



# ***CR 2003/11 - Income tax: Interest on Special Purpose Trust Accounts of Regulated Principals***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 March 2003*



## **Class Ruling**

### **Income tax: Interest on Special Purpose Trust Accounts of Regulated Principals**

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#### ***Preamble***

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings TR 92/1** and **TR 97/16** together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

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

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

##### **Tax law(s)**

2. The tax laws dealt with in this Ruling are section 97 of the *Income Tax Assessment Act 1936* ('ITAA 1936') and section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

##### **Class of persons**

3. The class of persons to whom this Ruling applies is a 'regulated principal' as defined in Subregulation 10.2.20B(1) of the *Corporations Regulations 2001* ('the Corporations Regulations'), which states:

'For section 1444 of the Act [*Corporations Act 2001*], this regulation applies in relation to a person that is:

- a) a regulated principal, mentioned in Item 1 of the Table in Section 1430 of the *Corporations Act 2001* (including a person to whom Part 7.6 of the old Corporations Act applies); and
- b) a participant of the Australian Stock Exchange Limited.'

4. Item 1 of the Table in Section 1430 of the *Corporations Act 2001* states that a regulated principal is ‘a holder of a dealers licence within the meaning of the old Corporations Act’. The old Corporations Act is defined in section 1371 of the *Corporations Act 2001* to be ‘the Corporations Act 1989 as in force from time to time before the commencement (of the Corporations Act 2001)’.

### **Qualifications**

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 10 to 14 is carried out in accordance with the details of the arrangement provided in this Ruling.

7. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- b) this Ruling may be withdrawn or modified.

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### **Date of effect**

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9. This ruling shall have effect from the date of issue until 11 March 2004. This class ruling is only operative while Corporations Regulation 10.2.20B is operative. The regulation will only govern

regulated principals until they obtain a new Australian Financial Services License, at which time they will cease to be classed as 'regulated principals'. The Australian Financial Services License must be obtained before 11 March 2004.

## **Arrangement**

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10. The arrangement that is the subject of the Ruling is described below.

11. Upon the commencement of the Financial Services Reform ('FSR') amendments to the *Corporations Act 2001* ('the Corporations Act') on 11 March 2002, the requirement to lodge two thirds of a regulated principal's minimum quarterly trust balance with the Australian Stock Exchange ('the ASX Special Deposit') was removed. Interest earned from the ASX Special Deposit was paid to the National Guarantee Fund, administered by the Securities Exchange Guarantee Corporation Limited ('SEGC'). However, in light of the FSR amendments, the SEGC does not continue to receive any interest earned from these deposits. The ASX Special Deposit was governed by Part 7.6 of the Corporations Act (prior to the introduction of the FSR amendments).

12. Amendments to the Corporations Regulations, which came into effect 14 June 2002, require 'regulated principals' to operate an interest-bearing Special Purpose Trust Account into which two thirds of their minimum quarterly trust balance must be paid. This account is separate to their primary trust account through which regulated principals pass client monies in accordance with the law. Interest earned on the Special Purpose Trust Account must be paid to SEGC. This interest replaced the payments to the SEGC, made from the ASX Special Deposit.

13. Under the amendments, regulated principals are the recipients of interest on the Special Purpose Trust Accounts. However, the interest must be remitted in full, by the regulated principals, to the SEGC, per subregulation 10.2.20B(8) which states:

'If money is held in an account under subregulation (4) [ie two thirds of the trust balance on deposit in a Special Purpose Trust Account]:  
(a) the interest on the account is the income of the SEGC. and (b) the regulated principal must pay the interest to SEGC'

14. The full text of Regulation 10.2.20B is as follows:

'10.2.20B Financial products quoted on Australian Stock Exchange Limited

(1) For section 1444 of the Act, this regulation applies in relation to a person that is:

- (a) a regulated principal mentioned in item 1 of the table in section 1430 of the Act (including a person to whom Part 7.6 of the old Corporations Act applies), and
  - (b) a participant of Australian Stock Exchange Limited.
- (2) In addition to section 866 of the old Corporations Act, the regulated principal must:
- (a) operate a special purpose interest-bearing trust account,
  - (b) designate the account to be a Special Purpose Trust Account, and
  - (c) ensure that the Special Purpose Trust Account is:
    - (i) with an Australian ADI, or
    - (ii) of a kind mentioned in subregulation 7.8.01(2).
- (3) The regulated principal must withdraw from an account maintained for section 866 of the old Corporations Act an amount equal to two-thirds of:
- (a) if the regulated principal maintains 2 or more accounts for that section - the lowest aggregate of the balances in the accounts during the 3 months ending on the quarter day last past, or
  - (b) if the regulated principal maintains 1 account for that section - the lowest balance in the account during the 3 months ending on the quarter day last past.
- (4) Subject to subregulations (5) and (6), the regulated principal must:
- (a) deposit the amount mentioned in subregulation (3) into the regulated principal's Special Purpose Trust Account, and
  - (b) keep the amount on deposit.
- (5) A deposit need not be lodged or kept for subregulation (4) if, apart from this subregulation, the amount of the deposit would be less than \$3,000.
- (6) If, because of subregulation (3), the amount of a deposit to be lodged and kept in the regulated principal's Special Purpose Trust Account increases, the regulated principal must lodge the amount of the increase within

5 business days after the relevant quarter day that is the last day of the period by reference to which the amount required to be lodged is calculated.

