



Social Security (Attribution of Income) 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 (Attribution of Income) Principles 2017*.

2 Commencement

These Principles commence on 1 April 2017.

3 Definitions

In these Principles:

Act means the *Social Security Act 1991*.

attributable income, in relation to an individual who is an attributable stakeholder of a company or trust, means income that the individual is taken to receive during an attribution period of the company or trust.

distribution, in relation to a trust, includes an amount credited by a trust to a beneficiary of the trust.

4 Purpose

These Principles set out decision-making principles with which the Secretary must comply in making the following determinations:

- (a) a determination under subsection 1207Y (2) of the Act that, for the purposes of the application of subsection 1207Y (1) of the Act to a specified individual and a specified company or trust, a specified amount is excluded income;
- (b) a determination under section 1207Z of the Act that the ordinary income of an individual does not include the amount or value of a distribution, or a part of the amount or value of a distribution, to the individual by a company or trust;
- (c) a determination under section 1208C of the Act that a specified period is a derivation period of a company or trust for the purposes of the application of Division 7 of Part 3.18 of the Act to a specified individual and to a specified company or trust;
- (d) a determination under section 1208D of the Act that a specified period is an attribution period for the purposes of the application of Part 3.18 of the Act to a specified individual and to a specified company or trust.

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Part 2 Determination about excluded income (Act s 1207Y)

Division 2.1 No double counting — both members of couple are attributable stakeholders of company or trust

5 Application of Division 2.1

This Division applies if, in respect of an individual, the following circumstances exist:

- (a) the individual is a member of a couple;
- (b) the individual and the individual's partner are attributable stakeholders of a company or trust;
- (c) during a derivation period of the company or trust, the individual:
 - (i) may, or may not, receive a distribution from the company or trust; but
 - (ii) is taken to receive an amount of attributable income during the attribution period that relates to the derivation period;
- (d) during the derivation period mentioned in paragraph (c), the individual's partner:
 - (i) receives a distribution from the company or trust; and
 - (ii) is taken to receive an amount of attributable income during the attribution period that relates to the derivation period.

6 Sum of distributions is the same as sum of attributable income

- (1) This section applies if:
 - (a) the sum of the distributions mentioned in subparagraphs 5 (c) (i) (if any) and 5 (d) (i) is the same as the sum of the attributable income mentioned in subparagraphs 5 (c) (ii) and 5 (d) (ii); but
 - (b) the amount of the distribution mentioned in subparagraph 5 (d) (i) is greater than the amount of attributable income mentioned in subparagraph 5 (d) (ii).
- (2) The Secretary must consider determining that the difference between the amounts referred to in paragraph (1) (b) is excluded income in relation to the attributable income of the individual mentioned in paragraph 5 (c).

7 Sum of distributions is less than sum of attributable income

- (1) This section applies if:
 - (a) the sum of the distributions mentioned in subparagraphs 5 (c) (i) (if any) and 5 (d) (i) is less than the sum of the attributable income mentioned in subparagraphs 5 (c) (ii) and 5 (d) (ii); but
 - (b) the amount of the distribution mentioned in subparagraph 5 (d) (i) is greater than the amount of attributable income mentioned in subparagraph 5 (d) (ii).
- (2) The Secretary must consider determining that the difference between the amounts referred to in paragraph (1) (b) is excluded income in relation to the attributable income of the individual mentioned in paragraph 5 (c).

8 Sum of distributions is greater than sum of attributable income

- (1) This section applies if:
 - (a) the sum of the distributions mentioned in subparagraphs 5 (c) (i) (if any) and 5 (d) (i) is greater than the sum of the attributable income mentioned in subparagraphs 5 (c) (ii) and 5 (d) (ii); but
 - (b) the amount of the distribution mentioned in subparagraph 5 (c) (i) (if any) is less than the amount of attributable income mentioned in subparagraph 5 (c) (ii).
- (2) The Secretary must consider determining that the difference between the amounts referred to in paragraph (1) (b) is excluded income in relation to the attributable income of the individual mentioned in paragraph 5 (c).

Division 2.2 No double counting — one member of couple is not attributable stakeholder

9 Distribution made to partner who is not attributable stakeholder

- (1) This section applies if, in respect of an individual, the following circumstances exist:
 - (a) the individual is a member of a couple;
 - (b) the individual is an attributable stakeholder of a company or trust, but the individual's partner is not an attributable stakeholder of the company or trust;
 - (c) during a derivation period of the company or trust, the individual:
 - (i) may, or may not, receive a distribution from the company or trust; but
 - (ii) is taken to receive an amount of attributable income during the attribution period that relates to the derivation period;
 - (d) during the derivation period mentioned in paragraph (c), the individual's partner receives a distribution from the company or trust.

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- (2) The Secretary must consider determining that an amount equal to the amount of the distribution received by the partner is excluded income in relation to the attributable stakeholder.

