



Social Security (Attributable Stakeholders and Attribution Percentages) Principles 2017

I, FINN PRATT, Secretary of the Department of Social Services, formulate these Principles under section 1209E of the *Social Security Act 1991*.

Dated 8 March 2017

Finn Pratt
Secretary of the Department of Social Services

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Part 1 Preliminary

1 Name of Principles

These Principles are the *Social Security (Attributable Stakeholders and Attribution Percentages) Principles 2017*.

2 Commencement

These Principles commence on 1 April 2017.

3 Definitions

In these Principles:

Act means the *Social Security Act 1991*.

company means a controlled private company.

contribution means:

- (a) a transfer of property or services, to a company or trust, at any time, whether before or after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and
- (b) any other kind of contribution:
 - (i) in the case of a company — to either the capital or income of the company; and
 - (ii) in the case of a trust — to either the corpus or income of the trust.

trust means a controlled private trust.

4 Purpose

These Principles set out decision-making principles with which the Secretary must comply in making a determination, under section 1207X of the Act, that:

- (a) an individual is not an attributable stakeholder of a company or trust; or
- (b) a specified percentage, lower than 100%, is the asset attribution percentage, or income attribution percentage, of an attributable stakeholder of a company or trust.

Section 5

Part 2 **Determination that individual is not attributable stakeholder**

5 **Purpose**

This Part sets out decision-making principles with which the Secretary must comply in making a determination, under paragraph 1207X (1) (a) or (2) (c) of the Act, that an individual is not an attributable stakeholder of a company or trust.

6 **Application**

- (1) This Part applies if, but for a determination by the Secretary, the individual would be an attributable stakeholder of the company or trust.
- (2) The Secretary must consider the relationship between the individual and the company or trust having regard to:
 - (a) the reason why, but for a determination, the individual would be an attributable stakeholder; and
 - (b) the circumstances mentioned in this Part.
- (3) In particular, the Secretary must consider whether the effect of one or more of the circumstances mentioned in this Part, in relation to the individual and the company or trust, provides a sufficient basis on which to determine that the individual is not an attributable stakeholder of the company or trust.

7 **Circumstances affecting relationship with company or trust**

- (1) The Secretary must consider whether there are relevant circumstances that make it inappropriate for the individual to be an attributable stakeholder of the company or trust.
- (2) For subsection (1), *relevant circumstances* include the extent to which the relationship between the individual and the company or trust is affected by any of the following circumstances:
 - (a) circumstances arising from the legal structure of the company or trust;
 - (b) circumstances arising from the administrative arrangements of the company or trust;
 - (c) whether, having regard to the relationship between the individual and the company or trust, the individual can reasonably be expected to exercise effective control in relation to the company or trust.

8 Contribution to company or trust

If the individual has made a contribution to the company or trust, the Secretary must consider the circumstances in which the contribution was made and, in particular:

- (a) the value of the contribution; and
- (b) the proportion that the value of the contribution has to the total assets of the company or trust at the time of the contribution; and
- (c) the effect of the contribution on the financial position of the company or trust; and
- (d) if the individual received consideration for the contribution, the amount of consideration.

9 Past benefit from distributions by company or trust

- (1) The Secretary must consider whether the individual has received a benefit from a distribution made by the company or trust.
- (2) If an individual has received a benefit, the Secretary must also consider:
 - (a) the value of the benefit; and
 - (b) if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.
- (3) For this section, a *distribution* includes distributions:
 - (a) in the case of a distribution by a company — of the capital or income, or both, of the company; and
 - (b) in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

10 Future benefit from distributions by company or trust

- (1) The Secretary must consider whether it is reasonably foreseeable that the individual may receive a benefit from a future distribution by the company or trust.
- (2) If subsection (1) applies, the Secretary must also consider the likely value of the benefit.
- (3) For this section, the Secretary must have regard to:
 - (a) the constituent documents of the company; or
 - (b) documents, if any, establishing the terms of the trust.
- (4) For this section, a *distribution* includes distributions:
 - (a) in the case of a distribution by a company — of the capital or income, or both, of the company; and
 - (b) in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

Section 11

11 Benefit from assets and income of company or trust

- (1) The Secretary must consider whether the individual receives or derives any kind of benefit (other than a benefit mentioned in section 9 or 10) from the assets or income, or both, of the company or trust.
- (2) For this section, *benefit*:
 - (a) is not limited to a benefit to which the individual has a legal or equitable entitlement; and
 - (b) includes benefits received or derived in the form of property or services.

