


CR 2022/74 - Police & Nurses Limited - PNL Capital Notes

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Status: **legally binding**

Class Ruling

Police & Nurses Limited – PNL Capital Notes

📌 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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What this Ruling is about

1. This Ruling sets out income tax consequences for specified entities who applied for the issue of and acquired Floating Rate Capital Notes issued by Police & Nurses Limited (PNL) on 26 May 2022 (PNL Capital Notes) under the Programme for the Issuance of Capital Notes described in the Information Memorandum dated 6 April 2022 (IM) and specified as Tranche No 1 of Series No 1 in the Pricing Supplement dated 24 May 2022 (PS).
2. The scheme is set out in paragraphs 33 to 57 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Terms of the PNL Capital Notes (Terms) which are contained in the IM as amended, supplemented, modified or replaced by the PS.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

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Who this Ruling applies to

5. This Ruling applies to you if you are an investor in PNL Capital Notes (referred to as an Investor) who:
- acquired PNL Capital Notes by initial application for the issue of PNL Capital Notes under the Programme for the Issuance of Capital Notes described in the IM and supplemented by the PS
 - is a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) during the period in which you hold your PNL Capital Notes
 - holds your PNL Capital Notes on capital account, and
 - is not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your PNL Capital Notes.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

What this Ruling does not consider

6. This Ruling does not deal with:
- the tax implications in relation to a non-resident who holds their PNL Capital Notes through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) in Australia
 - the tax implications of Conversion or Write-off of PNL Capital Notes on the occurrence of a Non-Viability Event, or
 - how the gross-up and tax offset rules in Division 207 apply to partnership or trustee investors (other than a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity), or to indirect distributions to partners in a partnership or beneficiaries or trustees of a trust.

When this Ruling applies

7. This Ruling applies from 1 July 2021 to 30 June 2027.

Ruling

Consequences of acquiring PNL Capital Notes

Acquisition date of PNL Capital Notes

8. You acquired your PNL Capital Notes on 26 May 2022 under table item 2 of section 109-10.

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Cost base and reduced cost base of each PNL Capital Note

9. The first element of the cost base and reduced cost base of each PNL Capital Note is A\$10,000, being the money you paid to acquire each of your PNL Capital Notes (subsections 110-25(2) and 110-55(2)).

Consequences of holding PNL Capital Notes***Distributions on PNL Capital Notes and entitlement to tax offset for franking credits***

10. A Distribution on a PNL Capital Note is a non-share dividend under section 974-120 and is included in your assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).

11. In the income year in which a Distribution is made (section 207-20), you also:

- include the amount of the franking credit attached to the Distribution in your assessable income, and
- are entitled to a tax offset equal to the franking credit.

12. To the extent that a Distribution (or a part of it) is either exempt income or non-assessable non-exempt income in your hands (and none of the exceptions in Subdivision 207-E apply), the amount of any franking credit on the Distribution that is exempt income or non-assessable non-exempt income is not included in your assessable income, and you are not entitled to a tax offset under Division 207 (Subdivision 207-D).

13. The franking credit tax offset that you are entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25. Entities excluded by section 67-25 include corporate tax entities (such as companies, corporate limited partnerships and public trading trusts), unless they satisfy the requisite conditions in subsections 67-25(1C) or (1D).

Determination under paragraph 177EA(5)(b) of the ITAA 1936

14. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits you receive in relation to a Distribution.

Determination under paragraph 204-30(3)(c)

15. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits you receive in relation to a Distribution.

Gross-up and tax offset cancelled in certain circumstances

16. Paragraph 207-145(1)(a) will not apply to cancel the effect of the gross-up and tax offset in respect of a franked Distribution if you are a qualified person in respect of that Distribution.

17. You will be a qualified person in relation to a Distribution if, during the primary qualification period, you held your PNL Capital Notes for a continuous period of at least 90 days during which you did not have 'materially diminished risks or loss of opportunities for

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gain' (as defined in former section 160APHM of the ITAA 1936) in respect of your PNL Capital Notes.

18. Paragraphs 207-145(1)(b) to (db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution.

19. In respect of paragraphs 207-145(1)(b) and (c), refer to paragraphs 14 and 15 of this Ruling.

20. In respect of paragraph 207-145(1)(d), there is no evidence that the Distributions will be made as part of a dividend stripping operation.

