TD 2012/D6 - Income tax: must income tax have been assessed before an agent or trustee has an obligation under section 254 of the Income Tax Assessment Act 1936 to retain sufficient money to pay tax which is or will become due as a result of their agency or trusteeship?

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Draft Taxation Determination

Income tax: must income tax have been assessed before an agent or trustee has an obligation under section 254 of the *Income Tax Assessment Act 1936* to retain sufficient money to pay tax which is or will become due as a result of their agency or trusteeship?

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Ruling

1. No. The phrase 'tax which is or will become due' in paragraph 254(1)(d) of the *Income Tax Assessment Act 1936* (ITAA 1936) is not restricted to tax that has been assessed, and includes tax that will become due when an assessment is made. Consequently, the obligation to retain an amount under paragraph 254(1)(d) can arise in respect of tax that has not yet been assessed.

Date of effect

2. 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 75 to 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
19 September 2012

Appendix 1 – Explanation

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

Explanation

3. Section 254 of the ITAA 1936 imposes a number of general obligations upon agents and trustees in respect of any income, profits or gains of a capital nature derived by the agent or trustee in their representative capacity, or derived by the principal by virtue of their agency.

4. In respect of any such income, profits or gains, the agent or trustee:

- is responsible for the taxation consequences that flow from the derivation of those amounts
- is required to lodge returns, and
- is assessed in their representative capacity.

5. Furthermore, paragraph 254(1)(d) of the ITAA 1936 provides that the agent or trustee is:

> authorized and required to retain from time to time out of any money which comes to him or her in his or her representative capacity so much as is sufficient to pay tax which is or will become due in respect of the income, profits or gains.[1]

6. The obligation to retain must be considered in relation to the consequences of a failure to retain. Paragraph 254(1)(e) of the ITAA 1936 expressly refers to the obligation under paragraph 254(1)(d) of the ITAA 1936 and provides that the agent or trustee is:

> made personally liable for the tax payable in respect of the income, profits or gains to the extent of any amount that he or she has retained, or should have retained, under paragraph (d); but he or she shall not be otherwise personally liable for the tax.[2]

7. Both the wording of the section and its overall scheme, together with the context in which the section is intended to operate, make it clear that the section is a collecting provision, and not an assessing provision.[3]

8. It is considered that the interpretation of paragraph 254(1)(d) of the ITAA 1936 must start from the words and the context of that provision.

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[1] This provision can be traced to paragraph 52(e) of the *Income Tax Assessment Act 1915* (ITAA 1915) and subsequently to paragraph 89(e) of the *Income Tax Assessment Act 1922* (ITAA 1922).

[2] This provision can be traced to paragraph 52(f) of the ITAA 1915 and subsequently to paragraph 89(f) of the ITAA 1922.

[3] *Fermanis v. Cheshire Holdings Pty Ltd* (1990) 1 WAR 373; 90 ATC 4201 at 4203; (1990) 20 ATR 1862 at 1865, per Murray J. See also *Howey v. Federal Commissioner of Taxation* (1930) 44 CLR 289 at 294; [1930] HCA 45, per Rich and Dixon JJ who considered section 89 of the ITAA 1922, the predecessor of section 254 of the ITAA 1936.

9. The phrase 'tax which is or will become due' gives rise to two alternative interpretations:

- that the relevant tax liability must exist, whether or not it is payable ('tax which is due'), or may yet arise ('tax which will become due'); or
- that the relevant tax liability must exist and, either, be presently payable ('tax which is due'), or not payable until some future date ('tax which will become due').

10. These competing interpretations arise from the fact that the word 'due' is ambiguous; it takes its meaning from its legislative context.[4]

11. The view that the words 'tax which is or will become due' does not require an assessment to have issued is consistent with the legislative scheme of section 254 of the ITAA 1936.

Operation of section 254 of the ITAA 1936

12. The obligation to retain in paragraph 254(1)(d) of the ITAA 1936 operates within the context of both paragraph 254(1)(a) of the ITAA 1936, which makes the agent or trustee answerable as taxpayer for the doing of all things required to be done in respect of the income, profits or gains, and for the payment of tax thereon; and of paragraph 254(1)(b) of the ITAA 1936 which creates an obligation on the agent or trustee to make returns and be assessed in their representative capacity.[5] The obligation requires retention of an amount to pay a liability for which the trustee or agent is answerable as taxpayer, and in respect of income, profits and gains for which they are responsible for lodging returns.

