


# ***CR 2006/53 - Income tax: scrip for scrip roll-over: cancellation of ordinary shares in Shell Transport and Trading Company in exchange for Royal Dutch Shell plc B shares***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *20 July 2005*



## Class Ruling

### Income tax: scrip for scrip roll-over: cancellation of ordinary shares in Shell Transport and Trading Company in exchange for Royal Dutch Shell plc B shares

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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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-25;
- subsection 116-20(1);
- Subdivision 124-M; and
- subsection 960-50(6).

## Class of entities

3. The class of entities to which this Ruling applies is the ordinary shareholders of Shell Transport and Trading Company, p.l.c (STT) who:

- were residents of Australia within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on 20 July 2005, being the day on which the Scheme of Arrangement described at paragraphs 17 to 19 of this Ruling became effective;
- acquired their STT ordinary shares on or after 20 September 1985;
- held their STT ordinary shares on capital account;
- had their STT ordinary shares cancelled and were subsequently issued with fully paid Royal Dutch Shell plc Shares (RDS B Shares); and
- were not 'significant stakeholders' or 'common stakeholders' in STT within the meaning of that expression in Subdivision 124-M of the ITAA 1997.

## 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 the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 25 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.

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## Date of effect

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8. This Ruling applies from 20 July 2005. However, the Ruling does 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 Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Withdrawal

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12. This Ruling is withdrawn immediately after 30 June 2006. However, the Ruling continues to apply after its withdrawal in respect of the relevant provisions ruled upon, to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

## Scheme

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13. The scheme that is the subject of this Ruling is described below. The description is based on, and includes, the following documents:

- Class Ruling application dated 19 October 2005 from Allens Arthur Robinson requesting the Commissioner to make a Class Ruling in relation to the capital gains tax consequences for ordinary shareholders of STT in respect of the cancellation of their Ordinary Shares in STT under the Scheme of Arrangement described below;

- Annexure A to the Class Ruling application – proposals relating to the unification of STT and Royal Dutch Petroleum Company (RD);
- Annexure B – STT articles of association;
- Annexure A to Class Ruling applications dated 6 May 2005 – background information;
- Addendum dated 16 December 2005 to Annexure A to Class Ruling applications dated 6 May 2005; and
- Email from Allens Arthur Robinson dated 3 April 2006.

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

14. The scheme that is the subject of this Ruling involves a cancellation by The STT of its preference shares and ordinary shares, and the issuing of new STT ordinary shares to RD. In consideration for the cancellation of the STT ordinary shares, Royal Dutch Shell plc (RDS) allotted and issued credited as fully paid RDS B Shares to ordinary shareholders and/or RDS Corporate Nominee for the benefit of the ordinary shareholders.

15. The STT scheme was part of a restructuring that saw the two parent companies of the Shell group, STT and RD, replaced by a single parent company in RDS.

16. STT ordinary shares on issue prior to 20 July 2005 were in the following forms:

- STT ordinary shares of 25 pence each in registered form quoted and traded on the London Stock Exchange and other European Exchanges;
- STT bearer warrants which entitled the holder to STT ordinary shares in accordance with the terms of the bearer warrants; and
- American depository receipts, each of which represented 6 STT ordinary shares, quoted and traded on the New York Stock Exchange.

17. STT also had two classes of preference shares on issue prior to 20 July 2005:

- shares with a nominal value of £1 per share that conferred on the holders the right to a fixed cumulative dividend of 5.5% that ranked in priority to STT ordinary shares (First Preference Shares); and
- shares with a nominal value of £1 per share that conferred on the holders the right to a fixed cumulative dividend of 7% that ranked in priority to STT ordinary shares (Second Preference Shares).

18. STT ordinary shares are voting shares for the purpose of section 9 of the *Corporations Act 2001*. Allens Arthur Robinson have also advised that the First Preference and Second Preference Shares are likely to be considered voting shares as that term is defined in section 9 of the *Corporations Act 2001*.

