



Social Security (Attribution of Income — Ineligible Deductions) Determination 2017

I, FINN PRATT, Secretary of the Department of Social Services, make this Determination under sections 1208B and 1209C 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 Determination

This Determination is the *Social Security (Attribution of Income — Ineligible Deductions) Determination 2017*.

2 Commencement

This Determination commences the day after it is registered on the Federal Register of Legislation.

3 Revocation

The *Social Security (Attribution of Income — Ineligible Deductions) Determination 2004* is revoked.

4 Definitions

In this Determination:

Act means the *Social Security Act 1991*.

assessable income means assessable income for the purposes of *ITAA 1936* or *ITAA 1997*.

ITAA 1936 means the *Income Tax Assessment Act 1936*.

ITAA 1997 means the *Income Tax Assessment Act 1997*.

Part 2 Ineligible deductions and ineligible parts of deductions

Division 2.1 Ineligible deductions

5 Ineligible deductions — *ITAA 1936* and *ITAA 1997*

- (1) For subsection 1208B (3) of the Act:
 - (a) an allowable deduction for the purposes of a provision of *ITAA 1936* mentioned in an item in Part 1 of Schedule 1 is an ineligible deduction; and
 - (b) an allowable deduction for the purposes of a provision of *ITAA 1997* mentioned in an item in Part 2 of Schedule 1 is an ineligible deduction.
- (2) For subsection 1209C (3) of the Act:
 - (a) an allowable deduction for the purposes of a provision of *ITAA 1936* mentioned in an item in Part 1 of Schedule 2 is an ineligible deduction; and
 - (b) an allowable deduction for the purposes of a provision of *ITAA 1997* mentioned in an item in Part 2 of Schedule 2 is an ineligible deduction.

Division 2.2 Ineligible parts of deductions

6 Ineligible part of amount of salary or wages

- (1) For subsection 1208B (5) of the Act, this section applies if:
 - (a) a company or a trust pays a wage or salary (the ***amount paid***) to an individual (the ***wage or salary earner***) who is:
 - (i) an attributable stakeholder of the company or trust; or
 - (ii) an associate, within the meaning of paragraph 1207C (1) (e), (h), (i) or (j) of the Act, of an attributable stakeholder of the company or trust; and
 - (b) the amount paid is an allowable deduction of a kind mentioned in paragraph 1208B (1) (a) of the Act; and
 - (c) the amount paid exceeds an amount that represents reasonable remuneration for the wage or salary earner having regard to:
 - (i) the period to which the amount paid relates; and
 - (ii) the work performed by the wage or salary earner during that period; and
 - (iii) the relevant qualifications or skills of the wage or salary earner; and

- (iv) remuneration paid to individuals, with comparable qualifications or skills, performing work that is comparable to that performed by the wage or salary earner; and
 - (v) other relevant circumstances affecting the employment of the wage or salary earner.
- (2) For subsection 1209C (5) of the Act, this section applies if:
- (a) a company or trust that carries on a primary production enterprise pays a wage or salary (the **amount paid**) to an individual (the **wage or salary earner**) who is:
 - (i) an attributable stakeholder of the company or trust; or
 - (ii) an associate, within the meaning of paragraph 1207C (1) (e), (h), (i) or (j) of the Act, of an attributable stakeholder of the company or trust; and
 - (b) the amount paid is an allowable deduction of a kind mentioned in paragraph 1209C (1) (a) of the Act; and
 - (c) the amount paid exceeds an amount that represents reasonable remuneration for the wage or salary earner having regard to:
 - (i) the period to which the amount paid relates; and
 - (ii) the work performed by the wage or salary earner during that period; and
 - (iii) the relevant qualifications or skills of the wage or salary earner; and
 - (iv) remuneration paid to individuals, with comparable qualifications or skills, performing work comparable to that performed by the wage or salary earner; and
 - (v) other relevant circumstances affecting the employment of the wage or salary earner.
- (3) The amount by which the amount paid, referred to in paragraph (1) (a) or (2) (a), exceeds the reasonable remuneration referred to in paragraph (1) (c) or (2) (c), is an ineligible part of the relevant allowable deduction.

7 Ineligible part of amount of interest on borrowings

- (1) For subsection 1208B (5) of the Act, this section applies if:
- (a) a company or a trust borrows money for the purposes of carrying on a business; and
 - (b) the interest payable on the money borrowed is an allowable deduction of a kind mentioned in paragraph 1208B (1) (a) of the Act; and
 - (c) the interest paid exceeds an amount that represents a reasonable rate of interest on the money borrowed having regard to:
 - (i) the terms and conditions of the loan; and

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- (ii) standard commercial interest rates at the time that the loan was made; and
 - (iii) the kind of business carried on, or the way in which assessable income is gained or produced by the business.
- (2) For subsection 1209C (5) of the Act, this section applies if:
 - (a) an entity that carries on a primary production enterprise borrows money for the purposes of carrying on a business; and
 - (b) the interest payable on the money borrowed is an allowable deduction of a kind mentioned in paragraph 1209C (1) (a) of the Act; and
 - (c) the interest paid exceeds an amount that represents a reasonable rate of interest on the money borrowed having regard to:
 - (i) the terms and conditions of the loan; and
 - (ii) standard commercial interest rates at the time that the loan was made; and
 - (iii) the kind of business carried on, or the way in which assessable income is gained or produced by the business.
- (3) The amount by which the interest paid, referred to in paragraph (1) (c) or (2) (c), is greater than the reasonable rate of interest referred to in that paragraph, is an ineligible part of the relevant allowable deduction.