Division 2.3 Investor makes genuine transfer and receives distribution or credit

10 Application of Division 2.3

This Division applies if:

- (a) an individual (the *investor*) makes a genuine transfer of capital to a company or trust of which the investor is not an attributable stakeholder; and
- (b) during a derivation period of the company or trust, the investor receives a distribution from the company or trust.

11 Genuine transfer of capital

For section 10, a transfer of capital is a genuine transfer of capital if:

- (a) the investor receives, as consideration for the transfer, shares in the company, or units in the trust, of a value that is equivalent to the value of the capital transferred; and
- (b) the investor has a legal or equitable right to a share of the capital of the company or trust; and
- (c) the investor has a legal or equitable right to receive dividends or distributions in accordance with the constituent documents of the company or the terms of the trust; and
- (d) the investor is over 18 years of age.

12 Excluded income

- (1) This section applies if:
 - (a) an individual who is an attributable stakeholder of a company or trust is taken to receive attributable income in accordance with subsection 1207Y (1) of the Act; and
 - (b) the attributable income of the individual is taken to include additional ordinary income in the circumstances mentioned in section 10.
- (2) The Secretary must consider determining that the amount of additional ordinary income worked out in accordance with subsection (3) is excluded income in relation to the attributable stakeholder.
- (3) The amount of excluded income is worked out by multiplying the amount of the distribution mentioned in paragraph 10 (b) by the income attribution percentage of the attributable stakeholder.

Part 3 Determination about excluded income (Act s 1207Z)

Division 3.1 No double counting of attributed income — general

13 No double counting of attributed income — general

- (1) For paragraphs 1207Z (1) (d) and (e) and (2) (d) and (e) of the Act, the Secretary must have regard to the ordinary income of the individual received during the relevant attribution period and consider if the individual is an attributable stakeholder of:
 - (a) more than 1 controlled private company; or
 - (b) more than 1 controlled private trust; or
 - (c) at least 1 controlled private company and 1 controlled private trust.
- (2) For paragraphs 1207Z (1) (d) and (e) and (2) (d) and (e) of the Act, the Secretary must also consider if a company or trust mentioned in subsection (1) has derived an amount, directly or indirectly, by way of dividend or other distribution from another controlled private company or controlled private trust.

14 No double counting if ordinary income significantly diminished

- (1) This section applies if:
 - (a) a company or trust makes a distribution to an individual who is an attributable stakeholder of the company or trust; and
 - (b) the individual would, but for this section, be taken to receive an amount of ordinary income over a period of 12 months in accordance with section 1073 of the Act; and
 - (c) the ordinary income of the individual derived from the company or trust during an attribution period has ceased, or is significantly diminished, because the company or trust:
 - (i) has been wound-up or otherwise ceased to exist; or
 - (ii) has been subject to circumstances adversely affecting its profitability.
- (2) For paragraphs 1207Z (1) (d) and (e) and (2) (d) and (e) of the Act, the Secretary must consider:
 - (a) whether, in all the circumstances, the application of section 1073 of the Act would be unfair or unreasonable in relation to the individual; and

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- (b) if section 1073 applies unfairly or unreasonably in relation to the individual, determining that the ordinary income of the individual does not include the whole or part of the amount or value distributed to the individual.

Division 3.2 Distributions by companies

15 No double counting of attributed income — distribution by company to all attributable stakeholders

- (1) This section applies if:
 - (a) during a particular derivation period of a company, an individual receives a distribution of capital from the company (the *distribution*); and
 - (b) the individual is an attributable stakeholder of the company during an attribution period that corresponds with the derivation period of the company; and
 - (c) the distribution made to the attributable stakeholder is part of a distribution to all attributable stakeholders of the company (the *total distribution*); and
 - (d) the proportion that the distribution to each attributable stakeholder bears to the total distribution, expressed as a percentage, is the same as each attributable stakeholder's asset attribution percentage in relation to the company.
- (2) For paragraph 1207Z (1) (d) of the Act, the Secretary must consider determining that the ordinary income of the individual received during the attribution period does not include the distribution if, but for this section, the amount or value of the distribution would be included in the ordinary income of the individual for that period.
- (3) For paragraph 1207Z (1) (e) of the Act, the Secretary must consider determining that the ordinary income of the individual received during the attribution period does not include any part of the amount or value of the distribution if, but for this section, any part of the amount or value of the distribution would be included in the ordinary income of the individual for that period.