13. An agent or trustee will generally be in possession of sufficient information (or at least be entitled to obtain such information) to calculate the amount of tax that will become due as a consequence of the derivation of income, profits or gains, by them in their representative capacity, or by their principal by virtue of their agency.[6]

14. If an agent or trustee is required to retain moneys under paragraph 254(1)(d) of the ITAA 1936, they become personally liable for the tax payable (paragraph 254(1)(e) of the ITAA 1936). That is, if the agent or trustee dissipates the funds representing relevant gross income, profits or gains without sufficient retention, they are required to personally satisfy any resulting shortfall.

15. In this context, retention of an amount under paragraph 254(1)(d) of the ITAA 1936 is the mechanism by which the agent or trustee can ensure that they have sufficient funds in their representative capacity to satisfy the personal liability that arises under paragraph 254(1)(e) of the ITAA 1936, and pursuant to paragraph 254(1)(b) of the ITAA 1936.

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[4] The High Court considered the meaning of 'due' in the context of the former section 218 of the ITAA 1936 (the garnishee provisions) in *Clyne v. Deputy Commissioner of Taxation* (1981) 150 CLR 1 at 8; [1981] HCA 40 at paragraph 4, per Gibbs CJ:

> The word 'due' is ambiguous; it can mean owing, although not payable until some future date, or it can mean presently payable. The meaning of the word must be determined by the context.

See also *Mack v. Commissioner of Stamp Duties (NSW)* (1920) 28 CLR 373; [1920] HCA 76, per Isaacs J.

[5] This was the first of the grounds identified by the High Court in *Bluebottle UK Ltd v. Deputy Commissioner of Taxation* (2007) 232 CLR 598; [2007] HCA 54 (*Bluebottle*) at paragraph 84 as distinguishing the context of paragraph 52(e) of the ITAA 1915 from section 255 of the ITAA 1936. *Bluebottle* is considered in more detail in Appendix 2 – Alternative Views.

[6] See Explanation at paragraph 39 below.

16. Further, the obligation to retain in paragraph 254(1)(d) of the ITAA 1936 relates to retention from an amount of money that comes to the agent or trustee in that capacity, and it will often be the derivation of that same amount that gives rise to the tax liability contemplated by paragraphs 254(1)(a) and 254(1)(b) of the ITAA 1936.[7] As the High Court said in *Bluebottle UK Ltd v. Deputy Commissioner of Taxation* (2007) 232 CLR 598; [2007] HCA 54; (2007) 67 ATR 1; 2007 ATC 5302 (*Bluebottle*) of paragraph 52(e) of the *Income Tax Assessment Act 1915* (ITAA 1915) , the provision operates as '… if the amounts with which the agent dealt both founded the relevant taxation liability and marked the outer boundary of that liability'.[8]

17. Furthermore, paragraph 52(f) of the ITAA 1915 imposed a personal liability on the agent or trustee in a situation where the agent or trustee paid away money after the Commissioner had required the agent or trustee to make a return.[9] In this context, the obligation to retain money to pay 'the income tax which is or will become due' in paragraph 52(e) of the ITAA 1915 was not dependent on the Commissioner having made an assessment; it was enough that the agent or trustee had been required to lodge a return.

18. The circumstances in which personal liability is imposed under paragraph 254(1)(e) of the ITAA 1936 is cast in more general terms than its precursor, and is expressly linked to what the agent or trustee retained or should have retained under paragraph 254(1)(d) of the ITAA 1936. The statutory setting indicates that the obligation of the agent or trustee was never limited to an amount quantified by the making of an assessment, but could arise at an earlier time.

