

Refund of franking credits

1 July 2008 to 30 June 2009

Endorsed income tax exempt entities and deductible gift recipients

Franking credits attached to franked dividends received by the following organisations may be refundable, provided the eligibility criteria are met:

- entities that are endorsed as exempt from income tax
- deductible gift recipients
- developing-country relief funds, and
- exempt institutions that are eligible for a refund under a Commonwealth law other than the income tax law.

Franking credits arise for shareholders when certain resident Australian companies pay income tax on their taxable income and distribute their after-tax profits by way of franked dividends. These franked dividends have franking credits attached. Franked dividends are received either directly as a shareholder or indirectly as a beneficiary of a trust.

Organisations that receive a dividend from a New Zealand company with Australian franking credits attached to it will be able to obtain a refund of those credits if they would have been able to, had the dividend been paid by an Australian company.

! New Zealand franking credits cannot be claimed.

If the New Zealand company that paid the dividend has not specified that the franking credit is Australian you should contact the company to ascertain whether the franking credit is Australian or New Zealand. In most cases, it will be a New Zealand franking credit.

WHICH ENDORSED INCOME TAX EXEMPT ENTITIES ARE ELIGIBLE?

To be eligible for a refund of franking credits, an entity must:

- have an Australian business number (ABN)
- satisfy the residency requirement, and
- be endorsed by us as an income tax exempt charity or an income tax exempt fund.

WHICH DEDUCTIBLE GIFT RECIPIENTS ARE ELIGIBLE?

To be eligible for a refund of franking credits, a deductible gift recipient (DGR) must:

- have an Australian business number (ABN)
- satisfy the residency requirement, and
- be endorsed by us as a DGR in its own right or be a DGR listed by name in the *Income Tax Assessment Act 1997*.

! A DGR must be endorsed in its own right. It is not sufficient if the DGR is only endorsed in relation to a fund, authority or organisation that it operates, such as a school building fund.

WHAT IS THE RESIDENCY REQUIREMENT?

An organisation will satisfy the residency requirement if, at all times during the income year for which it is applying for a refund, it:

- has a physical presence in Australia, and
- to that extent incurs its expenditure and pursues its objectives principally in Australia.

HOW DO YOU CHECK IF YOUR ORGANISATION IS ELIGIBLE?

To check if your organisation is a DGR or is endorsed as an income tax exempt charity or income tax exempt fund:

- visit the Australian Business Register website at www.abn.business.gov.au or
- phone **1300 130 248**.

WHAT ARE THE REQUIREMENTS FOR DEVELOPING-COUNTRY RELIEF FUNDS?

An entity is eligible for a refund of franking credits if it is a public fund declared by the Treasurer to be a developing-country relief fund, and it has not been prescribed by regulation as ineligible for the concession.

HOW DOES YOUR ORGANISATION APPLY FOR A REFUND OF FRANKING CREDITS?

Eligible organisations apply for a refund annually on the form *Application for refund of franking credits – Endorsed income tax exempt entities and deductible gift recipients – 1 July 2008 to 30 June 2009* (NAT 4131).

In June of each year we send a personalised refund application package to eligible organisations that applied for and received a refund in the previous financial year.

Eligible organisations that wish to apply for a refund, but have not received a refund package by the end of the last week of June, should contact us by phoning **1300 130 248**.



Australian Government
Australian Taxation Office

WHAT IF YOUR ORGANISATION HAS OUTSTANDING TAX LIABILITIES?

If your organisation has any outstanding tax liabilities or other debts that are collected by us, the amount of the refund claimed in an application will be offset against those outstanding tax liabilities and debts. The amount of any remaining franking credits will be then refunded to your organisation.

ARE THERE ANY LIMITS ON CLAIMING REFUNDS?

Rules apply to prevent an eligible organisation from receiving a franking credit on a distribution which is attributable to a franked dividend received through another eligible organisation.

EXAMPLE

A charitable trust, Charity, is an eligible organisation. It is paid a fully franked dividend of \$5,000. It claims and receives a franking credit of \$2,575. It then distributes the franked dividend of \$5,000 to its beneficiary, Benevolence, another charitable trust that is an eligible organisation. Benevolence receives the franked dividend in its capacity as a beneficiary of Charity. Benevolence is therefore not eligible to claim the franking credit, because Charity is entitled to claim it. This applies whether or not Charity claims the franking credit.

The following rules also operate to curb the unintended use of franking credits:

- specific anti-avoidance rules for eligible organisations
- franking credit trading rules
- general anti-avoidance rules.

WHAT ARE THE SPECIFIC ANTI-AVOIDANCE RULES?

A refund will not be available to an eligible organisation upon payment of a franked dividend directly from the company or indirectly through a trust, if a transaction related to that payment results in:

- the organisation obtaining a reduced benefit from the franked dividend (or notional trust amount)
- the organisation or another entity providing a benefit or incurring a detriment
- the entity that pays the dividend or trust distribution (or their associate) obtaining an advantage, or
- failure to pass full, unconditional ownership of property comprising the dividend (or trust distribution) to the organisation at the time of payment.

WHAT ARE THE FRANKING CREDIT TRADING RULES?

Your organisation's entitlement to a refund may be affected by the holding-period rule and the related-payments rule.

The holding-period rule requires your organisation to hold shares at risk for at least 45 days (90 days for preference shares) during the primary qualification period to be eligible for a refund. If the organisation is under no obligation to make a related payment, this rule only needs to be satisfied once for each purchase of shares.

The primary qualification period means the period commencing the day after the organisation acquires the shares and ends the day after the shares go ex-dividend.

The related-payments rule applies if your organisation has made, or is under an obligation to make, a related payment in relation to a dividend. The related-payments rule requires your organisation to hold shares at risk for at least 45 days (90 days for preference shares) during the secondary qualification period to be eligible for franking benefits. This rule must be satisfied for all dividends and distributions for which a related payment will be made.

The secondary qualification period means the period beginning on the 45th day before, and ending on the 45th day after, the day the shares became ex-dividend (noting that the relevant period is 90 days if the shares are preference shares).

➤ MORE INFORMATION

For more information about the issues in this fact sheet, you can:

- visit the non-profit section of our website at www.ato.gov.au or
- phone **1300 130 248**

If you don't speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

OUR COMMITMENT TO YOU

We are committed to providing you with guidance you can rely on. If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at www.ato.gov.au or contact us.

This publication was current in **May 2009**.