


# ***CR 2007/18 - Income tax: Innoventure First Trust Deed - Distribution Reinvestment Plan***

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## Class Ruling

### Income tax: Innoventure First Trust Deed – Distribution Reinvestment Plan

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#### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in this Ruling are:

- subsection 110-25(2) of *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 110-55(2) of the ITAA 1997; and
- section 725-145 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies is those who:
- hold units in Innoventure First Trust (IFT) and elect to participate in the Distribution Reinvestment Plan (DRP) for the distribution of the distributable income of IFT for the 2007 financial year, to be made after the end of that year (the 2007 distribution); and
  - are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 26 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
  - this Ruling may be withdrawn or modified.
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## Date of effect

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8. This Ruling applies for the income years ending 30 June 2007 and 2008. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Scheme

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13. The following description of the scheme is based on information provided by the applicant. The following documents or parts of them form part of and are to be read with the description:

- the class ruling application dated 23 November 2005;
- notice of the meeting of unit holders of IFT held 5 October 2005, and explanatory memoranda for the DRP confirmed by that meeting;
- the IFT Trust Deed as amended; and
- correspondence received from the applicant between 26 December 2005 and 15 December 2006.

**Note:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

14. This Ruling applies to the implementation of the IFT DRP for a single distribution being the distribution of the distributable income of the Trust for the 2007 financial year, to be made after the end of that year (the 2007 distribution). This Ruling does not apply to other distributions, including interim distributions.

15. IFT was created in March 2004 and its terms are set out in the IFT Trust Deed, as amended. Innoventure Group Pty Ltd (the Manager) and Innoventure Nominees Pty Ltd (the Trustee) have separate offices. The Manager manages the business, property and affairs of IFT. The Trustee is controlled by external non executive directors. Some basic administrative functions are performed by the Manager's personnel under the supervision of the directors of the Trustee.

16. IFT has, in accordance with a settled investment policy, acquired a number of businesses. Further acquisitions are planned.

17. The Trustee has the power to distribute amounts of capital and income.

18. IFT has only one class of units (ordinary units) on issue. Under the terms of the Trust Deed, any final distribution of the distributable income for a financial year (when made) will be made to those who hold units on the final day of that year and in accordance with their proportionate unit holdings on that date (the Income Distribution Record Date). The distributable income for a year of income will be the net income, reduced by any interim distributions made during that year, unless the Manager directs that an additional amount of income be distributed.

19. Interim distributions are made by the Trustee at the direction of, and on a date nominated by, the Manager. Interim distributions are made to unit holders in proportion to their unit holdings on the date nominated by the Manager.

20. The unit holders in IFT as at the time of issue of this Ruling consist of a mixture of trusts, superannuation funds, companies and individuals.

21. The Trustee has proposed, and the unit holders have accepted, a DRP for the final distribution of the 2005 financial year and later distributions.

22. The DRP has been proposed to secure resources for projected capital requirements.

23. Under the terms of the DRP, the Trustee will offer to unit holders the right to reinvest part or all of a distribution in exchange for new ordinary units in IFT.

24. The Trustee will determine the subscription price at which those ordinary units are to be issued within formula based limits. The limits for the 2007 distribution are that the subscription price for the units will be not less than the cum distribution market value of an IFT unit, reduced by the lesser of 10% of that cum distribution market value or the amount of the distribution.

25. Shortly after the determination of the net income of IFT for the 2007 financial year, the 2007 distribution and the subscription price for units to be offered under the DRP is announced. The 2007 distribution and DRP are made on a later day.

26. Immediately after they are issued, the market value of the ordinary units issued under the DRP for the 2007 distribution will not be greater than their subscription price.

## **Ruling**

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### **Subscription price for ordinary units issued under DRP**

27. On the issue of IFT ordinary units to the unit holders who elect to participate in the DRP for the 2007 distribution, any discount on the subscription price is not assessable income of the unit holder.

### **Application of direct value shifting rules in Division 725**

28. On the issue of IFT ordinary units to the unit holders who elect to participate in the DRP for the 2007 distribution, there will not be a direct value shift under section 725-145.