19. Holders of STT ordinary shares, First Preference Shares and Second Preference Shares approved at an extraordinary general meeting of STT held on 28 June 2005, the cancellation and repayment of the First Preference Shares and Second Preference Shares.

20. On 15 July 2005 an order of the High Court of Justice and Wales (High Court) relating to the cancellation and repayment of the First Preference and Second Preference Shares was registered with the Registrar of Companies in England and Wales. The cancellation of the First Preference and Second Preference Shares became effective upon the registration of this order.

21. An order of the High Court sanctioning a Scheme of Arrangement (the Scheme) was registered by the Registrar of Companies in England and Wales on 20 July 2005. The Scheme became effective upon registration of the court order, all other conditions to the Scheme (including the conditions to the RDS public exchange offer) having been satisfied or waived. The Scheme involved the following:

- the cancellation of all STT ordinary shares, including STT ordinary shares represented by STT bearer warrants;
- re-registering STT as a private company;
- increasing the authorised share capital of STT by creating such number of new STT ordinary shares of 25 pence each as equalled the number of Scheme Shares cancelled less one and one dividend access share; and
- STT applying the reserve arising as a result of the cancellation of the Scheme Shares in paying up in full at par the New STT ordinary shares which were allotted and issued credited as fully paid to RDS and/or its nominee(s) and the dividend access share, which was allotted and issued credited as fully paid to the trustee, a company incorporated in Jersey.

22. In consideration for the cancellation of the STT ordinary shares and the allotment and issue of New STT ordinary shares to RDS and/or its nominee and the dividend access share to the trustee, RDS allotted and issued on 20 July 2005, credited as fully paid RDS B Shares to:

- registered holders of STT ordinary shares whose name appeared in the register of members of STT at 6pm on Tuesday 19 July 2005 and holders of STT bearer warrants (relevant holders); or
- Lloyds TSB Bank plc or its nominee, Lloyds TSB Registrars Corporate Nominee Limited (RDS Corporate Nominee), for the benefit of the relevant holders,

on the following basis:

1 STT ordinary share = 0.287333066 RDS B Shares.

23. If the issue of RDS B Shares to relevant holders or the RDS Corporate Nominee resulted in the issue of fractions of RDS B Shares, such fractions were not allotted or issued but rather were aggregated and sold on behalf of the relevant holders or the RDS Corporate Nominee in the market. The proceeds of sale were subsequently paid to the relevant holders in due proportions in accordance with their entitlements.

24. Just before RDS first increased the percentage of voting shares it owns in STT under the arrangement the shareholders in RDS were Shell RDS Holding B.V., Shell Petroleum N.V. and Euroclear Nederland. The shares owned by Euroclear Nederland were held for ABN Amro which held for Shell RDS Holding B.V. holding on behalf of RD ordinary shareholders. Allens Arthur Robinson have advised that Shell RDS Holding B.V. did not beneficially own all of the shares in RDS just before RDS first increased the percentage of voting shares it owns in STT under the arrangement.

25. STT had at least 300 members just before the STT arrangement commenced. Both STT and RDS were not 'residents of Australia' within the meaning of that expression in subsection 6(1) of the ITAA 1936.

## Ruling

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### Time of CGT event

26. CGT event C2 in paragraph 104-25(1)(a) of the ITAA 1997 happened as a result of the cancellation of the STT ordinary shares.

27. The event happened at the time the STT ordinary shares were cancelled: subsection 104-25(2) of the ITAA 1997. STT ordinary shares were cancelled as a result of the Scheme. The Scheme became effective on 20 July 2005, the time the order sanctioning the Scheme was registered by the Registrar of Companies in England and Wales.

28. A STT ordinary shareholder made a capital gain from CGT event C2 happening if the capital proceeds for a STT ordinary share exceeded its cost base. The shareholder made a capital loss if those capital proceeds were less than the share's reduced cost base: subsection 104-25(3) of the ITAA 1997.