19. From this, it may be observed that the provision contemplates: income, profits or gains are derived or made; funds representing that income, profits or gains are received by an agent or trustee; the agent or trustee retains a sufficient amount from these funds to cover the income tax consequences arising from the derivation of the relevant income, profits or gains, or risks personal liability. Requiring an assessment to have been made before an agent or trustee is authorised and required to retain would be contrary to this straightforward operation of the section, as an assessment of the tax in relation to income, profits or gains would not usually be made prior to the receipt by the agent or trustee of the relevant funds.

20. The operation of the provision would be easily circumvented by the disbursement of the money prior to the tax being assessed, particularly in the situation of short-term agency or trustee relationships, for example the sale of a single asset, where no further money will flow through the hands of the agent or trustee in that capacity in respect of the relevant principal or beneficiary. For example, if an asset were sold in April, the sale proceeds collected by the agent or trustee, and then disbursed in May, tax would not generally be assessed until after the relevant tax return is lodged. In such a situation no obligation to retain would ever arise. This is not the view taken in this draft Determination.

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[7] This was the second of the grounds identified by the High Court in *Bluebottle* at (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84 as distinguishing the context of paragraph 52(e) of the ITAA 1915 from section 255 of the ITAA 1936.

[8] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84.

[9] This was the third of the grounds identified by the High Court in *Bluebottle* at (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84, as distinguishing the context of paragraph 52(e) of the ITAA 1915 from section 255 of the ITAA 1936. Personal liability was also imposed 'while the tax remains unpaid'.

References to 'tax due' and 'tax payable' in paragraphs 254(1)(d) and (e) of the ITAA 1936

21. It should also be noted that paragraph 254(1)(d) of the ITAA 1936 uses the phrase 'tax which is …due', and by contrast paragraph 254(1)(e) of the ITAA 1936 uses the phrase 'the tax payable'.

22. Tax can only become 'payable' if an assessment has been made.[10] If the operation of paragraph 254(1)(d) of the ITAA 1936 was intended to be limited to situations where an assessment had been made, the Parliament could have adopted the formulation used in paragraph 254(1)(e) of the ITAA 1936. While by no means determinative, the use of different words in paragraphs (d) and (e) of the same subsection suggest that a difference in meaning is intended.

Similar words used in paragraph 255(1)(b) of the ITAA 1936

23. In *Bluebottle,* the High Court considered the meaning of the phrase 'tax which is or will become due' in the context of section 255 of the ITAA 1936. The Court decided that the phrase must be read as referring to an ascertained sum,[11] and that in the context of section 255 'tax which is or will become due' means an amount that has been assessed to the non-resident but that may not yet be due for payment.

24. In the course of considering the operation of section 255 of the ITAA 1936, the High Court observed that the context of paragraph 52(e) of the ITAA 1915 (the predecessor provision to paragraph 254(1)(d) of the ITAA 1936), was 'radically different' from section 255.[12]

25. While there is a presumption that where words are used consistently in legislation they should be given the same meaning,[13] that presumption must yield to the requirements of context and is easily rebutted;[14] more so in the case of tax legislation.[15]

26. This approach is supported by section 15AA of the *Acts Interpretation Act 1901* which provides that an interpretation that would best achieve the purpose or object of the Act is to be preferred to one that does not.

Date of effect and Taxation Ruling IT 2544 (withdrawn)

27. Taxation Ruling IT 2544 discussed the application of section 255 of the ITAA 1936 and more specifically, whether paragraph 255(1)(b) of the ITAA 1936 could have effect before an assessment has issued. The position taken in the ruling was that paragraph 255(1)(b) could have effect before an assessment had been issued and that the section operated of its own force without the requirement for any notification from the Commissioner. The ruling also addressed section 254 of the ITAA 1936, though only incidentally, and took the view that paragraph 254(1)(d) of the ITAA 1936 could also operate before an assessment of tax was made.[16]

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[10] *Income Tax Assessment Act 1997* section 5-5.
[11] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 78.
[12] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84.
[13] *Registrar of Titles (WA) v. Franzon* (1975) 132 CLR 611; [1975] HCA 41 at paragraph 11, per Mason J.
[14] *McGraw-Hinds (Aust) Pty Ltd v. Smith* (1978) 144 CLR 633; [1979] HCA 19 at paragraph 4, per Gibbs ACJ.
[15] *Lygon Nominees Pty Ltd v. Commissioner of State Revenue* (2007) 23 VR 474; [2007] VSCA 140 at paragraph 31.
[16] See paragraph 18 of IT 2544.