21. In respect of paragraph 207-145(1)(da), the distribution washing provision does not apply (refer to subparagraph 57(t) of this Ruling).

22. In respect of paragraph 207-145(1)(db), the PNL Capital Notes are equity interests which form part of PNL's Additional Tier 1 Capital (refer to subsection 207-158(2) and subparagraph 57(d) of this Ruling).

Consequences of disposing of PNL Capital Notes

PNL Capital Notes are not traditional securities

23. A PNL Capital Note is not a 'traditional security' as defined in subsection 26BB(1) of the ITAA 1936.

24. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or Redemption of PNL Capital Notes in your assessable income.

25. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or Redemption of PNL Capital Notes as a deduction to you.

Optional Redemption of PNL Capital Notes

26. CGT event C2 happens when a PNL Capital Note is Redeemed for its Face Value (section 104-25).

27. The capital proceeds received by Investors on Redemption of the PNL Capital Notes will be replaced with the market value of the PNL Capital Notes on the Redemption Date, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value of the PNL Capital Notes (subparagraph 116-30(2)(b)(ii)).

28. You will make a capital gain (or capital loss) on Redemption of your PNL Capital Notes if the capital proceeds you receive are greater than (or less than) the cost base of your PNL Capital Notes.

29. As you hold your PNL Capital Notes on capital account, no amount will be included in your assessable income on the Redemption under section 6-5.

30. In addition, you will not incur a deductible loss under section 8-1 as a consequence of the Redemption.

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Other integrity provisions

Section 45A of the ITAA 1936

31. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole, or a part, of the capital benefit provided to you on Redemption as an unfranked dividend.

Section 45B of the ITAA 1936

32. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole, or a part, of the capital benefit provided to you on Redemption as an unfranked dividend.

Scheme

33. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

34. PNL is a public company limited by shares, incorporated and domiciled in Australia.

35. PNL is a multi-brand customer-owned banking organisation that operates P&N Bank in Western Australia and bcu in New South Wales and south-east Queensland.

36. PNL is organised on the basis of its principles of mutuality. Customers must be members of PNL and a person can only become a member by subscribing for a member share.

37. PNL is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* and is regulated by the Australian Prudential Regulation Authority (APRA) and other regulatory bodies.

38. PNL is an Australian resident as defined in subsection 995-1(1) and is not a resident of any other jurisdiction.

Main features of PNL Capital Notes

39. PNL Capital Notes are Australian dollar-denominated perpetual, non-cumulative, subordinated, unsecured debt obligations in the form of unsecured notes issued by PNL.

40. PNL Capital Notes were issued by PNL in Australia on the Issue Date, being 26 May 2022.

41. PNL Capital Notes are held in the Austraclear System. Austraclear is the Holder of the PNL Capital Notes and holds the PNL Capital Notes as nominee for the beneficial PNL Capital Notes holders (Investors).

42. The PNL Capital Notes offer raised Additional Tier 1 Capital as part of PNL's capital management policy within the regulatory capital requirements prescribed by APRA. The proceeds from the issue are to be used by PNL for general corporate purposes, including a digital transformation programme.

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43. The offer for issue was only open to eligible professional or sophisticated investors in accordance with Part 6D.2 of the *Corporations Act 2001* and raised A\$75 million from a mix of institutional and wholesale non-institutional investors.

Issue price

44. The issue price (Face Value) of each PNL Capital Note was A\$10,000. PNL Capital Notes were fully-paid on the Issue Date.

Distributions

45. Subject to the Terms, PNL will pay quarterly floating-rate cash Distributions on the Face Value of each PNL Capital Note on the relevant Payment Date.

46. The Distribution payable is calculated as the Face Value of each PNL Capital Note, multiplied by a Distribution Rate (which is equal to the BBSW plus the Margin, together adjusted by $(1 - \text{Tax Rate})$), multiplied by the Day Count Fraction (which is equal to the actual number of days in the Calculation Period divided by 365). If any Distribution is not fully franked, then the Distribution will be adjusted to reflect the Franking Rate.

