exempt from income tax under Subdivision 50-B; and
- (c) satisfies the \*residency requirement.

*Income tax exempt deductible gift recipients*

- (3) An entity is an **exempt institution that is eligible for a refund** if it:
  - (a) is endorsed under paragraph 30-120(a); and
  - (b) satisfies the \*residency requirement.

*Income tax exempt specified deductible gift recipients*

- (4) An entity is an **exempt institution that is eligible for a refund** if:
  - (a) the entity's name is specified in a table in a section in Subdivision 30-B; and
  - (b) it has an ABN; and
  - (c) it satisfies the residency requirement.

*Income tax exempt relief funds*

- (5) An entity is an **exempt institution that is eligible for a refund** if:
  - (a) a declaration by the Treasurer is in force in relation to the institution under subsection 30-85(2); and
  - (b) the regulations do not provide that the entity is not an exempt institution that is eligible for a refund.

*Prescribed income tax exempt entities*

- (6) An entity is an **exempt institution that is eligible for a refund** if the entity is prescribed as an exempt institution that is eligible for a refund by the regulations.

## **207-135 Residency requirement**

An entity satisfies the **residency requirement** for the purposes of determining whether, at the time a \*franked distribution is made, the entity is an \*exempt institution that is eligible for a refund if:

- (a) the entity has a physical presence in Australia; and
- (b) to that extent, incurs its expenditure and pursues its objectives principally in Australia;

at all times during the income year in which the distribution is made.

## **Subdivision 207-F—No gross-up or tax offset where the imputation system has been manipulated**

### **Guide to Subdivision 207-F**

#### **207-140 What this Subdivision is about**

Where an entity has manipulated the imputation system in a manner that is not permitted under the income tax law:

- no additional amount is included in the entity's assessable income as a result of the relevant franked distribution; and
- any tax offset to which the entity would otherwise be entitled as a result of the distribution is denied.

#### **Table of sections**

##### **Operative provisions**

- 207-145 Gross-up and tax offset under section 207-20 is denied where there is manipulation of the imputation system
- 207-150 Gross-up and tax offset under section 207-50 is denied where there is manipulation of the imputation system
- 207-155 When is a distribution made as part of a dividend stripping operation?
- 207-160 Interest payments—distributions that flow indirectly to a beneficiary of a trust
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- 207-170 Interest payments—distributions that flow indirectly to a partner in a partnership

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

#### **Operative provisions**

##### **207-145 Gross-up and tax offset under section 207-20 are denied where there is manipulation of the imputation system**

- (1) Where an entity makes a \*franked distribution to another entity in one or more of the following circumstances:

- 
- (a) the receiving entity is not a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*;
  - (b) the Commissioner has made a determination under paragraph 204-30(3)(b) that no \*imputation benefit is to arise for the receiving entity in respect of the distribution;
  - (c) the distribution is made as part of a \*dividend stripping operation;
  - (d) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of the distribution to the entity;
- then:
- (e) the \*franking credit on the distribution is not included in the assessable income of the entity under subsection 207-20(1); and
  - (f) the receiving entity is not entitled to a \*tax offset under subsection 207-20(2) as a result of the distribution.
- (2) If the Commissioner makes a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of a \*franked distribution to an entity, the amount included in the assessable income of the entity under subsection 207-20(1), and the \*tax offset to which the entity is entitled under subsection 207-20(2), is worked out using the formula:

$$\frac{\text{*Franked distribution} - \text{Specified part}}{\text{Franked distribution}} \times \text{*Franking credit}$$

**207-150 Gross-up and tax offset are denied where there is manipulation of the imputation system—distribution flowing indirectly**

- (1) Where a \*franked distribution \*flows indirectly to an entity in one or more of the following circumstances:
  - (a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*;

- (b) the Commissioner has made a determination under paragraph 204-30(3)(b) that no \*imputation benefit is to arise for the entity in respect of the distribution;
  - (c) the distribution is made as part of a \*dividend stripping operation;
  - (d) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of the distribution in the hands of the entity, or an entity through which the distribution flows indirectly to that entity;
  - (e) the distribution is treated as an interest payment under section 207-160, 207-165 or 207-170;
- then:
- (f) the entity is allowed:
    - (i) where the distribution flows indirectly to the entity as a partner in a \*partnership or a beneficiary of a trust—a deduction from its assessable income; or
    - (ii) where the distribution flows indirectly to the entity under subsection 207-35(4) as trustee of a trust—a reduction of its assessable income;of an amount worked out under Subdivision 207-J;
  - (g) the entity is not entitled to a \*tax offset under subsection 207-50(1) as a result of the distribution.
- (2) If the Commissioner makes a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of a \*franked distribution in the hands of an entity the following apply:
- (a) the entity is allowed:
    - (i) where the distribution flows indirectly to the entity as a partner in a \*partnership or a beneficiary of a trust—a deduction from its assessable income; or
    - (ii) where the distribution flows indirectly to the entity under subsection 207-35(4) as trustee of a trust—a reduction of its assessable income;of an amount worked out under Subdivision 207-J;

