


# ***CR 2014/12 - Income tax: demerger of Recall Holdings Limited by Brambles Limited***

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## Class Ruling

### Income tax: demerger of Recall Holdings Limited by Brambles Limited

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provisions

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

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 44 of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45BA of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Subdivision 115-A of the ITAA 1997;
- Division 125 of the ITAA 1997; and
- section 975-300 of the ITAA 1997.

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

## **Class of entities**

3. The class of entities to which this Ruling applies is the holders of ordinary shares in Brambles Limited who:

- (a) were listed on the share register of Brambles Limited as at the Record Date (16 December 2013) for the demerger of shares in Recall Holdings Limited;
- (b) on the Record Date, held their shares in Brambles Limited neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) that is, broadly on capital account;
- (c) were each a 'resident of Australia' as defined in subsection 6(1) of the ITAA 1936 on the Record Date; and
- (d) are not subject to the taxation of financial arrangement rules in Division 230.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

## **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 that the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 38 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.

## Date of effect

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7. This Ruling applies from 1 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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8. The following description of the Scheme is based on information provided by Brambles Limited's advisers, the applicant for this Ruling. The following documents, or relevant parts of them, form part of and are to be read with this description:

- (a) Class Ruling Application dated 22 July 2013.
- (b) Brambles Limited 2006 Performance Share Plan, consolidated version as at November 2011.
- (c) Brambles Limited MyShare Plan, consolidated version as at November 2011.
- (d) The Scheme Book for the Demerger of Recall Holdings Limited by Brambles Limited dated 23 October 2013.
- (e) Brambles Limited Annual Report 2013.
- (f) All other correspondence from the Applicant in relation to this Ruling.

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

9. The Scheme that is the subject of this ruling involved the demerger of shares in Recall Holdings Limited by Brambles Limited (Demerger). The Demerger happened on 18 December 2013.

### The Brambles Group

10. The Brambles Group is a global pooling solutions group specialising in the provision of reusable pallets, crates and containers and associated logistics services.

11. Prior to the Demerger the Brambles Group owned and operated two main businesses:

- (a) The pooling solutions business operating under the CHEP and IFCO brands and associated logistical services (the Pooling Business). The phrase 'pooling solutions' refers to the shared use of high quality standard pallets and containers by multiple customers who collectively benefit from the network scale of the pool, versus trying to manage reusable equipment individually.
- (b) The information management services business, operating under the Recall brand name (the Recall Business).

12. The ultimate holding company of the Brambles Group is Brambles Limited (BL). BL is an Australian resident company, whose shares are listed on the Australian Securities Exchange (ASX).

13. BL has one class of fully paid ordinary shares that have no par value. At the time of undertaking the Scheme, BL had on issue:

- 1,561,480,363 ordinary shares; and
- 10,370,007 unlisted rights to acquire shares in BL that have been issued under various Brambles employee share plans (BL Share Rights).

14. There were no other ownership interests (as defined in subsection 125-60(1)) in BL immediately before the Demerger.

15. All BL shares are post-CGT assets because they were either issued in December 2006 upon the unification of the dual listed company structure previously employed by the Brambles Group or after that time.

16. Approximately 60% of BL shareholders were Australian residents at the time of Demerger.

17. As at 30 June 2013, BL had share capital of approximately A\$8.2 billion (as recorded in its Statement of Financial Position). For the purposes of preparing the US dollar consolidated financial statements published in Brambles' Annual Report each year, transactions impacting the share capital of BL are recorded in US dollars using the historical AUD/USD exchange rates relevant to the nature of the transaction and the time at which that transaction occurred.

## **The Demerger**

18. On 2 July 2013, BL announced a proposal to demerge the Recall Business by distributing 100% of the shares in Recall Holdings Limited (RHL) to BL shareholders.

19. To effect the demerger by BL of RHL shares, the shareholders of BL were asked to vote at a general meeting on 3 December 2013 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of BL by the Capital Reduction Aggregate Amount (the capital reduction amount). This amount was debited to the share capital account of BL. The capital reduction amount equated to \$0.4803 per BL ordinary share.

