



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

2 Commencement

These Principles commence on 1 April 2017.

3 Definition

In these Principles:

Act means the *Social Security Act 1991*.

4 Purpose

These Principles set out decision-making principles with which the Secretary must comply for the purposes of making a determination under subsection 1208E (2), 1208G (6) or 1208H (1) of the Act.

Part 2 Excluded assets

5 Purpose of Part 2

This Part sets out decision-making principles with which the Secretary must comply for the purposes of making a determination under subsection 1208E (2) of the Act.

6 Excluded asset — capital transfer by genuine investor

- (1) This section applies if an individual (the *investor*), who is not an attributable stakeholder of a company, makes a genuine transfer of capital to the company for shares in the company.
- (2) This section also applies if an individual (the *investor*), who is not an attributable stakeholder of a trust, makes a genuine transfer of capital to the trust for units in the trust.
- (3) For subsections (1) and (2), a transfer of capital is a genuine transfer of capital if:
 - (a) the investor is over 18 years; and
 - (b) 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
 - (c) the investor has a legal or equitable right to a share of the capital on the winding-up of the company or trust; and
 - (d) the investor has a legal or equitable right to receive dividends or distributions under the constituent documents of the company or the terms of the trust.
- (4) The Secretary must consider the extent to which capital transferred in accordance with subsection (3) should be determined to be an excluded asset in relation to an attributable stakeholder of the company or trust, having regard to:
 - (a) the value of the capital transferred to the company or trust; and
 - (b) the value of shares or units received by the investor; and
 - (c) the extent, if any, to which the value of the capital would not be required to be disregarded by any express provision of the Act.

Section 7

Part 3 Excluded charge or encumbrance

7 Purpose of Part 3

This Part sets out decision-making principles with which the Secretary must comply for the purposes of making a determination under subsection 1208G (6) of the Act.

8 Determination that charge or encumbrance is excluded

In relation to a charge or encumbrance, the Secretary must take into account:

- (a) whether a transaction that gave rise to the charge or encumbrance was an arm's length transaction, having regard to the criteria described in section 9; and
- (b) the matters referred to in section 10.

9 Criteria for arm's length transaction

- (1) For paragraph 8 (a), a transaction is an arm's length transaction if:
 - (a) the transaction is for the purposes of the business activities of the company or trust; and
 - (b) the transaction is made under a written agreement that is signed by each party to the agreement, and witnessed by an individual who is not a party to the transaction; and
 - (c) each party to the transaction is:
 - (i) at least 18 years old; or
 - (ii) at least 16 years old and engaged in a full-time occupation; or
 - (iii) at least 16 years old and receiving a social security entitlement; and
 - (d) the transaction is made for an arm's length amount.
- (2) For subparagraph (1) (c) (ii), a **full-time occupation**:
 - (a) includes any employment, trade, business, profession, vocation or calling; and
 - (b) does not include a course of education at a school, college, university or similar institution.

Section 10**10 Other matters**

For paragraph 8 (b), the Secretary must also take into account, in relation to the transaction that gave rise to the charge or encumbrance:

- (a) whether the individual is the sole attributable stakeholder, or a member of a couple both members of which are the only 2 attributable stakeholders of the company or trust; and
- (b) the commercial, social and familial relationships (if any) between the parties to the transaction; and
- (c) the nature and circumstances of the transaction.

Section 11

Part 4 Effect of loan not secured by charge or encumbrance over asset of company or trust

11 Purpose of Part 4

This Part sets out decision-making principles with which the Secretary must comply in making a determination under subsection 1208H (1) of the Act.

12 Effect of unsecured loan on value of assets

In relation to an unsecured loan, the Secretary must take into account:

- (a) whether a transaction that gave rise to the loan was an arm's length transaction, having regard to the criteria described in section 13; and
- (b) the matters referred to in section 14.

13 Criteria for arm's length transaction

- (1) For paragraph 12 (a), a transaction is an arm's length transaction if:
 - (a) the transaction is for the purposes of the business activities of the company or trust; and
 - (b) the transaction is made under a written agreement that is signed by each party to the agreement, and witnessed by an individual who is not a party to the transaction; and
 - (c) each party to the transaction is:
 - (i) at least 18 years old; or
 - (ii) at least 16 years old and engaged in a full-time occupation; or
 - (iii) at least 16 years old and receiving a social security entitlement; and
 - (d) the transaction is made for an arm's length amount.
- (2) For subparagraph (1) (c) (ii), a **full-time occupation**:
 - (a) includes any employment, trade, business, profession, vocation or calling; and
 - (b) does not include a course of education at a school, college, university or similar institution.

Section 14**14 Other matters**

For paragraph 12 (b), the Secretary must also take into account, in relation to the transaction that gave rise to the charge or encumbrance:

- (a) whether the individual is the sole attributable stakeholder, or a member of a couple both members of which are the only 2 attributable stakeholders of the company or trust; and
- (b) whether the loan is secured by a charge or encumbrance over an asset other than an asset described in paragraph 1208H (1) (b) of the Act; and
- (c) the commercial, social and familial relationships (if any) between the parties to the transaction; and
- (d) the nature and circumstances of the transaction.