- (b) any \*tax offset to which the entity is entitled under subsection 207-50(1), is not of the amount mentioned in subsection 207-50(2), but of an amount worked out using the formula:

$$\frac{\text{*Franked distribution} - \text{Specified part}}{\text{*Franked distribution}} \times \frac{\text{Entity's * share of the}}{\text{*franking credit on the}} \text{distribution}$$

**207-155 When is a distribution made as part of a dividend stripping operation?**

A distribution made to a \*member of a \*corporate tax entity is taken to be made as part of a *dividend stripping operation* if, and only if, the making of the distribution arose out of, or was made in the course of, a scheme that:

- (a) was by way of, or in the nature of, dividend stripping; or
- (b) had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

**207-160 Interest payments—distributions that flow indirectly to a beneficiary of a trust**

- (1) For the purposes of this Subdivision, a \*franked distribution is treated as an *interest payment* if:
  - (a) it \*flows indirectly to an entity as beneficiary of a trust; and
  - (b) the entity's interest in the trust:
    - (i) was acquired, or was acquired for a period that was extended, at or after the commencing time; or
    - (ii) was acquired as part of a \*financing arrangement for the entity (including an arrangement extending to an earlier arrangement) entered into at or after the commencing time; and
  - (c) having regard to the matters in subsection (2), the distribution could reasonably be regarded as equivalent to the payment of interest on a loan.
- (2) A \*distribution that \*flows indirectly to a beneficiary of a trust can reasonably be regarded as equivalent to the payment of interest on a loan if:

- (a) an amount is included in the assessable income of the entity, for the income year in which the distribution is made, that is attributable to the distribution; and
- (b) having regard to the following matters, the amount could reasonably be regarded as equivalent to the payment of interest on a loan:
  - (i) the way in which the amount was calculated;
  - (ii) the conditions applying to the inclusion of the amount;
  - (iii) any other relevant matters.
- (3) The *commencing time*, for the purposes of subsection (1), is 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

**207-165 Interest payments—distributions that flow indirectly to the trustee of a trust**

- (1) For the purposes of this Subdivision, a \*franked distribution is treated as an *interest payment* if:
  - (a) it \*flows indirectly to an entity under subsection 207-35(4) as trustee of a trust; and
  - (b) the interest in the trust in respect of which the trustee is liable to be assessed:
    - (i) was acquired, or was acquired for a period that was extended, at or after the commencing time; or
    - (ii) was acquired as part of a \*financing arrangement for the entity (including an arrangement extending to an earlier arrangement) entered into at or after the commencing time; and
  - (c) having regard to the matters in subsection (2), the distribution could reasonably be regarded as equivalent to the payment of interest on a loan.
- (2) A \*distribution that \*flows indirectly to the trustee of a trust can reasonably be regarded as equivalent to the payment of interest on a loan if:
  - (a) the trustee is liable to be assessed under Division 6 of Part III of the *Income Tax Assessment Act 1936*, for the income year in which the distribution is made, on an amount that is attributable to the distribution; and

- (b) having regard to the following matters, the amount could reasonably be regarded as equivalent to the payment of interest on a loan:
  - (i) the way in which the amount was calculated;
  - (ii) the conditions applying to the inclusion of the amount;
  - (iii) any other relevant matters.
- (3) The *commencing time*, for the purposes of subsection (1), is 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