20. The market value of the shares in RHL demerged by BL exceeded the capital reduction amount.

21. The RHL shares were acquired by the BL shareholders by applying the following amounts distributed to them by BL (the demerger distribution) to the acquisition of those RHL shares:

- the capital reduction amount being a return of share capital in the amount of approximately \$0.4803 on each BL share; and
- the dividend amount, being the balance of the demerger distribution in the amount of \$0.3878 per BL share.

22. The total demerger distribution amount of \$1,355,431,532 was ascertained by reference to the volume weighted average price of the RHL shares as traded in the ordinary course of trading on the ASX (on a deferred settlement basis) over the first five trading days after the Effective Date, 9 December 2013.

23. As a result of the Demerger, BL shareholders will own shares in both BL and RHL.

24. BL shareholders (other than Ineligible Foreign BL Shareholders, and Small Shareholders who chose to participate in the share sale facility) received one RHL share for every five BL shares they held at the Record Date for the demerger of shares in RHL.

25. A BL shareholder was an Ineligible Foreign BL Shareholder if it was a resident of a jurisdiction where:

- (a) a foreign law impeded BL's ability to transfer RHL shares to them; or
- (b) it was impractical or unreasonably onerous to determine whether a foreign law impeded BL's ability to transfer RHL shares to them.

26. BL allocated the RHL shares that would otherwise be transferred to an Ineligible Foreign BL Shareholder to a share sale agent. The share sale agent was required to sell as soon as reasonably practicable the RHL shares and remit the cash proceeds, less expenses, to the Ineligible Foreign BL Shareholder.

27. BL shareholders with a registered address in Australia and New Zealand that held 2,500 BL shares or less as at the Record Date (i.e. Small Shareholders) were able to elect to sell on the ASX all of the RHL shares that they would otherwise receive. That sale was done by a Sale Agent, with the sale proceeds remitted to them, free of any brokerage costs or stamp duty.

## **Pre-Demerger transactions**

28. The Recall Business was conducted through subsidiaries of BL located in various countries. Prior to the Demerger, it was necessary for all the relevant Recall subsidiaries to be transferred under a single Australian holding company, so that all of the shares in that company could be demerged to BL shareholders. To this end, various intra-group transactions occurred to ensure that all of the entities that conduct the Recall Business were wholly owned subsidiaries of RHL.

29. RHL was a wholly owned direct subsidiary of Brambles Industries Limited and not BL. Prior to the Demerger, Brambles Industries Limited sold all of its RHL shares to BL, in consideration for which BL issued Brambles Industries Limited with an intercompany loan note.

30. Prior to the Demerger, Brambles Industries Limited paid a dividend to its sole shareholder, Brambles Holdings International Pty Limited, which in turn paid an equivalent dividend to its sole shareholder, BL. The amount of these dividends equalled the anticipated dividend component of the demerger distribution by BL to BL shareholders.

## **Reasons for the restructure**

31. The Demerger was undertaken for the following reasons:
- (a) Improve the operational performance of the Pooling Business by allowing management to direct its energy and resources to a single line of business.
  - (b) Improve the operational performance of the Recall Business by allowing its management to pursue their own business strategy and to establish a capital structure and financial policies aligned to this business.
  - (c) Enhance the value to the shareholders of both the Pooling Business and the Recall Business and to provide them with increased flexibility for managing their exposure to both businesses.
  - (d) Facilitate the global realignment of all of the businesses in the Brambles Group in order to improve the operational efficiency of its global businesses.

**Accounting for the distribution to effect the Demerger**

32. BL accounted for the distribution of RHL shares under the Demerger by debiting its share capital account by the capital reduction amount of \$749,923,196.

33. The difference between the market value, at the time of the Demerger, of the RHL shares and the capital reduction amount was debited to distributable reserves and was not sourced from BL's share capital account.

**BL Share Rights issued under employee share plans**

34. Just before the Demerger, BL Share Rights represented less than 1% of the total ownership interests in BL, taking into account both their number and value. This satisfied the 3% ceiling in subsections 125-75(1) and (2).

