



Refunding franking credits: endorsed income tax exempt entities and deductible gift recipients

Franking credits attached to franked dividends received by endorsed income tax exempt entities, deductible gift recipients and public relief funds may be refundable, provided certain eligibility criteria are met.

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 it would have been able to, had the dividend been paid by an Australian company. New Zealand franking credits cannot be claimed.

WHICH INCOME TAX EXEMPT ENTITIES ARE ELIGIBLE?

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

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

WHICH DEDUCTIBLE GIFT RECIPIENTS ARE ELIGIBLE?

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

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

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 I CHECK IF MY 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 PUBLIC RELIEF FUNDS ARE ELIGIBLE?

A public fund is eligible for a refund of franking credits if it is a public fund declared by the Treasurer to be a relief fund. The Treasurer must be satisfied that the fund:

- has been established by an organisation declared by the Minister for Foreign Affairs and Trade to be an approved organisation, and
- is solely for the relief of people in a country declared by the Minister for Foreign Affairs and Trade to be a developing country.

A relief fund will not be eligible for the refund if it has been prescribed by regulation as ineligible for the concession.

HOW DOES AN ELIGIBLE 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* (NAT 4131).

In May of each year a personalised refund application package is sent to organisations that:

- are endorsed income tax exempt entities, DGRs endorsed in their own right or DGRs specifically named in the Act, and
- 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 first week of June, should contact the Tax Office by phoning **1300 130 248**.

OFFSET AGAINST ANY OUTSTANDING TAX LIABILITIES

If your organisation has any outstanding tax liabilities or other debts that are collected by the Tax Office, 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 THE REFUND?

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

Charity is a charitable trust that 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*. *Benevolence* is also a 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 usage 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 distribution trust) to the organisation at the time the dividend or trust distribution is received by the organisation.

➤ MORE INFORMATION

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

- phone **1300 130 248**
- visit the non-profit organisations section of our website at **www.ato.gov.au**
- obtain a fax by phoning **13 28 60**

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 advice and information you can rely on. If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

The information in this publication is current at May 2006.

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.