**207-170 Interest payments—distributions that flow indirectly to a partner in a partnership**

- (1) For the purposes of this Subdivision, a \*franked distribution is treated as an *interest payment* if:
  - (a) it \*flows indirectly to an entity as partner in a \*partnership; and
  - (b) the entity's interest in the partnership:
    - (i) was acquired, or was acquired for a period that was extended, at or after the commencing time; or
    - (ii) was acquired as part of a \*financing arrangement for the entity (including an arrangement extending to an earlier arrangement) entered into at or after the commencing time; and
  - (c) having regard to the matters in subsection (2), the distribution could reasonably be regarded as equivalent to the payment of interest on a loan.
- (2) A \*distribution that \*flows indirectly to a partner in a \*partnership can reasonably be regarded as equivalent to the payment of interest on a loan if:
  - (a) either:
    - (i) a share of the \*net income of the partnership is included in the partner's assessable income, for the income year in which the distribution is made, under subsection 92(1) of the *Income Tax Assessment Act 1936*; or
    - (ii) a share of the \*partnership loss of the partnership is allowable as a deduction to the entity, for the income year in which the distribution is made, under subsection 92(2) of that Act; and

- (b) the whole or a part of that share is attributable to the distribution; and
- (c) having regard to the following matters, that amount could reasonably be regarded as equivalent to the payment of interest on a loan:
  - (i) the way in which the amount was calculated;
  - (ii) the conditions applying to the inclusion of the amount;
  - (iii) any other relevant matters.
- (3) The *commencing time*, for the purposes of subsection (1), is 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

## **Division 215—Consequences of the debt/equity rules**

### **215-1 Application of the imputation system to non-share equity interests**

- (1) The \*imputation system applies to a \*non-share equity interest in the same way as it applies to a \*membership interest.
- (2) The \*imputation system applies to an equity holder in an entity who is not a member of the entity in the same way as it applies to a member of the entity.

## **Schedule 2—Consequential amendments of Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997**

### **1 Subsection 995-1(1)**

Insert:

*benchmark franking percentage* has the meaning given by section 203-30.

### **2 Subsection 995-1(1)**

Insert:

*benchmark rule* is the rule in section 203-25.

### **3 Subsection 995-1(1)**

Insert:

*class*: \* membership interests in a company form a *class* if the interests have the same, or substantially the same, rights.

### **4 Subsection 995-1(1)**

Insert:

*corporate tax rate* means the rate of tax in respect of the taxable income of a company covered by subsection 23(2) of the *Income Tax Rates Act 1986*.

### **5 Subsection 995-1(1)**

Insert:

*deficit*: section 205-40 sets out when a \*franking account is in deficit.

### **6 Subsection 995-1(1)**

Insert:

*distribution statement* has the meaning given by section 202-80.

**7 Subsection 995-1(1)**

Insert:

*dividend stripping operation* has the meaning given by section 207-155.

**8 Subsection 995-1(1)**

Insert:

*exempt institution that is eligible for a refund* has the meaning given in section 207-130.

**9 Subsection 995-1(1)**

Insert:

*exempting company* has the same meaning as in Part IIIAA of the *Income Tax Assessment Act 1936*, as in force on 30 June 2002.

**10 Subsection 995-1(1)**

Insert:

*flows indirectly:*

- (a) section 207-35 sets out the circumstances in which a \*franked distribution flows indirectly to an entity; and
- (b) section 207-115 sets out the circumstances in which a franked distribution flows indirectly through an entity.

**11 Subsection 995-1(1)**

Insert:

*frankable distribution* has the meaning given by section 202-40.

**12 Subsection 995-1(1)**

Insert:

*franked distribution:* a \*distribution is franked if an entity \*franks it in accordance with section 202-5.

**13 Subsection 995-1(1)**

Insert:

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*franking account* means an account that arises under  
section 205-10.

Note 1: Section 205-15 sets out when a credit arises in that account.

Note 2: Section 205-30 sets out when a debit arises in that account.

**14 Subsection 995-1(1)**

Insert:

*franking credit* has the meaning given by section 205-15.

**15 Subsection 995-1(1)**

Insert:

*franking debit* has the meaning given by section 205-30.

**16 Subsection 995-1(1)**

Insert:

*franking deficit* has the meaning given by subsection 205-40(2).

**17 Subsection 995-1(1)**

Insert:

*franking deficit tax* means tax imposed under the *New Business  
Tax System (Franking Deficit Tax) Act 2002*.

Note: That Act imposes tax where it is payable under section 205-45 of this  
Act.

**18 Subsection 995-1(1)**

Insert:

*franking entity* has the meaning given by section 202-15.

**19 Subsection 995-1(1)**

Insert:

*franking percentage* has the meaning given by section 203-35.

**20 Subsection 995-1(1)**

Insert:

*franking period* has the meaning given by sections 203-40 and 203-45.