### **Capital proceeds**

29. The capital proceeds for each STT ordinary share were the total of the money received by shareholders in respect of the sale of their fractional entitlements to RDS B Shares (if any) and the market value of the RDS B Shares issued and allotted to them or to the RDS Corporate Nominee on 20 July 2005: subsection 116-20(1) of the ITAA 1997. The market value of a RDS B Share is to be translated to Australian currency at the daily foreign exchange rate for the United Kingdom on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997.

### **Availability of scrip for scrip roll-over**

30. A STT ordinary shareholder, who made a capital gain from CGT event C2 happening in relation to a STT ordinary share they acquired on or after 20 September 1985 can choose scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 provided:

- RDS was not a member of a wholly-owned group of which another company was the ultimate holding company just before it first increased the percentage of voting shares it owned in STT under the Scheme; and
- any capital gain that could be made upon a future CGT event happening in relation to a replacement share in RDS would not be disregarded (except because of a roll-over).

31. Where a STT ordinary shareholder chooses roll-over in respect of a STT ordinary share, the capital gain arising from the cancellation of that share is disregarded.

32. Scrip for scrip roll-over is not available for ineligible proceeds pursuant to subsection 124-790(1) of the ITAA 1997. The capital gain is not disregarded to the extent that the shareholder received money for the disposal of their STT ordinary shares.

## Appendix 1 – Explanation

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**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.*

### Time of CGT event

33. CGT event C2 in paragraph 104-25(1)(a) of the ITAA 1997 happens if the ownership of an intangible CGT asset ends because it is redeemed or cancelled. Subsection 104-25(2) of the ITAA 1997 provides that CGT event C2 happens when a contract to end the asset is entered into, or if there is no contract, when the asset ends.

34. The time when CGT event C2 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain.

35. The Scheme became effective on 20 July 2005, being the day on which the order of the High Court sanctioning the Scheme was registered, all other conditions to the Scheme (including the conditions to the RDS public exchange offer) having been satisfied or waived. Accordingly, CGT event C2 happened on 20 July 2005.

### Capital proceeds

36. Subsection 116-20(1) of the ITAA 1997 provides that the capital proceeds from a CGT event are the total of the money and the market value of any property received or entitled to be received in respect of the event happening. Where property is received as capital proceeds, its market value is to be worked out as at the time of the CGT event.

37. Holders of STT ordinary shares received RDS B Shares and money (in the event they were entitled to a fraction of an RDS B Share) in respect of the cancellation of their STT ordinary shares.

38. Therefore, in order to determine the capital proceeds from the cancellation of the STT ordinary shares, it is necessary to ascertain the market value of RDS B Shares at the time the Scheme became unconditional and effective on 20 July 2005.

39. The market value of an RDS B Share is to be translated to Australian currency at the daily foreign exchange rate for the United Kingdom on 20 July 2005: item 5 in the table in subsection 960-50(6) of the ITAA 1997. The exchange rate published on the ATO website for that day is 0.4350.

**Availability of scrip for scrip roll-over**

40. Scrip for scrip roll-over enables a shareholder to disregard a capital gain they make from a share that is disposed or cancelled as part of a corporate restructure if the shareholder receives in exchange a replacement share.

41. The capital gain is disregarded completely if the only capital proceeds the shareholder receives is a replacement share. The roll-over provides that the cost base and reduced cost base of the replacement share is based on the cost base and reduced cost base of the original share at the time of the roll-over.

42. The first element of the cost base of each RDS B Share received under the scheme will be an amount which is the reasonably attributable part of the cost base of the STT ordinary shares for which it was exchanged and for which roll-over was obtained (subsection 124-785(2) of the ITAA 1997). The first element of the reduced cost base of each RDS B Share is worked out on a similar basis (subsection 124-785(4) of the ITAA 1997).

43. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip roll-over. Below is an outline of the main conditions and exceptions which are relevant to the circumstances of the arrangement that is the subject of this Ruling.

44. Subparagraph 124-780(1)(a)(i) of the ITAA 1997 requires an entity (a STT ordinary shareholder) to exchange a share in a company for a share in another company.

45. STT ordinary shareholders who cancel and exchange their STT ordinary shares for RDS B Shares under the Scheme satisfy this condition.