- (7) An amount deposited in the Special Purpose Trust Account under subregulation (4) is also taken to be monies held in an account maintained by the regulated principal for section 866 of the old Corporations Act.
- (8) If money is held in an account under subregulation (4):
- (a) the interest on the account is the income of SEGC, and
  - (b) the regulated principal must pay the interest to SEGC, less any amount paid in relation to account establishment fees, account keeping fees, government taxes or other duties.'

## **Ruling**

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15. Interest income on 'Special Purpose Trust Accounts' required to be maintained pursuant to Subregulation 10.2.20B(2), Chapter 10, Part 10.2 Division 5B of the Corporations Regulations and that are properly conducted in accordance with the relevant regulations is not derived by regulated principals and hence not assessable to the regulated principals under the ITAA 1997 or the ITAA 1936.

## **Explanations**

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16. SEGC, as trustee for the National Guarantee Fund, is the beneficial owner of the interest income arising from the Special Purpose Trust Accounts and regulated principals merely act as trustees in this regard. The regulated principals are not presently entitled to the interest and as such are not assessable on this interest under section 97 of the ITAA 1936. The only entity that is presently entitled to this interest is SEGC, as trustee for the National Guarantee Fund. Therefore, the interest received on the Special Purpose Trust Accounts is not derived by regulated principals and is not assessable under section 6-5 of the ITAA 1997 and other operative provisions of that Act or the ITAA 1936, in the hands of regulated principals.

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## **Other relevant information**

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17. Part VA of the ITAA 1936, dealing with Tax File Numbers, could potentially be applicable to this arrangement as a result of subsection 202D(1) of the ITAA 1936 given that a regulated principal will be an 'investor' and the relevant financial institution with which the Special Purpose Trust Account is held will be an 'investment body' for the purposes of item 1 in the table contained in that subsection.

18. However, as a regulated principal receives the relevant income on trust, for the benefit of SEGC and the regulated principal has no present entitlement to this income, it is neither ordinary income nor statutory income of the regulated principal.

19. Where no Tax File Number is quoted in relation to the Special Purpose Trust Accounts, section 12-140 of Schedule 1 to the TAA 1953 does not require the investment body (in this case the bank with which an account is opened) to withhold amounts where the interest is not ordinary or statutory income derived by the person who is paid the interest (in this case, the regulated principal, as the account is opened in the name of the regulated principal).

20. However, the beneficial owner of the interest income as per Regulation 10.2.20B(8), is the SEGC as trustee for the National Guarantee Fund. As the SEGC is a tax exempt entity, the interest income it derives is not ordinary or statutory income and therefore the investment body (being the bank), is not obliged to withhold amounts under section 12-140 of Schedule 1 of the TAA.

21. As regulated principals are not assessable on interest from Special Purpose Trust Accounts, financial institutions are not required to withhold amounts from interest paid on Special Purpose Trust Accounts where the regulated principals do not disclose a Tax File Number as interest is neither ordinary nor statutory income derived by the regulated principal, provided that these accounts are properly conducted in accordance with the relevant regulations.

22. A Tax File Number withholding obligation on the part of the regulated principal also potentially arises as a result of subsection 202D(3) of the ITAA 1936 given that SEGC has an entitlement to receive the income on the relevant investment from a body corporate. A regulated principal will typically be a 'body corporate' for the purposes of that subsection.

23. In this instance, by virtue of subsection 202(4), the regulated principal will be the 'investment body' (and the party potentially liable to make withholdings) and SEGC will be the 'investor' as per the table in subsection 202D(1). As stated above, the SEGC is a tax exempt body.

24. By virtue of paragraph 12-140(1)(a), there is no obligation on the relevant regulated principal to withhold an amount in relation to the interest income received on Special Purpose Trust Accounts and on-paid to SEGC provided those accounts are properly conducted in accordance with the relevant regulations.

## **Detailed contents list**

25. Below is a detailed contents list for this Class Ruling:

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### **Commissioner of Taxation**

5 March 2003

<i>Previous draft:</i>	- Corporations Regulations 2001
Not previously released in draft form	10.2.20B(1)
	- Corporations Regulations 2001
	10.2.20B(2)
<i>Related Rulings/Determinations:</i>	- Corporations Regulations 2001
TR 92/1; TR 97/16; CR 2001/1	10.2.20B(3)
	- Corporations Regulations 2001
	10.2.20B(4)
<i>Legislative references:</i>	- Corporations Regulations 2001
- ITAA 1936 Part VA	10.2.20B(5)
- ITAA 1936 97	- Corporations Regulations 2001
- ITAA 1936 202D(1)	10.2.20B(6)
- ITAA 1936 202D(3)	- Corporations Regulations 2001
- TAA 1953 Part IVAA	10.2.20B(8)
- TAA 1953 Sec 12-140 Sch1	- Corporations Act 2001
- ITAA 1997 6-5	- Corporations Act 2001 Sec 1371
- Corporations Regulations 2001	- Corporations Act 2001 Sec 1430
- Corporations Regulations 2001	- Corporations Act 2001 Sec 1444
10.2.5A	- Corporations Act 2001 Part 7.6

- Corporations Act 2001 7.8.01(2)
  - Copy right Act 1968
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ATO References

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