**21 Subsection 995-1(1)**

Insert:

*franking surplus* has the meaning given by subsection 205-40(1).

**22 Subsection 995-1(1)**

Insert:

*greater benefit from franking credits* has a meaning affected by subsections 204-30(7) and (8).

**23 Subsection 995-1(1)**

Insert:

*imputation benefit* has the meaning given by subsection 204-30(6).

**24 Subsection 995-1(1)**

Insert:

*imputation system* means the rules in Part 3-6.

**25 Subsection 995-1(1)**

Insert:

*maximum franking credit* for a distribution has the meaning given by subsection 202-60(2).

**26 Subsection 995-1(1)**

Insert:

*net income:*

- (a) of a partnership—has the same meaning as in Division 5 of Part III of the *Income Tax Assessment Act 1936*; and
- (b) of a trust—has the same meaning as in Division 6 of Part III of that Act.

**27 Subsection 995-1(1)**

Insert:

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*non-equity share* has the meaning given by subsection 6(1) of the  
*Income Tax Assessment Act 1936*.

**28 Subsection 995-1(1)**

Insert:

*off-market buy-back* means a purchase that is a buy-back and an  
off-market purchase for the purposes of Division 16K of Part III of  
the *Income Tax Assessment Act 1936*.

**29 Subsection 995-1(1)**

Insert:

*off-market purchase* has the meaning given by section 159GZZZZJ  
of the *Income Tax Assessment Act 1936*.

**30 Subsection 995-1(1)**

Insert:

*on-market buy-back* means a purchase that is a buy-back and an  
on-market purchase for the purposes of Division 16K of Part III of  
the *Income Tax Assessment Act 1936*.

**31 Subsection 995-1(1)**

Insert:

*over-franking tax* means tax imposed under the *New Business Tax  
System (Over-franking Tax) Act 2002*.

Note: The Act imposes tax where it is payable under section 203-50 of this  
Act.

**32 Subsection 995-1(1)**

Insert:

*partnership loss* has the same meaning as in Division 5 of Part III  
of the *Income Tax Assessment Act 1936*.

**33 Subsection 995-1(1)**

Insert:

*PAYG instalment period* means:

- (a) for a \*quarterly payer—an \*instalment quarter in relation to which a \*PAYG instalment is paid; and
- (b) for an \*annual payer—an income year in relation to which a PAYG instalment is paid.

**34 Subsection 995-1(1)**

Insert:

*PAYG instalment variation credit* means a credit under section 45-215 or 45-420 in Schedule 1 to the *Taxation Administration Act 1953*.

**35 Subsection 995-1(1)**

Insert:

*pays a PAYG instalment* has the meaning given by subsection 205-20(1).

**36 Subsection 995-1(1)**

Insert:

*pays income tax* has the meaning given by subsection 205-20(3).

**37 Subsection 995-1(1)**

Insert:

*qualified person*: a person is a qualified person in relation to a distribution if the person would have been a qualified person in relation to the distribution under Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*, as in force on 30 June 2002.

**38 Subsection 995-1(1)**

Insert:

*RBA* has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

**39 Subsection 995-1(1)**

Insert:

*RBA surplus* has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

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**40 Subsection 995-1(1)**

Insert:

*refund of income tax* has the meaning given by section 205-35.

**41 Subsection 995-1(1)**

Insert:

*residency requirement:*

- (a) for an entity making a distribution—has the meaning given by section 202-20;
- (b) for an income year in which, or in relation to which, an event specified in the table in section 205-15 (table of franking credits) or section 205-30 (table of franking debits) occurs—has the meaning given by section 205-25;
- (c) for an entity that receives a \*franked distribution—has the meaning given by section 207-75;
- (d) for the purposes of determining whether an entity is an exempt institution that is eligible for a refund at the time a \*franked distribution is made—has the meaning given by section 207-135.

**42 Subsection 995-1(1)**

Insert:

*resident unit trust:*

- (a) for a \*corporate unit trust—has the meaning given by section 102H of the *Income Tax Assessment Act 1936*; and
- (b) for a \*public trading trust—has the meaning given by section 102Q of the *Income Tax Assessment Act 1936*.

**43 Subsection 995-1(1)**

Insert:

*share* of a \*franking credit has the meaning given by section 207-55.

**44 Subsection 995-1(1)**

Insert:

*tax-exempt bonus share* has the meaning given by subsections 204-25(4) and (5).

**45 Subsection 995-1(1)**

Insert:

*unfrankable* has the meaning given by section 202-45.