46. However, pursuant to subsection 124-790(1) of the ITAA 1997, only a partial roll-over is available for original interest holders (STT ordinary shareholders), if the capital proceeds for the original interest (STT ordinary shares) includes something (the ineligible proceeds) other than a replacement interest (RDS B Shares). To the extent that the number of RDS B Shares issued to relevant holders or the RDS Corporate Nominee for the benefit of relevant holders, would otherwise have resulted in the issue of fractions of RDS B Shares, such fractions were not allotted or issued but were aggregated and sold in the market on behalf of the relevant holders and the proceeds paid to relevant holders in due proportions in accordance with their entitlements. Receipt of this money, is an ineligible proceed under the subsection and thus scrip for scrip roll-over cannot be obtained for this part of the proceeds.

47. Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (STT – the original entity) be exchanged in consequence of a single arrangement that results in another entity (RDS – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (STT).

48. In the context of the scrip for scrip roll-over provisions, the cancellation and repayment of the First Preference Shares and Second Preference Shares and the Scheme formed part of a single arrangement.
49. The arrangement resulted in RDS becoming the owner of 80% or more of the voting shares in STT.
50. Paragraphs 124-780(1)(b) and 124-780(2)(b) of the ITAA 1997 require that the arrangement be one in which at least all owners of voting shares in the original entity (STT) could participate.
51. Both the STT ordinary shares and the STT First Preference and Second Preference shares constitute voting shares for the purposes of section 9 of the *Corporations Act 2001*. As the owners of preference shares were not involved with the Scheme whether this requirement is satisfied is dependent on what constitutes the 'single arrangement' for the purposes of paragraph 124-780(1)(b) of the ITAA 1997.
52. Paragraph 11.23 of the Explanatory Memorandum to the New Business Tax System (Miscellaneous) Bill (No. 2) 2000 states that what constitutes a single arrangement is a question of fact and details a number of factors that are relevant to determining whether what takes place is part of a single arrangement. These include, but are not limited to:
- whether there is more than one offer or transaction, whether aspects of an overall transaction occur contemporaneously, and the intention of the parties in all the circumstances as evidenced by objective facts.
53. Viewed objectively, it is considered that the single arrangement in this case encompasses all transactions including the cancellation and repayment of the First Preference and Second Preference Shares.
54. As a result, this requirement is satisfied as all owners of voting shares were able to participate in the arrangement. All owners of STT Preference Shares were able to participate as they had their shares cancelled and repaid by STT and all owners of STT ordinary shares were subject to the Scheme.
55. Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that the arrangement be one in which participation is available on substantially the same terms for all of the owners of interests of a particular type in the original entity (STT).
56. Having regard to the differences between the rights attaching to the STT First Preference and Second Preference and the rights attaching to the STT ordinary shares, it is considered that the STT Preference shares constitute a different type of interest to the STT ordinary shares for the purposes of paragraph 124-780(2)(c) of the ITAA 1997.
57. Each owner of a STT First Preference Share participated in the arrangement on the same terms and received £1.4735 per share.

58. Each owner of a STT Second Preference Share participated in the arrangement on the same terms and received £1.0448 per share.
59. Each owner of STT ordinary shares participated in the arrangement on substantially the same terms as the terms of the Scheme were the same for all owners of STT ordinary shares.
60. As a result, this requirement is satisfied as each shareholder within each type of interest (ordinary or preference share) was able to participate in the arrangement on substantially the same terms.
61. Paragraphs 124-780(1)(c) and 124-780(3)(a) of the ITAA 1997 require the original interest holder (a STT ordinary shareholder) to have acquired its original interest (a STT ordinary share) on or after 20 September 1985.
62. This condition was satisfied by a STT ordinary shareholder in relation to the ordinary shares they acquired on or after 20 September 1985.
63. Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a STT ordinary shareholder) would make a capital gain from a CGT event happening in relation to the original interest (a STT ordinary share).
64. Whether a STT ordinary shareholder would, apart from the roll-over, make a capital gain from the cancellation of any of its STT ordinary shares is a question of fact that is dependent on the specific circumstances of each shareholder – in particular on the cost base of each STT ordinary share and the value of the capital proceeds received.
65. Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (RDS) or, where the acquiring entity is a member of a wholly-owned group, the ultimate holding company of that group.
66. This requirement is satisfied provided that RDS was not a member of a wholly-owned group of which another company was the ultimate holding company just before it first increased the percentage of voting shares it owns in STT under the arrangement.
67. Allens Arthur Robinson have advised that RDS was not a member of a wholly-owned group of which another company was the ultimate holding company just before RDS first increased the percentage of voting shares it owns in STT under the arrangement. RDS first increased the percentage of voting shares it owns in STT under the arrangement on 20 July 2005, being the date on which the New STT ordinary shares were issued as fully paid to RDS. Just before that time, Shell RDS Holding B.V. did not beneficially own all of the shares in RDS. Paragraph 30(a) limits this Ruling in this regard.
68. Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a STT ordinary shareholder) chooses to obtain the roll-over.