### **Cost base of ordinary units issued under DRP**

29. The first element of the cost base and reduced cost base of units issued under the DRP for the 2007 distribution will be equal to the subscription price for those units under subsections 110-25(2) and 110-55(2).

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**Commissioner of Taxation**

14 March 2007

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## Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### **Subscription price for ordinary units issued under DRP**

30. On the issue of IFT ordinary units to the unit holders who elect to participate in the DRP for the 2007 distribution, any nominal discount on the subscription price is not assessable income of the unit holder. Any nominal discount will be reflected in the cost base of the IFT units acquired.

31. Under the terms of the DRP, a unit holder elects to have the distributions payable to them applied to acquire new units in IFT. There is consequently a payment by the Trustee of the 2007 distribution to the unit holder.

32. The first element of cost base and reduced cost base under subsections 110-25(2) and 110-55(2) will include the amount of the distribution that has been applied to acquire each unit. The market value substitution rule in subsection 112-20(2) does not apply as the condition in paragraph (a) of that subsection (about non-arm's length dealing) is not satisfied.

### **Application of direct value shifting rules in Division 725**

33. Division 725 may apply where there is a direct value shift, as defined in section 725-145, and the further threshold conditions in Subdivision 725-A (as listed in section 725-50) are satisfied.

34. There is a direct value shift if, under a scheme involving equity or loan interests in an entity (called the *target entity*), there is a decrease in the market value of some equity or loan interests in that entity, and there is also an increase in the market value or an issue at a discount of other equity or loan interests in that entity:  
section 725-145. The decreases, increases or discount issues must be reasonably attributable to a thing or things done under that scheme: paragraph 725-145(1)(b) and subsections 725-145(2) and 725-145(3).

35. The DRP is a scheme involving equity or loan interests in IFT, and acts taken to implement the DRP for the 2007 distribution are things done under that scheme. The Trustee and Manager state that units will not be issued at a discount to market value under the DRP, and have set a pricing formula accordingly. This will be realised for the 2007 distribution, as no interests will be issued at a discount to market value. As a result, there will be no direct value shift as defined in section 725-145 on the implementation of the DRP for the 2007 distribution.

36. The condition in subsection 725-145(1) is not satisfied. There is no decrease in value for an interest in IFT that is reasonably attributable to the implementation of the DRP for the 2007 distribution, for which there is a corresponding increase in value or issue at a discount of another interest in that entity.

#### **Distribution received from IFT**

37. The application of Part III of Division 6 of the ITAA 1936 for the 2007 distribution is not affected by the fact that a cash payment is not actually received.

38. Where the 2007 distribution includes an amount that is not included in a unit holder's assessable income, CGT event E4 in section 104-70 will happen. When a CGT event E4 happens there will be a reduction in the cost base and reduced cost base of the units in respect of which the distribution is made: subsection 104-70(6). A unit holder will make a capital gain if the total of the non assessable parts they receive in respect of a unit in IFT for a year of income is greater than their cost base for that unit under subsection 104-70(4). The capital gain is the amount of the excess. If a unit holder makes a capital gain, the cost base and reduced cost base of the unit is reduced to nil pursuant to subsection 104-70(5).

## **Appendix 2 – Detailed contents list**

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39. The following is a detailed contents list for this Ruling:

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## References

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*Previous draft:*

Not previously issued as a draft

*Subject references:*

- CGT events E1 - E9 trusts
- CGT trust distributions
- general value shifting regime
- unit trust distributions

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 Pt III Div 6
- ITAA 1997 104-70
- ITAA 1997 104-70(4)
- ITAA 1997 104-70(5)
- ITAA 1997 104-70(6)

- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-20(2)
- ITAA 1997 112-20(2)(a)
- ITAA 1997 Div 725
- ITAA 1997 Subdiv 725-A
- ITAA 1997 725-50
- ITAA 1997 725-145
- ITAA 1997 725-145(1)
- ITAA 1997 725-145(1)(b)
- ITAA 1997 725-145(2)
- ITAA 1997 725-145(3)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

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*ATO references*

NO: 2007/3140

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT events E1 to E9 - trusts