TD 2003/D13 - Income tax: is a dividend paid before 1 July 1987 an unfranked dividend for the purposes of section 705-50 of the Income Tax Assessment Act 1997 (ITAA 1997)?

This cover sheet is provided for information only. It does not form part of *TD 2003/D13 - Income tax: is a dividend paid before 1 July 1987 an unfranked dividend for the purposes of section 705-50 of the Income Tax Assessment Act 1997 (ITAA 1997)?*

This document has been finalised by TD 2004/4.

Generated on: 28 November 2026, 02:57:12 AM

Draft Taxation Determination

Income tax: is a dividend paid before 1 July 1987 an unfranked dividend for the purposes of section 705-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. A dividend paid before 1 July 1987 is an unfranked dividend for the purposes of section 705-50 of the ('ITAA 1997'). The expression 'unfranked or partly franked dividends' in paragraph 705-50(2)(b) of the ITAA 1997 includes any dividends that have not been fully franked, including dividends that were not frankable because they were paid prior to the commencement of the imputation system on 1 July 1987.

2. An alternative construction is available that the expression 'unfranked or partly franked dividends' in paragraph 705-50(2)(b) can only refer to dividends paid on or after 1 July 1987 because it only became possible to frank dividends on and after this date.

3. The construction in paragraph 1 is preferred because it promotes the purpose of section 705-50 and is consistent with the meaning previously given to the expression unfranked dividend under the income tax laws.

4. Subsection 705-50(1) provides that its object '… is to limit deferral of tax on profits that were not subject to tax because of over-depreciation of assets and were distributed to recipients untaxed because of their entitlement to the intercorporate dividend rebate.' The mischief identified applies in relation to the distribution of untaxed profits arising from the over-depreciation of assets both before and after 1 July 1987. The combined operation of paragraphs 705-50(2)(b) and (c) ensure that whilst all dividends paid before 1 July 1987 will be unfranked dividends for section 705-50 purposes, consistent with the legislative intent, only those paid out of untaxed profits will be identified as creating the potential for tax deferral.

5. In the absence of a defined meaning the adjective 'unfranked' only requires that a dividend not be franked. The reference to '…the dividends, so far as they were not franked dividends…' in paragraph 705-50(3)(a) also clarifies that this is the meaning of unfranked dividend in paragraph 705-50(2)(b).

6. The introduction of the imputation system on 1 July 1987 was accompanied by the abolition of undistributed profits tax under Division 7 of the ITAA 1936. Under phasing-out arrangements a private company continued to be liable for undistributed profits tax in respect of the 1986-87 and later income years in relation to certain dividends received from other private companies (called 'phasing-out dividends') if it failed to make a sufficient distribution to its shareholders during 'the prescribed period' being 'the period of one year commencing 2 months before the end of the year of income' (subsection 103(1) of the ITAA 1936). Dividends paid by a private company during the part of a prescribed period after 30 June 1987 could not be taken into account in ascertaining whether a sufficient distribution had been made to the extent that the whole or part of the dividend was franked (section 105A(4AA) of the ITAA 1936).

7. The Explanatory Memorandum on clause 19 of the *Taxation Laws Amendment Act (No 4) 1988* under the heading 'Phasing-out arrangements' describes all dividends that were paid during the prescribed period to the extent that they were not franked as being unfranked dividends, without distinguishing whether the dividends were paid before or on or after 1 July 1987[1]:

> 'In the situation where a private company has paid, during the prescribed period, unfranked or partly franked dividends of an unfranked amount greater than the phasing-out amount, the company is required to …'

8. The definition of an 'unfranked dividend' in section 160APA expressly includes a dividend that is not a frankable dividend. The definition of unfranked dividend is not determinative as it only applies for the purposes of Part IIIAA of the ITAA 1936 or where expressly incorporated by reference (such as in subsections 45(4) and 45C(6) of the ITAA 1936). Also Part IIIAA ceased to apply to events occurring on or after 1 July 2002 except as specified in the *Income Tax (Transitional Provisions) Act 1997* with the commencement of the simplified imputation system in Part 3-6 of the ITAA 1997. However the definition is illustrative of an interpretation consistently applied under the income tax laws.

Date of Effect

9. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will 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 Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[1] This is consistent with Taxation Ruling IT 2439

Your comments

10. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Comments by Date: **6 August 2003**
Contact Officer: **Melissa Bird**
E-mail address: **melissa.bird@ato.gov.au**
Telephone: **(02) 6058 7735**
Facsimile: **(02) 9374 1221**
Address: **567 Smollett St**
Albury NSW 2640

Commissioner of Taxation
25 June 2003

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20; IT 2439

Subject references:
- Unfranked dividends
- Consolidation - assets
- Over-depreciation of an asset

Legislative references:
- ITAA 1997 Part 3-6
- ITAA 1997 705-50
- ITAA 1997 705-50(1)
- ITAA 1997 705-50(2)(b)
- ITAA 1997 705-50(2)(c)
- ITAA 1997 705-50(3)(a)
- ITAA 1936 45(4)
- ITAA 1936 45C(6)
- ITAA 1936 103(1)
- ITAA 1936 105A(4AA)
- ITAA 1936 Part IIIAA
- ITAA 1936 160APA
- ITAA 1936 Division 7
- Income Tax Transitional Provisions Act 1997
- Taxation Laws Amendment Act (No 4) 1988

ATO references
NO: 2003/004947
ISSN: 1038-8982