

# ***TA 2015/1A - Addendum - Dividend stripping arrangements involving the transfer of private company shares to a self-managed superannuation fund***

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! View the [updated version](#) of TA 2015/1.



## Addendum

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### Taxpayer Alert

## Dividend stripping arrangements involving the transfer of private company shares to a self-managed superannuation fund

*Taxpayer Alerts are intended to be an early warning of our concerns about significant or emerging potential aggressive tax planning issues or arrangements that the Australian Taxation Office (ATO) has under risk assessment, or where there are recurrences of arrangements that have been previously risk assessed.*

*This Addendum amends Taxpayer Alert TA 2015/1 to:*

- *make it clear that a Taxpayer Alert cannot cover every potential variation of an arrangement and that a person who has entered into, or is contemplating entering, a similar arrangement should apply for a private ruling (which provides certainty as to the ATO view) rather than rely on distinguishing their arrangement from the Taxpayer Alert, and*
- *provide further clarity to the “other compliance issues” that may arise for arrangements of the type referred to in the Taxpayer Alert.*

*This Addendum to a Taxpayer Alert is issued under the authority of the Commissioner.*

#### **TA 2015/1 is amended as follows:**

- 1. Immediately before the paragraph “*This Taxpayer Alert is issued under the authority of the Commissioner.*”**

Insert:

*While this Taxpayer Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement to which the anti-avoidance rules or other provisions of the Income Tax Assessment Act 1936, Income Tax Assessment Act 1997 or Superannuation Industry (Supervision) Act 1993 may apply. Taxpayers who have entered into, or are contemplating entering, an arrangement similar to that described in this Taxpayer Alert should apply for a private ruling to obtain certainty as to the ATO view, rather than seek to distinguish certain aspects of their arrangement from the Taxpayer Alert. Taxpayers may also consider seeking independent professional advice.*

**2. Subparagraph c)(i), under the heading “What are the ATO’s concerns?”**

Omit the subparagraph; substitute:

- (i) capital gains tax consequences, for example, where transfers of shares are made below market value or the requirements of Division 152 of the ITAA 1997 (small business relief) are not met, even though that Division is relied upon as applying

**3. Subparagraph c)(iii), under the heading “What are the ATO’s concerns?”**

Omit the subparagraph; substitute:

- (iii) superannuation regulatory issues, for example, if the SMSF share acquisition from a related party is not covered by an exception contained in section 66 of the *Superannuation Industry (Supervision) Act 1993* (SISA); the market value ratio of the fund's in-house assets exceeds 5%; or the SMSF is maintained for purposes other than those set out in section 62 of the SISA. Breaches of the SISA may lead to the SMSF being made non-complying or the disqualification of an individual as a trustee, and/or

**4. After subparagraph c)iv), under the heading “What are the ATO’s concerns?”**

Insert:

**Please note:**

Even if your arrangement differs in some respects from the arrangement described in paragraphs 1 to 12 above, the anti-avoidance rules or other provisions of the ITAA 1936, ITAA 1997 or SISA may still apply.

If the essence of an arrangement is to direct dividend income and attached franking credits from a private company to an SMSF instead of being paid to another entity, the arrangement, and whether it should be undertaken, requires careful consideration.

The ATO has significant concerns that taxpayers are seeking to distinguish arrangements from this Taxpayer Alert on the basis of some feature or other variation, rather than focussing on the essence of the arrangement and what it will (or is designed to) achieve. For example, seeking to distinguish the arrangement from this Taxpayer Alert on the basis of one or more of the following does not take the arrangement outside of the scope of this Taxpayer Alert:

- the private company also holds residential or commercial property when shares in the company are acquired by the SMSF
- the private company earns income on an ongoing basis

- distributions of franked dividends to the SMSF from the private company may happen over a number of income years instead of in the one income year
- the SMSF may receive franked dividends indirectly from the private company through various interposed entities, or
- there are no plans to deregister the private company.

This Addendum applies on and from 30 April 2015.

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**Commissioner of Taxation**

29 October 2015

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