28. IT 2544 was withdrawn on 23 June 2010 in response to the decision in *Bluebottle.* The withdrawal notice highlighted the similarities between section 254 of the ITAA 1936 and section 52 of the ITAA 1915 which were distinguished in *Bluebottle* and noted that 'Bluebottle did not decide that section 254 of the ITAA 1936 only operated when an assessment had been made'.

29. The views expressed in this draft Determination are consistent with the Commissioner's view in IT 2544 that an assessment is not required before the obligation to retain amounts under paragraph 254(1)(d) of the ITAA 1936 has effect. Accordingly, the final Determination is proposed to apply both before and after its date of issue.

Appendix 2 – Alternative views

This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the proposed binding public ruling.

Alternative view

30. An alternative view is that the obligation to retain under paragraph 254(1)(d) of the ITAA 1936 arises only once income tax has been assessed, in the same way as the obligation to retain arises under section 255 of the ITAA 1936 (which also uses the words 'tax which is or will become due').

31. Section 255 of the ITAA 1936 provides that a person in receipt or control of money from a non-resident shall, when required by the Commissioner, pay the tax due and payable by a non-resident, and authorises and requires the person to retain from time to time out of any money which comes to him so much as is sufficient to pay the tax which is or will become due by the non-resident.

32. In *Bluebottle* the High Court rejected the Commissioner's argument that the phrase 'tax which is or will become due' in paragraph 255(1)(b) of the ITAA 1936 should be read as speaking of both the time of assessment and prior to that time.[17] The High Court decided that 'tax which is or will become due' must be read as referring to an ascertained sum,[18] and that until the non-resident has been assessed, it is not possible to say more than that tax *may* become due.[19] On this basis the High Court decided that in the context of section 255 of the ITAA 1936 'tax which is or will become due' means an amount that has been assessed to the non-resident but that may not yet be due.

33. As stated in paragraph 25 above, while there is a presumption that where a word is used consistently in legislation it should be given the same meaning, it is one that can easily be rebutted.[20]

34. While there are substantial similarities between the wording of the obligation in paragraph 255(1)(b) of the ITAA 1936 and that in paragraph 254(1)(d) of the ITAA 1936, the context in which the two sections operate is quite different, and a provision must be interpreted in the context in which it is intended to operate.[21]

35. The High Court in *Bluebottle* drew a number of distinctions between section 255 of the ITAA 1936 and paragraph 52(e) of the ITAA 1915 and identified that the context of paragraph 52(e) of the ITAA 1915 was 'radically different' from that of section 255.[22]

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[17] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 77.
[18] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 78.
[19] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 79.
[20] *McGraw-Hinds (Aust) Pty Ltd v. Smith* (1978) 144 CLR 633; [1979] HCA 19 at paragraph 4 per Gibbs ACJ.
[21] *Commissioner of Taxation v. BHP Billiton Ltd* (2011) 244 CLR 326; [2011] HCA 17; 2011 ATC 20-264; (2011) 79 ATR 1 at paragraph 45, *Alcan (NT) Alumina Pty Ltd v. Commissioner of Territory Revenue* (2009) 239 CLR 27; [2009] HCA 41; (2009) 73 ATR 256; 2009 ATC 20-134 at paragraph 47.
[22] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84.

36. The High Court highlighted three reasons for taking this view.[23]

> First, s 52(a) of the 1915 Act made the agent 'answerable *as taxpayer* for the doing of all such things as are required [by the Act] in respect of the income derived by him in his representative capacity and the payment of income tax thereon'. [emphasis added] Secondly, the authority given (and requirement made) by s 52(e) related to the tax due 'in respect of the income' as if the amounts with which the agent dealt both founded the relevant taxation liability and marked the outer boundary of that liability. Thirdly, the agent's personal liability for tax depended upon his paying away money from which tax could be paid after the Commissioner had required him to make a return or 'while the tax remains unpaid'.