8 Trading stock of business — election under s 70-45 of ITAA 1997

- (1) For subsection 1208B (5) of the Act, this section applies if:
 - (a) a company or trust values trading stock of a business owned or controlled by the company or trust using:
 - (i) a valuation method at the start of an income year, giving an amount (the **first valuation**); and
 - (ii) a different valuation method in accordance with an election made under section 70-45 of the *ITAA 1997* at the end of the income year, giving an amount (the **second valuation**); and
 - (b) the first valuation exceeds the second valuation; and
 - (c) the ordinary income of the company or trust from the business is reduced by the amount of any excess of the first valuation over the second valuation (the **allowable deduction**); and
 - (d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.
- (2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

9 Trading stock of primary production enterprise — election under s 70-45 of ITAA 1997

- (1) For subsection 1209C (5) of the Act, this section applies if:
- (a) an entity carrying on a primary production enterprise values trading stock of the enterprise using:
 - (i) a valuation method at the start of an income year, giving an amount (the **first valuation**); and
 - (ii) a different valuation method in accordance with an election made under section 70-45 of the *ITAA 1997* at the end of the income year, giving an amount (the **second valuation**); and
 - (b) the first valuation exceeds the second valuation; and
 - (c) the entity's income from the enterprise is reduced by the amount of any excess of the first valuation over the second valuation (the **allowable deduction**); and
 - (d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.
- (2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

10 Trading stock of business — election under s 70-50 of ITAA 1997

- (1) For subsection 1208B (5) of the Act, this section applies if:
- (a) a company or a trust values trading stock of a business owned or controlled by the company or trust using:
 - (i) a valuation method at the start of an income year, giving an amount (the **first valuation**), that is the same valuation method used to value the trading stock at the end of the preceding income year; and
 - (ii) a different valuation method in accordance with an election made under section 70-50 of the *ITAA 1997* at the end of the income year, giving an amount (the **second valuation**); and
 - (b) the first valuation exceeds the second valuation; and
 - (c) the ordinary income of the company or trust is reduced by the amount of any excess of the first valuation over the second valuation (the **allowable deduction**); and
 - (d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

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- (2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

11 Trading stock of primary production enterprise — election under s 70-50 of ITAA 1997

- (1) For subsection 1209C (5) of the Act, this section applies if:
- (a) an entity carrying on a primary production enterprise values trading stock using:
 - (i) a valuation method at the start of an income year, giving an amount (the **first valuation**), that is the same valuation method used to value the trading stock at the end of the preceding income year; and
 - (ii) a different valuation method in accordance with an election made under section 70-50 of the *ITAA 1997* at the end of the income year, giving an amount (the **second valuation**); and
 - (b) the first valuation exceeds the second valuation; and
 - (c) the entity's income from the enterprise is reduced by the amount of any excess of the first valuation over the second valuation (the **allowable deduction**); and
 - (d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.
- (2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

Schedule 1 Ineligible deductions for section 1208B of the Act

(subsection 5 (1))

Part 1 Ineligible deductions: ITAA 1936

Item	Provision	General description
101	Section 82KZM	Expenditure by small business entities and individuals incurring non-business expenditure
102	Section 82KZMD	Business expenditure and non-business expenditure by non-individual
103	Section 82KZMF	Proportional deduction
104	Section 266-25 of Schedule 2F	Fixed trust may be denied tax loss deduction
105	Section 266-35 of Schedule 2F	Fixed trust may be denied debt deduction
106	Section 266-50 of Schedule 2F	Fixed trust — deducting part of a tax loss
107	Section 267-20 of Schedule 2F	Non-fixed trust may be denied tax loss deduction
108	Section 267-50 of Schedule 2F	Non-fixed trust — deducting part of a tax loss

Part 2 Ineligible deductions: ITAA 1997

Item	Provision	General description
201	Section 25-20	Lease document expenses
202	Section 25-25	Borrowing expenses
203	Section 25-30	Expenses of discharging a mortgage
204	Section 25-110	Capital expenditure to terminate lease etc
205	Section 26-80	Financing costs on loans to pay superannuation contribution
206	Section 26-85	Borrowing costs on loans to pay life insurance premiums
207	Section 30-15	Table of gifts or contributions that you can deduct
208	Section 32-20	Fringe benefits
209	Section 32-25	Deductions for losses and outgoings relating to entertainment