16 No double counting of attributed income — other distributions by a company

- (1) This section applies if:
 - (a) during a particular derivation period of a company, an individual receives a distribution of capital or profits from the company (the *distribution*); and
 - (b) the individual is an attributable stakeholder of the company during an attribution period that corresponds with the derivation period of the company; and

- (c) the distribution is made in circumstances other than those mentioned in section 14 and paragraphs 15 (1) (c) and (d); and
 - (d) the individual is taken to receive additional ordinary income during that attribution period in accordance with subsection 1207Y (1) of the Act.
- (2) For paragraph 1207Z (1) (d) of the Act, if the amount of the distribution is less than, or equal to, the additional ordinary income that the individual is taken to receive in accordance with subsection 1207Y (1) of the Act during the attribution period, the Secretary must consider determining that the ordinary income of the individual received during that period does not include the amount of that distribution.
- (3) For paragraph 1207Z (1) (e) of the Act, if the amount of the distribution exceeds the additional ordinary income that the individual is taken to receive in accordance with subsection 1207Y (1) of the Act during the attribution period, the Secretary must consider determining that the ordinary income of the individual received during that period does not include so much of the amount of the distribution that equals the additional ordinary income that the individual is taken to receive in accordance with subsection 1207Y (1) of the Act.

Division 3.3 Distributions by trusts

17 No double counting of attributed income — distribution by trust to all attributable stakeholders

- (1) This section applies if:
- (a) during a particular derivation period of a trust, an individual receives a distribution of corpus from the trust (the *distribution*); and
 - (b) the individual is an attributable stakeholder of the trust during an attribution period that corresponds with the derivation period of the trust; and
 - (c) the distribution made to the attributable stakeholder is part of a distribution to all attributable stakeholders of the trust (the *total distribution*); and
 - (d) the proportion that the distribution to each attributable stakeholder bears to the total distribution, expressed as a percentage, is the same as the attributable stakeholder's asset attribution percentage in relation to the trust.
- (2) For paragraph 1207Z (2) (d) of the Act, the Secretary must consider determining that the ordinary income of the individual received during the attribution period does not include the amount or value of the distribution if, but for this section, the distribution would be included in the ordinary income of the individual for that period.

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- (3) For paragraph 1207Z (2) (e) of the Act, the Secretary must consider determining that the ordinary income of the individual received during the attribution period does not include any part of the amount or value of the distribution if, but for this section, any part of the amount or value of the distribution would be included in the ordinary income of the individual for that period.

18 No double counting of attributed income — other distributions by trust

- (1) This section applies if:
- (a) during a particular derivation period of a trust, an individual receives a distribution of corpus or income from the trust (the *distribution*); and
 - (b) the individual is an attributable stakeholder of the trust during an attribution period that corresponds with the derivation period of the trust; and
 - (c) the distribution is made in circumstances other than those mentioned in section 14 and paragraphs 17 (1) (c) and (d); and
 - (d) the individual is taken to receive additional ordinary income, during that attribution period, in accordance with subsection 1207Y (1) of the Act.
- (2) For paragraph 1207Z (2) (d) of the Act, if the amount of the distribution is less than, or equal to, the additional ordinary income that the individual is taken to receive in accordance with subsection 1207Y (1) of the Act during the attribution period, the Secretary must consider determining that the ordinary income of the individual received during that period does not include the amount of that distribution.
- (3) For paragraph 1207Z (2) (e) of the Act, if the amount of the distribution exceeds the additional ordinary income that the individual is taken to receive in accordance with subsection 1207Y (1) of the Act during the attribution period, the Secretary must consider determining that the ordinary income of the individual received during that period does not include so much of the amount of the distribution that equals the additional ordinary income that the individual is taken to receive in accordance with subsection 1207Y (1) of the Act.

Part 4 Determination of derivation period (Act s 1208C)

19 Derivation period must reflect typical income

- (1) This section applies to the determination of a specified period as the derivation period of a specified company or trust in relation to an attributable stakeholder of the company or trust.
- (2) The derivation period must be a period that is determined having regard to the following matters:
 - (a) the ordinary income of the company or trust for a derivation period referred to in subsection 1208C (1) of the Act;
 - (b) the ordinary income of the company or trust for any other period or periods that may reasonably be regarded as typical earning periods for the company or trust;
 - (c) any circumstances affecting the company or trust during the periods referred to in paragraphs (a) and (b);
 - (d) whether, having regard to any circumstances referred to in paragraph (c), it is appropriate to use a derivation period different from the derivation period referred to in subsection 1208C (1) of the Act.

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Part 5 **Determination of attribution period
(Act s 1208D)****20** **Attribution period must reflect typical circumstances**

- (1) This section applies to the determination of an attribution period in relation to:
 - (a) a specified individual who is an attributable stakeholder of a specified company or trust; and
 - (b) a specified derivation period of the company or trust.
- (2) The attribution period must be a period that is determined having regard to the following matters:
 - (a) the ordinary income of the attributable stakeholder for the derivation period;
 - (b) the ordinary income of the attributable stakeholder for any other period or periods that may reasonably be regarded as typical earning periods for the attributable stakeholder;
 - (c) any circumstances affecting the attributable stakeholder during the periods referred to in paragraphs (a) and (b);
 - (d) any circumstances that may reasonably be regarded as likely to affect the ordinary income of the attributable stakeholder.