37. The first and second of these reasons are equally applicable to distinguish section 254 of the ITAA 1936 from section 255 of the ITAA 1936, such that the interpretation given to the phrase 'tax which is or will become due' in the context of section 255 of the ITAA 1936 is not applicable to section 254 of the ITAA 1936. Like section 52(a) of the ITAA 1915, section 254 of the ITAA 1936 makes an agent or trustee answerable as taxpayer for the doing of all such things as are required to be done by the tax law in respect of the income, profits or capital gains derived by him in his representative capacity, or derived by the principal by virtue of his agency,[24] and requires the agent or trustee to make returns and be assessed (in his or her representative capacity) in respect of that income, or those profits or gains.[25] An agent or trustee therefore has significant obligations with regard to the income, profits or gains of the principal or trust.

38. The High Court in *Bluebottle* also traced the legislative history of section 255 of the ITAA 1936, and observed that the history of section 254 of the ITAA 1936 was significantly different. Section 254 of the ITAA 1936 was substantially the same as section 89 of the *Income Tax Assessment Act* 1922 (ITAA 1922), and section 89 of the ITAA 1922 was generally similar to section 52 of the ITAA 1915; while section 255 of the ITAA 1936 was in substantially the same form as section 90 of the ITAA 1922,[26] and section 52A of the ITAA 1915 was the 'first provision that can be seen as the direct legislative antecedent of s255'.[27]

39. In *Bluebottle* the High Court also stated:[28]

> When s 255(1)(b) refers to 'the tax which is or will become due by the non-resident' it must be read as referring to an ascertained sum. If the paragraph is not read in that way, the obligation to retain money which is imposed on the controller is an obligation of undefined content. It is undefined because all that may be retained (the controller 'is hereby authorised ... to retain') 'out of any money which comes to him on behalf of the non-resident' is *sufficient* to pay the tax which is or will become due. And it is *that* amount (and only that amount) which the controller is obliged to retain. And as the facts of the present matter show, if s 255(1)(b) is not read as referring to an ascertained sum, the Commissioner may require the controller to retain more than the amount later assessed as due from the non-resident. But that would require the controller, as the Commissioner's first notices did in this case, to retain more than sufficient to pay the tax which is or will become due.

[23] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84.
[24] ITAA 1936 paragraph 254(1)(a).
[25] ITAA 1936 paragraph 254(1)(b).
[26] (2007) 232 CLR 598; [2007] HCA 54 at paragraphs 88 – 89.
[27] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 85.
[28] (2007) 232 CLR 598; [2007] HCA 54 at paragraphs 78 – 79.

> Until the tax payable by the non-resident has been assessed it is not possible to say more than that there *may* be tax due by the non-resident. It is not possible to say that tax *is* due or that tax *will become* due. *The prediction that tax may be due (and any prediction of its likely amount) may be able to be made with more or less certainty by a person who is armed with a deal of information, but there is no reason to suppose that the controller of a non-resident's money would ordinarily, let alone invariably, have that information and be in a position to make any useful prediction about the taxation affairs of the non-resident whose money the controller receives.* The present case illustrates why that is so. The taxation liabilities of Cricket and Holdings relate to transactions they are alleged to have made on capital account and yielded a tax liability in the year ended 31 March 2004. The sums of money which Virgin Blue is now alleged to have been obliged to retain were payments in a different tax year and owing to its shareholders on revenue account. Neither the holding of shares by Cricket and Holdings, nor the fact that Virgin Blue was bound to pay the dividend that was declared, gave any basis for Virgin Blue knowing anything of the relevant Australian taxation affairs of Cricket or Holdings. [Emphasis added]

40. It is within the ordinary ability of an agent or trustee, as compared to a mere controller of money to whom section 255 of the ITAA 1936 may apply, to make a prediction as to the amount of tax that may become due. The very nature of their relationship as agent or trustee to the principal or beneficiary means that they will generally be in possession of relevant information or have the legal or practical ability to acquire the information necessary to calculate the tax liability. This is implicitly recognised by the section itself; the requirement to prepare returns assumes that the agent or trustee has sufficient information (or the ability to acquire such information) necessary to correctly prepare a return. Additionally, in the context of section 254 of the ITAA 1936 the agent or trustee will be a party (often the active party) to the transaction, course of conduct or process by which the relevant income, profit or gain was derived or made.