47. The payment of any Distribution is subject to PNL's absolute discretion and no Payment Condition existing (such conditions relate to, for example, APRA's capital adequacy requirements applicable to PNL).

48. Payments of Distributions are non-cumulative. If all or any part of a Distribution is not paid, PNL has no liability to pay any unpaid amount of the Distribution and Holders have no claim or entitlement in respect of such non-payment. No interest accrues on any unpaid Distributions and Holders have no claim or entitlement in respect of interest on any unpaid Distributions.

49. Subject to certain exceptions, if a Distribution has not been paid in full on the Relevant Distribution Payment Date, PNL must not, without the approval of a Special Resolution, declare, determine to pay or pay a Dividend, or undertake any Buy-Backs or Capital Reduction until and including the next Distribution Payment Date, unless the Distribution is paid in full within 5 Business Days of the Relevant Distribution Payment Date.

Conversion or Write-off on Non-Viability Event

50. A Non-Viability Event means APRA has notified PNL that APRA considers that:

- the conversion into PNL MCIs or write-off of Relevant Securities in accordance with their terms or by operation of law is necessary because without the conversion or write-off, PNL would become non-viable (clause 6.1(a)(i) of the Terms), or
- without a public sector injection of capital, or equivalent support, PNL would become non-viable (clause 6.1(a)(ii) of the Terms).

51. If a Non-Viability Event occurs, PNL must immediately either Convert into PNL MCIs or Write-off all Relevant Securities or, if a Non-Viability Event occurs which does not involve a determination by APRA that a public sector injection of capital would be required and APRA is satisfied that conversion or write-off of a proportion of Relevant Securities will be sufficient to ensure that PNL will not become non-viable, that proportion of Relevant Securities.

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52. Upon Conversion:

- you will be issued a number (the 'Conversion Number') of PNL MCIs for each PNL Capital Note held, and
- your rights (including to payment of Distributions) in relation to each PNL Capital Note that is being Converted will be immediately and irrevocably terminated for an amount equal to the Face Value of that PNL Capital Note and PNL will apply the Face Value by way of payment for subscription for the Conversion Number of PNL MCIs.

Optional Redemption

53. PNL may, with APRA's prior written approval, elect to Redeem for an amount equal to the Face Value, all or some PNL Capital Notes on:

- a Redemption Date following the occurrence of a Tax Event or a Regulatory Event, or
- the Optional Redemption Date, being 26 May 2027.

54. PNL may only elect to Redeem PNL Capital Notes if APRA is satisfied that either:

- the PNL Capital Notes the subject of the Redemption are replaced concurrently or beforehand with a capital instrument of the same or better quality and the replacement of the instrument is done under conditions that are sustainable for PNL's income capacity, or
- the capital position of the PNL Level 1 Group and the PNL Level 2 Group will remain adequate after PNL elects to Redeem the PNL Capital Notes.

55. PNL Capital Notes will be Redeemed by payment on the Redemption Date of an amount equal to the Face Value to the Holder.

56. On the Redemption Date, the only right the Holders will have in respect of PNL Capital Notes will be to obtain the Face Value payable in accordance with the Terms and any Distribution PNL has determined is payable on that date. Upon the Face Value being paid (or taken to be paid), all other rights conferred, or restrictions imposed, by PNL Capital Notes will no longer have effect.

Other matters

57. This Ruling is made on the basis that:

- (a) During the term of the scheme, PNL is a resident of Australia under the income tax laws of Australia and of no other jurisdiction.
- (b) The majority of the Investors who acquired PNL Capital Notes under the offer for issue were residents of Australia for tax purposes, although some may be non-residents.
- (c) PNL Capital Notes are equity interests in PNL and non-share equity interests as defined in subsection 995-1(1).
- (d) PNL Capital Notes form part of PNL's Additional Tier 1 Capital for the purposes of the prudential standards determined by APRA and in force under section 11AF of the *Banking Act 1959*.
- (e) Distributions will be frankable distributions as defined in section 202-40.

