



General class investors

A 'general class investor' is not a financial entity or an ADI but is subject to the thin capitalisation regime.

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QC 102755

What is a general class investor

Definition of a 'general class investor' for an income year.

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An entity is a general class investor for an income year if, and only if:

- for a period that is all or part of the income year, the entity is not any of the following

- an outward investing financial entity (non-ADI)
- an inward investing financial entity (non-ADI)
- an outward investing entity (ADI)
- an inward investing entity (ADI), and
- assuming that the entity were a financial entity for all of the income year, it would be, for the income year, any of the following
 - an outward investing financial entity (non-ADI)
 - an inward investing financial entity (non-ADI).

Effective for income years beginning on or after 1 July 2023, the following terms are repealed:

- outward investing entity (non-ADI)
- outward investor (general)
- inward investor (general)
- inward investing entity (non-ADI)
- inward investment vehicle (general)
- inward investor (general).

Entities that previously fell into one of the 'general' classes of entities – outward investor (general), inward investment vehicle (general) or inward investor (general) – will fall under the new 'general class investor' definition.

Broadly, the following entities, provided they are not financial entities or ADIs, will be general class investors:

- an Australian entity that controls a foreign entity or carries on business at or through an overseas permanent establishment
- an Australian entity that is an associate entity of the entity above
- an Australian entity that is controlled by a foreign entity or entities
- a foreign entity.

For general class investors, the amount of debt deductions disallowed (if any) for an income year is determined through the application of one of the following tests:

- the fixed ratio test
- the group ratio test
- the third party debt test.

Entities that are not general class investors are subject to the previous thin capitalisation tests, with the exception of the arm's length debt test which is repealed for all entities for income years commencing on or after 1 July 2023.

The previous law continues to apply for entities that are Australian plantation forestry entities for a period that is all or part of the income year.

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Procedure of choices

A 'general class investor' must determine which test to apply.

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Under the thin capitalisation rules, general class investors are subject to the fixed ratio test unless they make a choice to use either the group ratio test or the third party debt test for an income year. In some cases, certain general class investors are **deemed to have made a choice to use the third party debt test** by subsection 820-46(5) of the ITAA 1997.

A choice for an income year to use either the group ratio test or the third party debt test must be made in the approved form by the following dates:

- on or before the earlier of the following days
 - the day the entity lodges its income tax return for the income year
 - the day the entity is required to lodge its income tax return for the income year

- a later day allowed by the Commissioner.

An entity that has made a choice (other than a choice that is deemed to have made under subsection 820-46(5) of the ITAA 1997) to use the group ratio test or third party debt test may apply to the Commissioner, in the approved form, to revoke the choice. An entity must apply to revoke a choice in relation to an income year within 4 years after they lodge their income tax return for the income year (or are required to lodge their income tax return for the income year if that date is earlier).

In deciding whether to revoke a general class investor's choice, the Commissioner must consider whether it is fair and reasonable, having regard to matters the Commissioner considers relevant.

If an entity revokes its choice, then the entity is taken to have never made the choice. This has the effect that deemed choices previously taken to have been made under subsection 820-46(5) of the ITAA 1997 are taken to have never been made.

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Deemed choice to use third party debt test

Certain general class investors are deemed to have made a choice to apply the third party debt test.

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General class investors are deemed to have made a choice to use the third party debt test under subsection 820-46(5) if certain conditions are satisfied.

Broadly, if the entity that issues a debt interest chooses to use the third party debt test, then their 'associate entities' in the 'obligor group' in relation to the debt interest are all deemed to have chosen that test. A **modified definition of associate entity** applies for this purpose under subsection 820-48(2) of the ITAA 1997.

Additionally, entities that have entered into a cross staple arrangement together are also deemed to have chosen the third party debt test if one of those entities chooses to use that test.

If an entity is deemed to have made a choice to use the third party debt test, then the entity cannot make a choice to use the group ratio test, and any existing choice to use the group ratio test in relation to that income year is revoked and taken to never have been made.

Obligor group

An obligor group consists of the following entities:

- the borrower in relation to a debt interest
- each 'obligor entity', being an entity whose assets provide recourse to a creditor for payment of the borrower's debt.

A creditor does not need to have recourse to all the assets of an entity for that entity to be an obligor entity. It is sufficient for recourse to be had to one or more assets of the entity.

However, where a creditor only has recourse to the assets of an entity that are membership interests in the borrower, then that entity will not be an obligor entity.

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