

# ***PR 2022/3 - AIA Australia Limited - Priority Protection - income protection insurance cover***



This cover sheet is provided for information only. It does not form part of *PR 2022/3 - AIA Australia Limited - Priority Protection - income protection insurance cover*



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Status: **legally binding**

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## Product Ruling

# AIA Australia Limited – Priority Protection – income protection insurance cover

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### **❶ Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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## No guarantee of commercial success

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The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

## Terms of use of this Product Ruling

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This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

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### **What this Ruling is about**

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.
2. In this Product Ruling the scheme involves the purchase and holding of the Crisis Recovery benefit, the Specified Injury benefit and/or the Retirement Optimiser under an Ordinary Income Protection Plan issued by AIA Australia Limited (AIA) and offered under the Priority Protection Product Disclosure Statement and Policy Document (PDS) dated 10 October 2020.<sup>1</sup>
3. Broadly, and subject to paragraph 4 of this Product Ruling, this Ruling addresses:
  - the assessability of a Crisis Recovery benefit, Specified Injury benefit and Retirement Optimiser benefit paid under an Ordinary Income Protection Plan
  - the deductibility of premiums incurred in respect of the Crisis Recovery benefit, the Specified Injury benefit and the Retirement Optimiser under an Ordinary Income Protection Plan, and
  - whether a Retirement Optimiser benefit paid under an Ordinary Income Protection Plan constitutes a concessional contribution.
4. This Product Ruling does not address:
  - the tax consequences arising from any Priority Protection Ordinary Plan offered under the PDS, other than an Ordinary Income Protection Plan
  - the tax consequences arising in relation to any benefits and options available under an Ordinary Income Protection Plan, other than the Crisis Recovery benefit, the Specified Injury benefit and the Retirement Optimiser
  - the tax consequences arising in relation to the Crisis Recovery benefit, the Specified Injury benefit and the Retirement Optimiser when held under a Plan other than an Ordinary Income Protection Plan or (where applicable) as a stand alone Plan
  - the tax consequences arising from a Priority Protection Superannuation Plan offered under the PDS
  - the tax consequences arising from the transfer of ownership of a Plan to another entity, or
  - whether this scheme constitutes a financial arrangement for the purposes of Division 230 (taxation of financial arrangements).

### **Class of entities**

5. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to as the Policy Owner.

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<sup>1</sup> Capitalised terms in this Product Ruling have their meaning provided in the PDS.

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6. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities who are:

- Australian residents for tax purposes
- an individual (other than in the capacity of a trustee of a trust estate) who purchases an Ordinary Income Protection Plan on or after 1 July 2021 and on or before 30 June 2024, and
- the Life Insured under that Ordinary Income Protection Plan.

7. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are not Australian residents for tax purposes, or
- purchase an Ordinary Income Protection Plan before 1 July 2021 or after 30 June 2024.

### Qualifications

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 27 of this Product Ruling.

9. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

### Date of effect

10. This Product Ruling applies from 1 July 2021. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2021 until 30 June 2024, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

11. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

### Changes in the law

12. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

13. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

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**Note to promoters and advisers**

14. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

## Ruling

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15. Subject to paragraph 4 of this Product Ruling and the assumptions in paragraph 27 of this Product Ruling:

- (a) A Crisis Recovery benefit or Specified Injury benefit received by the Policy Owner under an Ordinary Income Protection Plan will not be included in the assessable income of the Policy Owner under section 6-5.
- (b) Any capital gain or capital loss made by the Policy Owner upon receipt of a Crisis Recovery benefit or Specified Injury benefit under an Ordinary Income Protection Plan will be disregarded pursuant to subparagraph 118-37(1)(a)(ii).
- (c) A Retirement Optimiser benefit paid by AIA under an Ordinary Income Protection Plan to a nominated superannuation account on behalf of the Policy Owner will not be included in the assessable income of the Policy Owner under section 6-5.
- (d) Any capital gain or capital loss made by the Policy Owner upon payment by AIA of a Retirement Optimiser benefit under an Ordinary Income Protection Plan will be disregarded pursuant to subparagraph 118-37(1)(a)(ii).
- (e) Premiums incurred by the Policy Owner in respect of an Ordinary Income Protection Plan will not be deductible under section 8-1 to the extent that they relate to the Crisis Recovery benefit, the Specified Injury benefit or the Retirement Optimiser. The portion of the premiums incurred in respect of an Ordinary Income Protection Plan which relate to the Crisis Recovery benefit, the Specified Injury benefit and the Retirement Optimiser is determined annually by AIA's actuaries.
- (f) A Retirement Optimiser benefit paid by AIA under an Ordinary Income Protection Plan to a nominated superannuation account on behalf of the Policy Owner will be a concessional contribution for a financial year pursuant to section 291-25.
- (g) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* will not apply to the Policy Owner.