41. Consequently, and in contrast to section 255 of the ITAA 1936, interpreting the obligation to retain as arising prior to assessment does not, in the context of section 254 of the ITAA 1936, give rise to 'an obligation of undefined content';[29] an agent or trustee is in a position to reasonably predict the likely amount of any tax liability.

42. The obligation to retain under section 254 of the ITAA 1936 only arises in respect of the tax liability arising from the acts of the agent or trustee in that capacity. The obligation links back to the income, profits or gains of a capital nature identified in paragraph 254(1)(a) of the ITAA 1936, being income, profits or gains arising from the relationship of the trustee/beneficiary or agent/principal. As the High Court acknowledged in *Bluebottle*, the money from which an amount must be retained both 'founded the relevant taxation liability and marked the outer boundary of that liability'.[30] The obligation in section 254 is limited to those tax liabilities arising from the trust or agency relationship and is relatively narrow in scope, even if construed as applying to both present and future liabilities. The obligation is limited to that income, profit or gain for which the agent or trustee is already answerable as taxpayer, and in respect of which they are required to make returns.

43. The Commissioner considers that the significant differences between section 255 of the ITAA 1936 and section 254 of the ITAA 1936 are such that the phrase has a different meaning in each of the provisions.

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[29] *Bluebottle* at 232 CLR 598; [2007] HCA 54 at paragraph 78.
[30] (2007) 232 CLR 598; [2007] HCA 54 at paragraph 84.

Appendix 3 – Your comments

44. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.

45. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**19 October 2012**
Contact officer:	**Amie Becker**
Email address:	**amie.becker@ato.gov.au**
Telephone:	**(07) 321 35023**
Facsimile:	**(07) 321 35971**
Address:	**Terrica Place** **140 Creek St** **Brisbane QLD 4000**

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 2544; TR 2006/10

Subject references:

- CGT assets
- disposal of assets
- insolvency
- liability of trustees
- receivers & managers
- representative of incapacitated entities
- tax assessments

Legislative references:

- ITAA 1915 52
- ITAA 1915 52(a)
- ITAA 1915 52(e)
- ITAA 1915 52(f)
- ITAA 1922 52A
- ITAA 1922 89
- ITAA 1922 89(e)
- ITAA 1922 89(f)
- ITAA 1922 90
- ITAA 1936 218
- ITAA 1936 254
- ITAA 1936 254(1)(a)
- ITAA 1936 254(1)(b)
- ITAA 1936 254(1)(d)
- ITAA 1936 254(1)(e)
- ITAA 1936 255
- ITAA 1936 255(1)(b)
- ITAA 1997 5-5
- Acts Interpretation Act 1901 15AA

Case references:

- Alcan (NT) Alumina Pty Ltd v. Commissioner of Territory Revenue (2009) 239 CLR 27; [2009] HCA 41; (2009) 73 ATR 256; 2009 ATC 20-134
- Bluebottle UK Ltd v. Deputy Commissioner of Taxation (2007) 232 CLR 598; [2007] HCA 54; (2007) 67 ATR 1; 2007 ATC 5302
- Clyne v. Deputy Commissioner of Taxation (1981) 150 CLR 1; [1981] HCA 40; (1981) 12 ATR 173; 81 ATC 4429
- Commissioner of Taxation v. BHP Billiton Ltd (2011) 244 CLR 326; [2011] HCA 17; 2011 ATC 20-264; (2011) 79 ATR 1
- Fermanis v. Cheshire Holdings Pty Ltd (1990) 1 WAR 373; 90 ATC 4201; (1990) 20 ATR 1862
- Howey v. Federal Commissioner of Taxation (1930) 44 CLR 289; [1930] HCA 45
- Lygon Nominees Pty Ltd v. Commissioner of State Revenue (2007) 23 VR 474; [2007] VSCA 140
- Mack v. Commissioner of Stamp Duties (NSW) (1920) 28 CLR 373; [1920] HCA 76
- McGraw-Hinds (Aust) Pty Ltd v. Smith (1978) 144 CLR 633; [1979] HCA 19
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