12 Existing attribution to individual

- (1) The Secretary must consider whether the individual is:
 - (a) under the Act — an attributable stakeholder of any other company or trust; or
 - (b) under the *Veterans' Entitlements Act 1986* — an attributable stakeholder of the company or trust, or of any other company or trust.
- (2) If subsection (1) applies, the Secretary must also consider:
 - (a) the asset attribution percentage attributed to the individual, if any; and
 - (b) the income attribution percentage attributed to the individual, if any.

13 Other circumstances

The Secretary must consider any other circumstance that affects the involvement of the individual with the activities or the administration of the company or trust.

Part 3 Determination of asset attribution percentage

14 Purpose

This Part sets out decision-making principles with which the Secretary must comply in making a determination, under subparagraph 1207X (1) (b) (ii) or (2) (d) (ii) of the Act, that an attributable stakeholder's asset attribution percentage, in relation to a company or a trust, is a specified percentage lower than 100%.

15 Application

- (1) This Part applies if, but for a determination by the Secretary, the asset attribution percentage of the attributable stakeholder, in relation to the company or trust, would be 100%.
- (2) The Secretary must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part.
- (3) In particular, the Secretary must consider whether the effect of one or more of the circumstances mentioned in this Part, in relation to the individual and the company or trust, provides a sufficient basis on which to determine a percentage lower than 100% as the asset attribution percentage.

16 Circumstances affecting relationship with company or trust

- (1) The Secretary must consider whether there are relevant circumstances that make it inappropriate for the individual to have an asset attribution percentage of 100%.
- (2) For subsection (1), *relevant circumstances* include the extent to which the relationship between the individual and the company or trust is affected by any of the following circumstances:
 - (a) circumstances arising from the legal structure of the company or trust;
 - (b) circumstances arising from the administrative arrangements of the company or trust;
 - (c) whether, having regard to the relationship between the individual and the company or trust, the individual can reasonably be expected to exercise effective control in relation to the company or trust and, if so, the extent of that control.

Section 17

17 Contribution to company or trust

If the individual has made a contribution to the company or trust, the Secretary must consider the circumstances in which the contribution was made and, in particular:

- (a) the value of the contribution; and
- (b) the proportion that the value of the contribution has to the total assets of the company or trust at the time of the contribution; and
- (c) the effect of the contribution on the financial position of the company or trust; and
- (d) if the individual received consideration for the contribution, the amount of consideration.

18 Past benefit from distributions by company or trust

- (1) The Secretary must consider whether the individual has received a benefit from a distribution made by the company or trust.
- (2) If an individual has received a benefit, the Secretary must also consider:
 - (a) the value of the benefit; and
 - (b) if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.
- (3) For this section, a *distribution* includes distributions:
 - (a) in the case of a distribution by a company — of the capital or income, or both, of the company; and
 - (b) in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

19 Future benefit from distributions by company or trust

- (1) The Secretary must consider whether it is reasonably foreseeable that the individual may receive a benefit from a future distribution by the company or trust.
- (2) If subsection (1) applies, the Secretary must also consider the likely value of the benefit.
- (3) For this section, the Secretary must have regard to:
 - (a) the constituent documents of the company; or
 - (b) documents, if any, establishing the terms of the trust.
- (4) For this section, a *distribution* includes distributions:
 - (a) in the case of a distribution by a company — of the capital or income, or both, of the company; and
 - (b) in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

Section 22**20 Benefit from assets and income of company or trust**

- (1) The Secretary must consider whether the individual receives or derives any kind of benefit (other than a benefit mentioned in section 18 or 19) from the assets or income, or both, of the company or trust.
- (2) For this section, *benefit*:
 - (a) is not limited to a benefit to which the individual has a legal or equitable entitlement; and
 - (b) includes benefits received or derived in the form of property or services.