## Scheme

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16. The scheme that is the subject of this Product Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by documents and information received on 16 April 2021 and 21 June 2021, and

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- Priority Protection Product Disclosure Statement and Policy Document dated 10 October 2020.

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

17. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which the Policy Owner, or any associate of the Policy Owner, will be a party to, which are a part of the scheme.

18. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

## Overview

19. Under Priority Protection and pursuant to the terms of the PDS, AIA offers insurance cover that is available for selection as either stand-alone insurance cover or (in certain circumstances) linked together with other insurance covers. These insurance covers can also be provided under an insurance policy issued directly to an individual policy owner (an Ordinary Plan), or under an insurance policy issued to the trustee of a superannuation fund as the policy owner (a Superannuation Plan).

20. One of the Ordinary Plans available under Priority Protection is the Income Protection Plan. Under the Ordinary Income Protection Plan AIA will pay the Insured Monthly Benefit or a proportion of the Insured Monthly Benefit, as applicable, to the Policy Owner of the Plan where:

- the Injury or Sickness causing the Total Disablement or the Partial Disablement (as per the relevant definition that applies to the cover) occurred while the Policy Owner (as the Life Insured) is covered by the Ordinary Income Protection Plan
- the Policy Owner remains Totally or Partially Disabled for at least the duration of the Waiting Period, and
- the Policy Owner remains Totally or Partially Disabled thereafter.

21. The Insured Monthly Benefit (or portion thereof) will be paid monthly in arrears, starting from the end of the Waiting Period. The maximum period of time that the Insured Monthly Benefit will be paid while the Policy Owner remains Totally or Partially Disabled is referred to as the Benefit Period.

22. In the context of an Ordinary Income Protection Plan:

- the Total Disablement of the Life Insured requires, among other things, that the Life Insured is not working solely as a result of Injury or Sickness, and
- the Partial Disablement of the Life Insured requires, among other things, that the Life Insured is unable to work in their own occupation at full capacity and are earning a reduced income (compared to their Pre-disablement Income), solely as a result of Injury or Sickness.

23. The Policy Owner may choose to extend the cover provided by their Ordinary Income Protection Plan by selecting one of two premium options known as the Advantage Optional and PLUS Optional. These premium options include particular built-in benefits which are not otherwise available under an Ordinary Income Protection Plan. Of those additional built-in benefits, Advantage Optional includes the Specified Injury benefit and PLUS Optional includes the Crisis Recovery benefit as well as the Specified Injury benefit.

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24. Under the Specified Injury benefit, the Insured Monthly Benefit is payable to the Policy Owner if the Policy Owner suffers one of the Listed Events (as listed in the PDS) as a result of an Injury while the Policy Owner is covered by the Ordinary Income Protection Plan. The Insured Monthly Benefit will be paid for the payment period applicable to the relevant Listed Event, commencing on the date of Injury (irrespective of the Policy Owner's Waiting Period) and is payable even if the Policy Owner is not Totally or Partially Disabled (that is, regardless of whether the Policy Owner is working or not as a result of the Injury).