Item	Provision	General description
210	Section 36-15	How to deduct tax losses of entities other than corporate tax entities
211	Section 36-17	How to deduct tax losses of corporate tax entities
212	Section 36-40	Deductions for amounts paid for debts incurred before bankruptcy
213	Section 40-25	Deducting amounts for depreciating assets
214	Section 40-80	When you can deduct the asset's cost
215	Section 40-285	Balancing adjustments
216	Section 40-335	Deduction for in-house software where you will never use it
217	Section 40-370	Balancing adjustments where there has been use of different car expense methods
218	Section 40-455	In-house software — how to work out your deduction
219	Section 40-645	Electricity and telephone lines
220	Section 40-730	Mining and quarrying — deduction for expenditure on exploration or prospecting
221	Section 40-735	Deduction for expenditure on mining site rehabilitation
222	Section 40-750	Deduction for payments of petroleum resource rent tax
223	Section 40-755	Environmental protection activities
224	Section 40-830	Project pools
225	Section 40-880	Business related costs
226	Section 40-1005	Deduction for expenditure for establishing trees in carbon sink forests
227	Section 40-1030	Extra deduction for destruction of trees in carbon sink forest
228	Section 43-10	Deductions for capital works
229	Section 43-40	Deduction for destruction of capital works
230	Section 70-120	Trading stock — capital costs of acquiring trees
231	Section 165-10	Changing ownership or control of a company — deducting tax losses
232	Section 165-20	Changing ownership or control of a company — deducting part of tax loss
233	Section 170-20	Treatment of company groups — who can deduct transferred loss
234	Subdivision 328-D	Capital allowances for small business entities

Schedule 2 Ineligible deductions for section 1209C of the Act

(subsection 5 (2))

Part 1 Ineligible deductions: ITAA 1936

Item	Provision	General description
101	Section 82KZM	Expenditure by small business entities and individuals incurring non-business expenditure
102	Section 82KZMD	Business expenditure and non-business expenditure by non-individual
103	Section 82KZMF	Proportional deduction
104	Section 266-25 of Schedule 2F	Fixed trust may be denied tax loss deduction
105	Section 266-35 of Schedule 2F	Fixed trust may be denied debt deduction
106	Section 266-50 of Schedule 2F	Fixed trust — deducting part of a tax loss
107	Section 267-20 of Schedule 2F	Non-fixed trust may be denied tax loss deduction
108	Section 267-50 of Schedule 2F	Non-fixed trust — deducting part of a tax loss

Part 2 Ineligible deductions: ITAA 1997

Item	Provision	General description
201	Section 25-20	Lease document expenses
202	Section 25-25	Borrowing expenses
203	Section 25-30	Expenses of discharging a mortgage
204	Section 25-110	Capital expenditure to terminate lease etc
205	Section 26-80	Financing costs on loans to pay superannuation contribution
206	Section 26-85	Borrowing costs on loans to pay life insurance premiums
207	Section 30-15	Table of gifts or contributions that you can deduct
208	Section 32-20	Fringe benefits

Item	Provision	General description
209	Section 32-25	Deductions for losses and outgoings relating to entertainment
210	Section 36-15	How to deduct tax losses of entities other than corporate tax entities
211	Section 36-17	How to deduct tax losses of corporate tax entities
212	Section 36-40	Deductions for amounts paid for debts incurred before bankruptcy
213	Section 40-25	Deducting amounts for depreciating assets
214	Section 40-80	When you can deduct the asset's cost
215	Section 40-285	Balancing adjustments
216	Section 40-335	Deduction for in-house software where you will never use it
217	Section 40-370	Balancing adjustments where there has been use of different car expense methods
218	Section 40-455	In-house software — how to work out your deduction
219	Section 40-515	Water facilities, grapevines and horticultural plants
220	Section 40-565	Extra deduction for destruction of a horticultural plant or grapevine
221	Section 40-630	Landcare operations
222	Section 40-645	Electricity and telephone lines
223	Section 40-755	Environmental protection activities
224	Section 40-830	Project pools
225	Section 40-880	Business related costs
226	Section 40-1005	Deduction for expenditure for establishing trees in carbon sink forests
227	Section 40-1030	Extra deduction for destruction of trees in carbon sink forest
228	Section 43-10	Deductions for capital works
229	Section 43-40	Deduction for destruction of capital works
230	Section 70-120	Trading stock — capital costs of acquiring trees
231	Section 165-10	Changing ownership or control of a company — deducting tax losses
232	Section 165-20	Changing ownership or control of a company — deducting part of tax loss
233	Section 170-20	Treatment of company groups — who can deduct transferred loss
234	Subdivision 328-D	Capital allowances for small business entities
235	Section 393-5	Deduction for making farm management deposit