35. BL Share Rights are acquired by Brambles Group employees through one of BL's employee share plans:

- (a) The BL 2006 Performance Share Plan
- (b) The BL MyShare Plan

**Other matters**

36. Less than 50% (by market value) of the assets of BL consisted of taxable Australian real property at the time of the Demerger (Subdivision 855-A).

37. There was no off-market buy-back of shares (as defined in Division 16K of Part III of the ITAA 1936) under the Demerger.

38. This Ruling is made on the following basis:

- (a) The share capital account of BL was not tainted (within the meaning of Division 197) immediately before the implementation of the Demerger.
- (b) BL will not make an election under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 do not apply to the total demerger dividend for all shareholders.
- (c) Just after the Demerger, at least 50% by market value, of all the CGT assets owned by RHL and its subsidiaries were used, directly or indirectly, in a business carried on by one or more of those entities in satisfaction of subsection 44(5) of the ITAA 1936.

## Ruling

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### **CGT consequences**

#### ***CGT event G1***

39. CGT event G1 happened in relation to each BL share owned by a BL shareholder at the time BL made the payment of the capital reduction amount under the Demerger (which was applied to the acquisition of the RHL shares) (section 104-135).

#### ***Capital gain***

40. A BL shareholder made a capital gain when CGT event G1 happened if the capital reduction amount (\$0.4803 per BL share) exceeded the cost base of the BL share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

41. If a BL shareholder made a capital gain from CGT event G1 happening in respect of a BL share, the share's cost base and reduced cost base are reduced to nil (subsection 104-135(3)).

#### ***Demerger roll-over***

42. A demerger, as defined under section 125-70, happened to the BL demerger group (which included BL and RHL) under the Demerger.

43. A BL shareholder who is a resident of Australia can choose to obtain demerger roll-over under subsection 125-55(1) for their BL shares.

#### ***CGT consequences of choosing demerger roll-over***

44. A BL shareholder who chooses demerger roll-over:

- (a) will disregard any capital gain made when CGT event G1 happened in relation to each of their BL shares under the Demerger (subsection 125-80(1)); and
- (b) must recalculate the cost base and reduced cost base of their BL shares, and calculate the cost base and reduced cost base of their new RHL shares (subsection 125-80(2)).

45. The first element of the cost base and reduced cost base of each BL and RHL share is worked out by:

- (a) taking the sum of the cost bases of the BL shares just before the Demerger; and
- (b) apportioning that sum between the BL shares and RHL shares received under the Demerger.

46. The apportionment of this sum is done on a reasonable basis having regard to the market values (just after the Demerger) of the BL shares and RHL shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

47. The Commissioner accepts that a reasonable approximation of the market value (just after the Demerger) of a BL share and a RHL share is \$8.68 and \$4.34 respectively, using a volume weighted average price analysis of those shares as traded in the ordinary course of trading on the ASX over the five trading days immediately following the Effective Date.

48. Accordingly, having regard to the distribution ratio under the Demerger of one RHL share for every five BL shares, for the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and 125-80(3) of the ITAA 1997, the Commissioner accepts that a reasonable apportionment of the summed cost bases of the BL shares (just before the Demerger) is to attribute:

- 90.91% of the summed cost bases to the BL shares; and
- 9.09% of the summed cost bases to the RHL shares.

***CGT consequences of not choosing demerger roll-over***

49. A BL shareholder who does not choose demerger roll-over:

- (a) cannot disregard any capital gain made when CGT event G1 happened in relation to their BL shares under the Demerger;
- (b) is eligible to make a discount capital gain from CGT event G1 if they satisfy the conditions of Subdivision 115-A; and
- (c) must calculate the first element of the cost base and reduced cost base of their BL shares and the corresponding RHL shares in the same manner described in paragraphs 45 to 48 of this Ruling (subsections 125-85(1) and (2)).