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- (f) PNL will frank Distributions at the same franking percentage as the benchmark franking percentage for the franking period in which the distributions are made.
- (g) Distributions on PNL Capital Notes are not sourced, directly or indirectly, from PNL's share capital account or its non-share capital account.
- (h) Distributions paid on PNL Capital Notes will not be debited against PNL's share capital account or non-share capital account.
- (i) Immediately before the payment of a Distribution, PNL expects that the amount of its available frankable profits will be such that no part of a Distribution is taken to be unfrankable under section 215-15.
- (j) PNL expects that future tax payments will generate sufficient franking credits for PNL to fully frank frankable distributions on all equity interests.
- (k) PNL will not differentially frank Distributions to different Investors according to their tax status or on any other basis.
- (l) PNL, as a mutual entity, does not presently make distributions on its member shares.
- (m) PNL's share capital account did not become tainted under Division 197 as a result of issuing the PNL Capital Notes and will not become tainted as a result of issuing PNL MCIs on Conversion.
- (n) If PNL Capital Notes are Redeemed, the Face Value payable to you will be debited in full to PNL's non-share capital account.
- (o) PNL MCIs issued on Conversion will be equity interests in PNL as defined in Subdivision 974-C and constitute Tier 1 Capital.
- (p) PNL does not currently have on issue any other equity interests as defined in Subdivision 974-C that constitute Tier 1 Capital.
- (q) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your PNL Capital Notes apart from holding your PNL Capital Notes.
- (r) You (or an associate) will not make, be under an obligation to make, or be likely to make, a 'related payment' (as defined under former section 160APHN of the ITAA 1936) in relation to a Distribution.
- (s) You will hold your PNL Capital Notes for a continuous period of at least 90 days (excluding the day of acquisition and disposal (if relevant)), during the 'primary qualification period' (as defined in former section 160APHD of the ITAA 1936) in relation to a Distribution.
- (t) You (or your connected entities) will not engage in distribution washing (as outlined in section 207-157) in relation to a Distribution (unless entitled to the exception under subsection 207-157(4)).
- (u) All parties to the transaction are dealing with each other on arm's length terms.

Commissioner of Taxation

17 August 2022

 Status: **not legally binding**

Appendix – Explanation

❶ *This Explanation 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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Determination under paragraph 177EA(5)(b) of the ITAA 1936

58. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of a particular scheme is to enable a taxpayer to obtain an imputation benefit.

59. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 will be satisfied, therefore the relevant circumstances of the scheme must be considered to establish whether any person who entered into or carried out the scheme, or any part of the scheme, did so for a more than incidental purpose of enabling an Investor to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

60. The Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling Investors to obtain imputation benefits is more than incidental to PNL’s primary purpose of raising Additional Tier 1 Capital for regulatory capital requirements and continuing to operate within capital ratios.

Determination under paragraph 204-30(3)(c)

61. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in a certain way.

62. Based on the scheme, there is no evidence of streaming. Distributions will be received by all Investors by reason of their proportionate holding of PNL Capital Notes and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows PNL to treat Investors differently in respect of their entitlement to a franked Distribution.

Status: **not legally binding**

Gross-up and tax offset denied in certain circumstances – qualified persons

63. If you are not a qualified person in relation to a Distribution, you:
- do not include the franking credit attached to the Distribution in your assessable income (paragraph 207-145(1)(e)), and
 - are not entitled to a tax offset equal to the amount of the franking credit attached to the Distribution (paragraph 207-145(1)(f)).
64. As this Ruling is made on the basis that you have not made a related payment in respect of a Distribution, the relevant qualification period is the 'primary qualification period' (as defined in former section 160APHD of the ITAA 1936). The primary qualification period begins on the day after you acquired your PNL Capital Notes and ends on the 90th day after the day PNL Capital Notes become ex-distribution.
65. You need to have held your PNL Capital Notes 'at risk' for a continuous period of 90 days (excluding the days of acquisition and disposal, if relevant) during the primary qualification period. Any days you had materially diminished risks of loss or opportunities for gain in respect of your holding are also excluded (former subsection 160APHO(3) of the ITAA 1936).
66. Under former subsection 160APHM(2) of the ITAA 1936, you are taken to have materially diminished the risks of loss and opportunities for gain on a particular day with respect to your PNL Capital Notes if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding PNL Capital Notes.