69. Whether a STT ordinary shareholder chooses roll-over is a question of fact.

70. Subsection 124-780(4) of the ITAA 1997 provides that conditions specified in subsection (5) must be satisfied if the original interest holder (a STT ordinary shareholder) and the acquiring entity (RDS) did not deal with each other at arm's length and:

- neither the original entity (STT) nor the replacement entity (RDS) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a) of the ITAA 1997; or
- the original interest holder (a STT ordinary shareholder), the original entity (STT) and the acquiring entity (RDS) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997.

71. Paragraph 124-780(4)(a) of the ITAA 1997 does not apply as STT had more than 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 also does not apply to STT as its ownership was not concentrated in the manner contemplated by that section.

72. Paragraph 124-780(4)(b) of the ITAA 1997 does not apply because no STT ordinary shareholder was a member of a linked group (within the meaning of section 170-260 of the ITAA 1997) along with STT and RDS just before the arrangement started.

### **Exceptions to obtaining scrip for scrip roll-over**

73. Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a STT ordinary shareholder) might make from their replacement interest (a RDS B Share) would be disregarded.

74. This exception may apply if, for example, the RDS B Shares are held as trading stock. Paragraph 30 of this Ruling limits this Ruling in this regard.

75. Paragraph 124-795(2)(b) of the ITAA 1997 provides that the roll-over is not available if the original interest holder (a STT ordinary shareholder) and the acquiring entity (RDS) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a STT ordinary share) and the acquiring entity is a foreign resident.

76. This exception does not apply as no STT ordinary shareholder was a member of the same wholly-owned group as RDS.

77. Subsection 124-795(4) of the ITAA 1997 provides that the roll-over is not available if, subject to other conditions, the original entity (STT) was not an Australian resident and did not have at least 300 members just before the arrangement started.

78. This exception does not apply as STT had more than 300 members just before the arrangement started.

## **Appendix 2 – Detailed contents list**

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79. Below is a detailed contents list for this Ruling:

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## References

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- ITAA 1997 124-780(2)(a)
  - ITAA 1997 124-780(2)(b)
- Not previously issued as a draft
- ITAA 1997 124-780(2)(c)
  - ITAA 1997 124-780(3)(a)
- Related Rulings/Determinations:*
- ITAA 1997 124-780(3)(b)
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  - ITAA 1997 124-780(3)(d)
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- CR 2006/54; CR 2006/55;  
CR 2006/56
- Subject references:*
- capital proceeds
  - CGT event C1-C3 - end of a CGT asset
  - cost base
  - ordinary share
  - replacement interest
  - resident
  - roll-over
  - roll-over relief
  - scrip for scrip
  - share
  - shareholder
- ITAA 1997 124-780(4)(a)
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  - ITAA 1997 960-50(6)
  - Corporations Act 2001 9
  - Copyright Act 1968
  - TAA 1953
  - TAA 1953 Sch 1 357-75(1)
- Legislative references:*
- ITAA 1936 6(1)
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  - ITAA 1997 116-20(1)
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### ATO references

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