25. Under the Crisis Recovery benefit, an amount equal to six times the Policy Owner's Insured Monthly Benefit (payable as a lump sum or in equal monthly instalments, at the discretion of the Policy Owner) is payable to the Policy Owner if the Policy Owner is diagnosed with a Crisis Event (as listed in the PDS) while the Policy Owner is covered by the Ordinary Income Protection Plan and survives for 14 days following the diagnosis. The Crisis Recovery benefit is payable irrespective of the Policy Owner's Waiting Period and even if the Policy Owner is not Totally or Partially Disabled (that is, regardless of whether the Policy Owner is working or not as a result of the Crisis Event).

26. The Policy Owner also has the choice of extending the cover provided by the Ordinary Income Protection Plan by selecting one or more optional Rider Benefits at an additional cost. One such option that can be purchased as a Rider Benefit to an Ordinary Income Protection Plan is known as Retirement Optimiser. Retirement Optimiser enables the Policy Owner to insure up to 5% of their average monthly income so that when AIA pays the Policy Owner's Insured Monthly Benefit in relation to Total Disablement, Partial Disablement, Crisis Recovery or Specified Injury, AIA will also pay an additional amount into the Policy Owner's nominated superannuation account, thereby enabling that account to continue to accumulate contributions while the Policy Owner is being paid an Income Protection benefit.

### **Assumptions**

27. This Product Ruling is made on the basis of the following necessary assumptions:
- (a) The Policy Owner is an Australian resident for tax purposes.
  - (b) The method of apportionment of the premiums incurred in respect of the Policy Owner's Ordinary Income Protection Plan, as determined by AIA's actuaries, is fair and reasonable.
  - (c) The Retirement Optimiser benefit will be paid by AIA on the Policy Owner's behalf to a complying superannuation plan and included in the assessable income of the trustee of that complying superannuation plan.
  - (d) The Policy Owner's concessional contributions for the financial year are not modified by Subdivision 291-C (relating to defined benefit interests).
  - (e) All dealings between the Policy Owner and AIA are at arm's length.
  - (f) The scheme is executed in the manner described in the Scheme section of this Product Ruling and the PDS referred to in paragraph 16 of this Product Ruling.

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**Commissioner of Taxation**

30 March 2022

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## Appendix – 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.*

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### **Crisis Recovery, Specified Injury and Retirement Optimiser benefits under an Ordinary Income Protection Plan not assessable as ordinary income under section 6-5**

28. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. Income according to ordinary concepts refers to an accepted usage of the word 'income' and income that Courts have determined is ordinary income.

29. The characterisation to be accorded to the Crisis Recovery benefit and the Specified Injury benefit payable under an ordinary Income Protection Plan will depend on the purpose of the payments and the circumstances of their receipt (*Tinkler v Commissioner of Taxation* [1979] FCA 136, per Brennan J).

30. Ordinarily, the receipt of insurance proceeds to replace lost earnings would be ordinary income (*Commissioner of Taxation (Cth) v Smith* [1981] HCA 10 (*Smith*)). This is to be distinguished from circumstances under which the receipt of insurance proceeds is intended to compensate for the loss of earning capacity, such payments being capital in nature.

31. Under an Ordinary Income Protection Plan, Policy Owners (as the Life Insured) may select Advantage Optional or PLUS Optional with the intention of receiving the Crisis Recovery benefit or the Specified Injury benefit on the happening of a relevant specified event. That event may or may not prevent the Policy Owner from performing the duties of their occupation. Any Crisis Recovery or Specified Injury benefit payable by AIA under Advantage Optional or PLUS Optional may therefore not be intended to compensate the Policy Owner for the loss of earnings.

32. Accordingly, the Crisis Recovery benefit and the Specified Injury benefit under Advantage Optional or PLUS Optional available under an Ordinary Income Protection Plan is a capital receipt, and is not assessable under section 6-5 as ordinary income.

33. The Retirement Optimiser benefit is a payment made in addition to any Insured Monthly Benefit payable to the Policy Owner under an Ordinary Income Protection Plan,

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and is made by AIA to the trustee of the Policy Owner's nominated superannuation fund. As a form of superannuation continuance insurance payment, the Retirement Optimiser benefit is not paid in substitution for a superannuation payment that would otherwise have been ordinary income of the Policy Owner. The Retirement Optimiser benefit is capital in nature and will not be included in the assessable income of the Policy Owner under section 6-5.