21 Existing attribution to individual

- (1) The Secretary must consider whether the individual is:
 - (a) under the Act — an attributable stakeholder of any other company or trust; or
 - (b) under the *Veterans' Entitlements Act 1986* — an attributable stakeholder of the company or trust, or of any other company or trust.
- (2) If subsection (1) applies, the Secretary must also consider:
 - (a) the asset attribution percentage attributed to the individual, if any; and
 - (b) the income attribution percentage attributed to the individual, if any.

22 Other circumstances

The Secretary must consider any other circumstance that affects the involvement of the individual with the activities or the administration of the company or trust.

Section 23

Part 4 **Determination of income attribution percentage**

23 **Purpose**

This Part sets out decision-making principles with which the Secretary must comply in making a determination, under subparagraph 1207X (1) (c) (ii) or (2) (e) (ii) of the Act, that an attributable stakeholder's income attribution percentage, in relation to a company or trust, is a specified percentage lower than 100%.

24 **Application**

- (1) This Part applies if, but for a determination by the Secretary, the income attribution percentage of the attributable stakeholder, in relation to the company or trust, would be 100%.
- (2) The Secretary must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part.
- (3) In particular, the Secretary must consider whether the effect of one or more of the circumstances mentioned in this Part, in relation to the individual and the company or trust, provides a sufficient basis on which to determine a percentage lower than 100% as the income attribution percentage.

25 **Circumstances affecting relationship with company or trust**

- (1) The Secretary must consider whether there are relevant circumstances that make it inappropriate for the individual to have an income attribution percentage of 100%.
- (2) For subsection (1), *relevant circumstances* include the extent to which the relationship between the individual and the company or trust is affected by any of the following circumstances:
 - (a) circumstances arising from the legal structure of the company or trust;
 - (b) circumstances arising from the administrative arrangements of the company or trust;
 - (c) whether, having regard to the relationship between the individual and the company or trust, the individual can reasonably be expected to exercise effective control in relation to the company or trust and, if so, the extent of that control.

26 Contribution to company or trust

If the individual has made a contribution to the company or trust, the Secretary must consider the circumstances in which the contribution was made and, in particular:

- (a) the value of the contribution; and
- (b) the proportion that the value of the contribution has to the total assets of the company or trust at the time of the contribution; and
- (c) the effect of the contribution on the financial position of the company or trust; and
- (d) if the individual received consideration for the contribution, the amount of consideration.

27 Past benefit from distributions by company or trust

- (1) The Secretary must consider whether the individual has received a benefit from a distribution made by the company or trust.
- (2) If an individual has received a benefit, the Secretary must also consider:
 - (a) the value of the benefit; and
 - (b) if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.
- (3) For this section, a *distribution* includes distributions:
 - (a) in the case of a distribution by a company — of the capital or income, or both, of the company; and
 - (b) in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

28 Future benefit from distributions by company or trust

- (1) The Secretary must consider whether it is reasonably foreseeable that the individual may receive a benefit from a future distribution by the company or trust.
- (2) If subsection (1) applies, the Secretary must also consider the likely value of the benefit.
- (3) For this section, the Secretary must have regard to:
 - (a) the constituent documents of the company; or
 - (b) documents, if any, establishing the terms of the trust.
- (4) For this section, a *distribution* includes distributions:
 - (a) in the case of a distribution by a company — of the capital or income, or both, of the company; and
 - (b) in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

Section 29

29 Benefit from assets and income of company or trust

- (1) The Secretary must consider whether the individual receives or derives any kind of benefit (other than a benefit mentioned in section 27 or 28) from the assets or income, or both, of the company or trust.
- (2) For this section, *benefit*:
 - (a) is not limited to a benefit to which the individual has a legal or equitable entitlement; and
 - (b) includes benefits received or derived in the form of property or services.

30 Existing attribution to individual

- (1) The Secretary must consider whether the individual is:
 - (a) under the Act — an attributable stakeholder of any other company or trust; or
 - (b) under the *Veterans' Entitlements Act 1986* — an attributable stakeholder of the company or trust, or of any other company or trust.
- (2) If subsection (1) applies, the Secretary must also consider:
 - (a) the asset attribution percentage attributed to the individual, if any; and
 - (b) the income attribution percentage attributed to the individual, if any.

31 Other circumstances

The Secretary must consider any other circumstance that affects the involvement of the individual with the activities or the administration of the company or trust.