

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

Page 1 of 2

Public advice and guidance compendium – PCG 2017/D9

This is a compendium of responses to the issues raised by external parties to Draft Practical Compliance Guideline PCG 2017/D9 *Dividend equivalent payments made by a trustee under an employee share scheme*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Practicality of guideline Generally, arrangements of the type referred to in the PCG are unlikely to be implemented by employers. To satisfy the requirements of the PCG, the trustee must have an absolute discretion to determine when the dividend equivalents payments are made. This results in the PCG having limited practical application. An example of the circumstance in which this PCG will be satisfied, in particular one that satisfies the second condition in paragraph 9 of PCG 2017/D9 should be provided. The Commissioner should consider issuing a safe harbour guideline (or amending the requirements in paragraph 9 of PCG 2017/D9) within which a trustee of an employee share trust (EST) can make dividend equivalent payments which are not taxable as remuneration or otherwise to employees and without breaching the sole activities test in subsection 130-85(4) of the <i>Income Tax Assessment Act 1997</i>. Such a safe harbour would provide greater practical	We have updated our practical administration approach to make the requirements less onerous. Our compliance approach is now contained in Appendix 2 of Taxation Determination TD 2017/26 <i>Income tax: employee share schemes - when a dividend equivalent payment is assessable to an employee as remuneration</i>. Refer to the compendium of responses to the issues raised by external parties to Draft Taxation Determination TD 2017/D2¹.

¹ Draft Taxation Determination TD 2017/D2 *Income tax: when will a dividend equivalent payment, made by a trustee under an employee share scheme that delivers ESS interests taxed by Subdivision 83A-B or 83A-C of the Income Tax Assessment Act 1997 be assessable as remuneration under section 6-5?*

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

Page 2 of 2

Issue No.	Issue raised	ATO Response/Action taken
	utility than that currently provided. The safe harbour guideline should allow trustees of ESTs to make dividend equivalent payments to employees that are not assessable as remuneration where: • dividends have been derived by the EST post the vesting of the ESS interests held by the employees • the trustee of the EST, in accordance with section 99A of the <i>Income Tax Assessment Act 1936</i>, pays tax on these dividends • the after tax amount of the dividends is used to pay the dividend equivalent payments to the employees in a later year once the employees have acquired an interest in shares held in the EST for those employees (that is, post exercise of the ESS interest) • dividend equivalent payments are only payable if dividends accrue and the ESS interests are exercised, and • the trust deed for the EST mandates that dividend equivalent payments are made and there is no option available to employers to change this arrangement or to make the payment in lieu.	