Market value of PNL Capital Notes on Redemption

67. The capital proceeds received by Investors on Redemption will be replaced with the market value of the PNL Capital Notes on the date of Redemption, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value (subparagraph 116-30(2)(b)(ii)).
68. If the PNL Capital Notes are Redeemed on the Optional Redemption Date or a Redemption Date following the occurrence of a Tax Event or Regulatory Event, the market value of the PNL Capital Notes which are Redeemed will need to be determined in accordance with Practical Compliance Guideline PCG 2021/1 *Application of market value substitution rules when there is a buy-back or redemption of hybrid securities – methodologies for determining the market value for investors holding their securities on capital account*.

Section 45A of the ITAA 1936

69. Section 45A of the ITAA 1936 applies where a company streams capital benefits and the payment of dividends to shareholders who would derive a greater benefit from receiving the capital benefits (the advantaged shareholders), and it is reasonable to assume that other shareholders (the disadvantaged shareholders) have received, or will receive, dividends.
70. The Redemption of PNL Capital Notes will constitute the provision of a capital benefit to Investors (paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936).

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71. However, the Redemption of PNL Capital Notes will not constitute the streaming of capital benefits because, under a Redemption, PNL will not selectively direct the flow of capital benefits to Investors who could most benefit from the receipt of capital. Accordingly, as this requirement does not apply to the Redemption of PNL Capital Notes, the Commissioner will not make a determination to treat the whole, or a part, of the capital benefit received by Investors as an unfranked dividend.

Section 45B of the ITAA 1936

72. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends. Where the conditions are met, the Commissioner may make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part, of the capital benefit such that it will be treated as an unfranked dividend.

73. The Redemption of PNL Capital Notes will constitute a scheme under which Investors are provided with a capital benefit by PNL (paragraph 45B(5)(b) as affected by subsection 45B(7) of the ITAA 1936). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

74. At least some Investors will obtain a tax benefit as defined in subsection 45B(9) of the ITAA 1936 as a result of a Redemption. Accordingly, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

75. Therefore, whether section 45B of the ITAA 1936 will apply to a Redemption of PNL Capital Notes turns on whether paragraph 45B(2)(c) of the ITAA 1936 will be satisfied. This involves considering the relevant circumstances of the Redemption scheme including, but not limited to, those listed in subsection 45B(8) of the ITAA 1936, to establish whether one of the persons who will enter into or carry out the scheme will do so for a more than incidental purpose of enabling a relevant taxpayer (the Investor) to obtain a tax benefit.

76. Having regard to the relevant circumstances, it would not be concluded that the Redemption of PNL Capital Notes will be entered into for a more than incidental purpose of enabling Investors to obtain a tax benefit. Accordingly, paragraph 45B(2)(c) of the ITAA 1936 would not be satisfied and the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part, of the capital benefit provided to Investors on Redemption.

Status: **not legally binding**

References

Legislative references:

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- ITAA 1936 26BB
- ITAA 1936 26BB(1)
- ITAA 1936 44(1)(a)(ii)
- ITAA 1936 45A
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- ITAA 1936 45A(3A)
- ITAA 1936 45A(3)(a)
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- ITAA 1936 45B
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(5)(a)
- ITAA 1936 45B(5)(b)
- ITAA 1936 45B(7)
- ITAA 1936 45B(8)
- ITAA 1936 45B(9)
- ITAA 1936 45C
- ITAA 1936 70B
- ITAA 1936 former 160APHD
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- ITAA 1997 Div 67
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- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
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- ITAA 1997 110-55(2)
- ITAA 1997 116-30(2)(b)(ii)
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- ITAA 1997 204-30(3)(c)
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- ITAA 1997 207-20
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- ITAA 1997 207-145(1)(c)
- ITAA 1997 207-145(1)(d)
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- ITAA 1997 207-145(1)(db)
- ITAA 1997 207-145(1)(e)
- ITAA 1997 207-145(1)(f)
- ITAA 1997 207-157
- ITAA 1997 207-157(4)
- ITAA 1997 207-158(2)
- ITAA 1997 215-15
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 974-C
- ITAA 1997 974-115
- ITAA 1997 974-120
- ITAA 1997 995-1(1)
- Banking Act 1959 11AF
- Corporations Act 2001 Pt 6D.2

Other references:

- PCG 2021/1

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ATO references

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