**Capital gain or capital loss from payment of Crisis Recovery, Specified Injury or Retirement Optimiser benefits under an Ordinary Income Protection Plan disregarded under section 118-37**

34. Under subsection 108-5(1), a CGT asset is any kind of property or a legal or equitable right that is not property. Contractual rights under an insurance policy are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1).

35. Where AIA makes a payment of a benefit in satisfaction of a Policy Owner's contractual rights under an Ordinary Income Protection Plan, the Policy Owner's ownership of those rights is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b)).

36. The Policy Owner makes a capital gain from this CGT event if their capital proceeds from the ending of the ownership of their asset are more than the asset's cost base or, alternatively, a capital loss if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

37. Section 118-37 disregards a capital gain or capital loss relating to compensation or damages received by a taxpayer as a result of any wrong, injury or illness they or their relative suffered.

38. A receipt of an amount under an insurance policy for a non-death benefit constitutes a form of compensation or damages covered by subparagraph 118-37(1)(a)(ii) where the amount is received for a wrong, injury or illness suffered personally by the recipient or the recipient's relative.

39. Any capital gain or capital loss the Policy Owner makes under section 104-25 upon payment of the Crisis Recovery or Specified Injury benefit by AIA under Advantage Optional or PLUS Optional available under an Ordinary Income Protection Plan as a result of Injury or Crisis Event suffered by the Policy Owner (as the Life Insured), will be disregarded under subparagraph 118-37(1)(a)(ii).

40. Similarly, any capital gain or capital loss the Policy Owner makes under section 104-25 upon payment of the Retirement Optimiser benefit by AIA under an Ordinary Income Protection Plan as a result of Injury, Sickness or Crisis Event suffered by the Policy Owner (as the Life Insured), will be disregarded under subparagraph 118-37(1)(a)(ii).

**Deductibility of premiums under section 8-1 in respect of an Ordinary Income Protection Plan**

41. Generally, the question of whether a premium is deductible is answered by reference to whether the benefits, when paid, would be assessable. In discussing the operation of subsection 51(1) of the *Income Tax Assessment Act 1936* (being the

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equivalent of section 8-1) in the High Court decision of *Smith, Gibbs, Stephen, Mason, and Wilson JJ* held that:

... What is incidental and relevant in the sense mentioned falls to be determined not by reference to the certainty or likelihood of the outgoing resulting in the generation of income but to its nature and character, and generally to its connexion with the operations which more directly gain or produce the assessable income. It is true that the payment of the premium in June 1978 did not result in the generation of any income in that year, but there is a sufficient connexion between the purchase of the cover against the loss of ability to earn and the consequent earning of assessable income to bring the premium within the first limb of s. 51 (1).

42. Murphy J delivered a separate judgment but concurred with the view of the majority of their Honours and stated:

... In general, if receipts under such a policy would be treated as income, the premiums should be treated as allowable expenditure, and if the receipts would be treated as capital the premiums should not be allowable expenditure.

43. As the Insured Monthly Benefit payable by AIA upon the Total or Partial Disablement of the Policy Owner (as the Life Insured) under an Ordinary Income Protection Plan is intended to compensate for the loss of earnings of the Policy Owner and would be assessable to the Policy Owner, the premiums incurred by a Policy Owner in respect of an Ordinary Income Protection Plan, excluding the portion of any premiums that relate to the Crisis Recovery, Specified Injury or Retirement Optimiser benefits, are incurred in gaining or producing assessable income and deductible under section 8-1.

44. As the Crisis Recovery or Specified Injuries benefit available as part of Advantage Optional and PLUS Optional and payable by AIA under an Ordinary Income Protection Plan may not be intended to compensate for the loss of earnings of the Policy Owner (as the Life Insured) and are treated as capital (see paragraphs 31 and 32 of this Product Ruling), the premiums incurred by the Policy Owner in respect of an Ordinary Income Protection Plan are not incurred in gaining or producing assessable income to the extent that they relate to these specific benefits, and are not deductible under section 8-1.