## **Schedule 3—Transitional provisions dealing with the application of Part IIIAA of the Income Tax Assessment Act 1936**

### *Income Tax Assessment Act 1936*

#### **1 Before Division 1AAA of Part IIIAA**

Insert:

#### **Division 1AAAA—Part ceases to apply after 1 July 2002**

##### **160AOAA Part ceases to apply after 1 July 2002**

Subject to the rules on the application of this Part set out in the *Income Tax (Transitional Provisions) Act 1997*, this Part does not apply to events that occur on or after 1 July 2002.

### *Income Tax (Transitional Provisions) Act 1997*

#### **2 After Part 3-5**

Insert:

### **Part 3-6—The imputation system**

#### **Division 201—Object and application of Part 3-6**

##### **201-1 Estimated debits**

Part IIIAA of the *Income Tax Assessment Act 1936* does not apply to any of the following acts if it is done on or after 1 July 2002:

- (a) lodging an application with the Commissioner for a determination of an estimated debit;
- (b) lodging an application with the Commissioner for a determination of an estimated debit in substitution for an earlier determination;

**Schedule 3** Transitional provisions dealing with the application of Part IIIAA of the  
Income Tax Assessment Act 1936

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- (c) a determination by the Commissioner of an estimated debit (including a determination in substitution for an earlier determination);
- (d) the service of notice of any such determination on a company;
- (e) the deemed determination of an estimated debit in accordance with an application (including an application for a determination in substitution for an earlier determination);
- (f) the deemed service of notice of a determination on a company (including service of notice of a determination in substitution for an earlier determination).

## **Schedule 4—Transitional provisions dealing with the conversion of the franking account**

### ***Income Tax Assessment Act 1936***

#### **1 Subsection 160ATD(1)**

After “franking accounts”, insert “immediately after the event occurred”.

### ***Income Tax (Transitional Provisions) Act 1997***

#### **2 After Division 201**

Insert:

### **Division 205—Franking accounts**

#### **205-1 Order of events provision**

If a company has a franking account under Part IIIAA of the *Income Tax Assessment Act 1936* (the **old account**) at the end of 30 June 2002, the old account is closed off and an opening balance is created in the company’s franking account under section 205-10 (the **new account**) as follows:

- (a) any estimated debits in the old account at the end of 30 June 2002 are washed out of the account under section 205-5; and
- (b) if there is a franking surplus in the account at the end of 30 June 2002, it gives rise to a franking credit in the new account under section 205-10.

#### **205-5 Washing estimated debits out of the franking account before conversion**

If, under Part IIIAA of the *Income Tax Assessment Act 1936*, the termination time in relation to an estimated debit of a company would, but for this section, occur after the end of 30 June 2002, it is taken to have occurred at the end of 30 June 2002.

Note: A franking credit of the appropriate class equal to the debit will arise under section 160APU of that Act at the beginning of 30 June 2002.

**205-10 Converting franking surplus on 30 June 2002 into a franking credit on 1 July 2002—normal balancers**

- (1) This section applies to companies that have a franking year that ends at the end of 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936* (the **1936 Act**).
- (2) If the company has a franking surplus under Part IIIAA of the 1936 Act at the end of 30 June 2002:
  - (a) no franking credit arises under section 160APL of that Act because of the surplus; and
  - (b) a franking credit arises on 1 July 2002 in the franking account established under section 205-10 of the *Income Tax Assessment Act 1997* (the **1997 Act**) for the company.

The amount of the franking credit is worked out under subsection (3).

- (3) The franking credit generated under paragraph (2)(b) from a franking surplus of a class specified in column 2 of the following table is worked out using the formula in column 3 of the table for that class.

<b>Conversion of 1936 Act franking surplus into 1997 Act franking credit</b>		
<b>Item</b>	<b>Franking surplus</b>	<b>Franking credit generated under paragraph (2)(b)</b>
1	class A franking surplus	Amount of the class A franking surplus at the end of 30 June 2002 under the 1936 Act $\times \frac{39}{61}$
2	class B franking surplus	Amount of the class B franking surplus at the end of 30 June 2002 under the 1936 Act $\times \frac{33}{67}$
3	class C franking surplus	Amount of the class C franking surplus at the end of 30 June 2002 under the 1936 Act $\times \frac{30}{70}$

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*[Minister's second reading speech made in—  
House of Representatives on 30 May 2002  
Senate on 19 June 2002]*

(122/02)