***Acquisition date of the RHL shares for the purpose of making a discount capital gain***

50. For the purpose of determining eligibility to make a discount capital gain, an RHL share received by a BL shareholder under the Demerger will be taken to have been acquired on the date the shareholder acquired, for CGT purposes, the corresponding BL shares (item 2 of the table in subsection 115-30(1)). This will be the case whether or not the shareholder chooses demerger roll-over.

## **Dividend consequences**

### ***Distribution debited to the share capital account is not a dividend for income tax purposes***

51. To the extent that the demerger distribution to BL shareholders under the Demerger was debited to the share capital account of BL (i.e. the capital reduction amount), it is not a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

### ***Balance of the distribution is a demerger dividend***

52. To the extent that the balance of the demerger distribution to BL shareholders is a dividend, it will be a demerger dividend (subsection 6(1) of the ITAA 1936).

53. BL shareholders received a demerger dividend consisting of a pro rata share of the excess of the money value of the demerger distribution over the amount debited to the share capital account of BL (see Taxation Ruling TR 2003/8).

54. The demerger dividend is neither assessable income nor exempt income of the BL shareholders (subsections 44(3) and 44(4) of the ITAA 1936).

## **Application of sections 45B, 45BA and 45C of the ITAA 1936**

55. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to BL shareholders under the Demerger.

56. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to BL shareholders under the Demerger.

## **Appendix 1 – Explanation**

**ⓘ** *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.*

57. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

### ***Demerger roll-over***

58. The demerger roll-over provisions in Division 125 contain a number of conditions for eligibility to choose roll-over. The main conditions that are relevant to the Demerger are:

- (a) a person owns a share in a company, or a unit or other interest in a trust (the original interest);
- (b) the company or trust is the head entity of a demerger group;
- (c) a demerger happens to the demerger group; and
- (d) under the demerger, a CGT event happens to the original interest and the person acquires a new or replacement interest in the demerged entity and nothing else.

59. Under the Demerger, the conditions for choosing demerger roll-over under Division 125 are satisfied in respect of the demerger of RHL shares. As a consequence, the demerger concessions outlined in Division 125 and in subsections 44(3) and (4) of the ITAA 1936, are available to the BL shareholders in respect of the demerger of RHL shares.

### ***Distribution debited to the share capital account is not a dividend for income tax purposes***

60. Subsection 44(1) of the ITAA 1936 includes in a resident shareholder's assessable income any dividends, as defined in subsection 6(1) of the ITAA 1936, paid to the shareholder out of profits derived by the company from any source.

61. A 'dividend' is defined in subsection 6(1) of the ITAA 1936 to include any distribution made by a company to any of its shareholders, whether in money or other property. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) excludes a distribution from the meaning of 'dividend' if the amount of a distribution is debited against an amount standing to the credit of the company's share capital account.

62. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

63. Subsection 975-300(3) states that an account is not a share capital account if it is tainted.

64. The demerger distribution to BL shareholders was partly recorded as a debit to BL's share capital account of \$749,923,196. As the share capital account of BL was not tainted within the meaning of Division 197, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 applies. Accordingly the part of the demerger distribution debited to the share capital account, was not a 'dividend' as defined in subsection 6(1) of the ITAA 1936. Therefore, it will not be included in the assessable income of BL shareholders under subsection 44(1) of the ITAA 1936.

### ***Balance of the distribution is a demerger dividend***

65. The BL shareholders also received a dividend to the extent that the amount of the demerger distribution exceeded the amount debited against the share capital account (see Taxation Ruling TR 2003/8).

66. This dividend is not assessable income or exempt income (subsections 44(3) and 44(4) of the ITAA 1936) if:

- the dividend was a 'demerger dividend' (as defined in subsection 6(1) of the ITAA 1936);
- BL (as the head entity of the demerger group) does not elect that subsections 44(3) and 44(4) of the ITAA 1936 will not apply to the demerger dividend (subsection 44(2) of the ITAA 1936); and
- subsection 44(5) of the ITAA 1936 is satisfied.