45. Similarly, as the Retirement Optimiser benefit payable by AIA and available as a Rider Benefit to an Ordinary Income Protection Plan may not be intended to compensate for the loss of earnings of the Policy Owner (as the Life Insured) and is treated as capital (see paragraph 33 of this Product Ruling), the premiums incurred by the Policy Owner in respect of an Ordinary Income Protection Plan are not incurred in gaining or producing assessable income to the extent that they relate to Retirement Optimiser, and are not deductible under section 8-1.

46. Section 8-1 does not prescribe any method of apportioning expenditure. The portion of the premiums incurred by a Policy Owner under an Ordinary Income Protection Plan which may not be deductible under section 8-1, as per paragraphs 44 and 45 of this Product Ruling, should be determined pursuant to a method of apportionment that is both fair and reasonable in the circumstances.

#### **Retirement Optimiser benefits paid as a concessional contribution**

47. The payment (contribution) of the Retirement Optimiser benefit under an Ordinary Income Protection Plan by AIA, on the Policy Owner's behalf, will be a concessional

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contribution in respect of the Policy Owner for a financial year pursuant to section 291-25 where:

- the nominated superannuation account to which the Retirement Optimiser benefit is paid is (as assumed at paragraph 27(c) of this Product Ruling) a complying superannuation plan, as defined in subsection 995-1(1), and
- the Retirement Optimiser benefit is (as assumed at paragraph 27(c) of this Product Ruling) included in the assessable income of the trustee of that complying superannuation plan.

48. There is a cap on the amount of superannuation contributions that may receive concessional tax treatment for an individual in a financial year, referred to as the 'concessional contributions cap' and set out in subsection 291-20(2). The concessional contributions cap of an individual for the financial year may be increased by unused concessional contributions cap space remaining from previous financial years if the individual's total superannuation balance at 30 June of the financial year immediately before a contribution is made was less than \$500,000 (subsection 291-20(3)).

49. Where the Policy Owner's concessional contributions for the financial year (worked out under section 291-25) exceeds their concessional contributions cap for the year they have excess concessional contributions equal to the amount of the excess (subsection 291-20(1)).

50. Pursuant to section 291-15, any excess concessional contributions for a financial year will be included in the Policy Owner's assessable income for their corresponding income year.<sup>2</sup> However, if there are special circumstances why the contributions for a financial year exceeded or will exceed the Policy Owner's concessional contributions cap, they can make an application to the Commissioner for a determination to disregard or reallocate the contributions.<sup>3</sup> If the Commissioner exercises his discretion to disregard or reallocate contributions, those contributions will count toward the Policy Owner's 'low tax contributions'<sup>4</sup> used in calculating a 'Division 293 tax' liability (if applicable).

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<sup>2</sup> This is accompanied by a tax offset equal to 15% of the excess concessional contributions.

<sup>3</sup> Upon receipt of an application for a written determination, the Commissioner has a discretion under section 291-465 to disregard concessional contributions or allocate them to a different year, where special circumstances exist.

<sup>4</sup> Refer to section 293-25.

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## References

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### *Legislative references:*

- ITAA 1936 51(1)
- ITAA 1936 Part IVA
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- ITAA 1997 118-37
- ITAA 1997 118-37(1)(a)(ii)
- ITAA 1997 Div 230
- ITAA 1997 291-15
- ITAA 1997 291-20(1)
- ITAA 1997 291-20(2)
- ITAA 1997 291-20(3)

- ITAA 1997 291-25
- ITAA 1997 Subdiv 291-C
- ITAA 1997 291-465
- ITAA 1997 Div 293
- ITAA 1997 293-25
- ITAA 1997 995-1(1)
- TAA 1953

### *Cases references:*

- Commissioner of Taxation (Cth) v Smith [1981] HCA 10; 147 CLR 578; 81 ATC 4114; 11 ATR 538; 34 ALR 16
- Tinkler v Commissioner of Taxation [1979] FCA 136; 79 ATC 4641; 10 ATR 411; 29 ALR 663

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### ATO references

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