67. As each of the conditions in paragraph 66 of this Ruling are satisfied, the demerger dividend received by BL shareholders will not be assessable income or exempt income (subsection 44(4) of the ITAA 1936).

### **Application of sections 45B, 45BA and 45C of the ITAA 1936**

68. Section 45B of the ITAA 1936 is an anti-avoidance provision which, if applicable, allows the Commissioner to make a determination that all or part of a return of capital to be received by shareholders is to be treated as an unfranked dividend.

69. The purpose of section 45B of the ITAA 1936 is to ensure that the relevant amounts distributed to shareholders are treated as dividends for tax purposes if certain payments, allocations and distributions are made in substitution for dividends. Specifically, the provision applies where:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company (paragraph 45B(2)(a));

- (b) under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose, (other than an incidental purpose) of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

70. The arrangement involving the payment of the demerger distribution to BL shareholders, and the application of the demerger distribution to the acquisition of the RHL shares, constitutes a scheme for the purposes of section 45B of the ITAA 1936.

71. The phrase 'provided with a demerger benefit' is defined in subsection 45B(4) of the ITAA 1936 and includes a company providing a person with ownership interests in that or another company. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936 and includes the distribution of share capital to a person. The arrangement involving the payment of the demerger distribution and the application of the demerger distribution to the acquisition of the RHL shares means that BL shareholders will be taken to have been provided with a demerger benefit, and provided with a capital benefit.

72. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the relevant circumstances (as outlined in subsection 45B(8) of the ITAA 1936) of the scheme to determine whether it could be concluded that entities that entered into or carried out the scheme or any part of the scheme did so for a purpose (other than an incidental purpose) of enabling the relevant taxpayer (BL shareholders) to obtain a tax benefit. Having regard to the relevant circumstances, and on the basis of the information provided, the Commissioner has concluded that the demerger benefits and capital benefits provided to the BL shareholders have not been made for a more than incidental purpose of obtaining a tax benefit.

73. Accordingly, the Commissioner will not make a determination:

- under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to BL shareholders under the demerger of RHL shares;
- under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to BL shareholders under the demerger of RHL shares.

**Appendix 2 – Detailed contents list**

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

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## References

<i>Previous draft:</i>	- ITAA 1936 45B(3)(a)
Not previously issued as a draft	- ITAA 1936 45B(3)(b)
	- ITAA 1936 45B(4)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 45B(5)
TR 2003/8; TR 2006/10	- ITAA 1936 45B(8)
	- ITAA 1936 45BA
	- ITAA 1936 45C
<i>Subject references:</i>	- ITAA 1936 Pt III Div16k
- capital benefit	- ITAA 1997 104-135
- capital gains	- ITAA 1997 104-135(3)
- CGT events	- ITAA 1997 Subdiv 115-A
- CGT event G1–G3	- ITAA 1997 115-30(1)
- cost base adjustments	- ITAA 1997 Div 125
- demerger	- ITAA 1997 125-55(1)
- demerger allocation	- ITAA 1997 125-70
- demerger benefit	- ITAA 1997 125-75(1)
- demerger dividend	- ITAA 1997 125-75(2)
- demerger group	- ITAA 1997 125-80(1)
- demerger subsidiary	- ITAA 1997 125-80(2)
- return of capital on shares	- ITAA 1997 125-80(3)
	- ITAA 1997 125-85(1)
<i>Legislative references:</i>	- ITAA 1997 125-85(2)
- ITAA 1936 6(1)	- ITAA 1997 Div 197
- ITAA 1936 44(1)	- ITAA 1997 Div 230
- ITAA 1936 44(2)	- ITAA 1997 Subdiv 855-A
- ITAA 1936 44(3)	- ITAA 1997 975-300
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- ITAA 1936 44(5)	- ITAA 1997 977-50
- ITAA 1936 45B	- ITAA 1997 995-1(1)
- ITAA 1936 45B(2)(a)	- TAA 1953
- ITAA 1936 45B(2)(b)	- Copyright Act 1968
- ITAA 1936 45B(2)(c)	

### ATO references

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