

# ***LCR 2018/D7 - Base rate entities and base rate entity passive income***



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This document has been finalised by LCR 2019/5.



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Page status: **draft only – for comment**

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## **Base rate entities and base rate entity passive income**

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### **Relying on this draft Ruling**

This publication is a draft for public comment. When the final ruling issues, it will have the following preamble:

*This Ruling describes how the Commissioner will apply the law as amended by Schedule 1 and Schedule 2 to the Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018.*

*If you rely on this Ruling in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Ruling if it does not correctly state how a relevant provision applies to you.*

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### What this draft Ruling is about

1. This draft Ruling considers the *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018* which amends the law to limit access to the lower corporate tax rate. From the 2017–18 income year a corporate tax entity must be a **‘base rate entity’** to be taxed at the lower rate. This Act also makes changes to how a corporate tax entity calculates the amount of a franking credit it may attach to a frankable distribution.
2. This draft Ruling provides advice on:
  - the general scheme of the new law
  - what amounts of assessable income are **‘base rate entity passive income’** (BREPI)
  - the meaning of rent, interest and when a share of net income of a trust or partnership is referable to an amount of BREPI, and
  - how to calculate a corporate tax entity’s corporate tax rate for imputation purposes and work out the maximum amount of the franking credit it may attach to frankable distributions.
3. This draft Ruling does not provide guidance on terms and concepts where there is existing ATO guidance on their meaning and the context of the law doesn’t suggest a different meaning. This is summarised in Appendix 1 of this draft Ruling.
4. All legislative references in this draft Ruling are to the *Income Tax Rates Act 1986* (ITRA 1986) unless otherwise specified.

### Date of effect

5. When finalised, this Ruling will be a public ruling, effective from the application date, which is from the 2017–18 year of income and later years of income.

### General scheme

6. Under the new law, a corporate tax entity will be taxed at the lower corporate tax rate if it is a base rate entity. A corporate entity will be a base rate entity if:
  - no more than 80% of its assessable income is BREPI<sup>1</sup>, and
  - its aggregated turnover<sup>2</sup> is less than the relevant threshold (\$25 million in the 2017–18 income year; \$50 million from the 2018–19 income year).<sup>3</sup> A

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<sup>1</sup> Paragraph 23AA(a).

corporate tax entity's aggregated turnover is the sum of their ordinary income and the ordinary income of any connected or affiliate entity.

7. Eligibility for the lower corporate tax rate depends on an entity's BREPI and aggregated turnover in an income year. A corporate tax entity's tax rate may change if there are fluctuations in either their BREPI, as a percentage of their assessable income, or their aggregated turnover. The Commissioner does not have a discretion to allow an entity to be a base rate entity in an income year, if its BREPI is more than 80% of its assessable income or its aggregated turnover exceeds the applicable threshold in that income year.

### Base rate entity passive income

8. The types of income that are BREPI are listed in section 23AB. Table 1 summarises the different forms of income that are BREPI and whether they are defined terms.

**Table 1 – Types of base rate entity passive income**

Base rate entity passive income	Is the form of BREPI a defined term?
Corporate distributions (but not including non-portfolio dividends) and franking credits on these distributions <sup>4</sup>	Yes: corporate distribution: section 960-120 of the ITAA 1997 Yes: non-portfolio dividend: section 317 of the <i>Income Tax Assessment Act 1936</i> (ITAA 1936) Yes: franking credits: section 205-15 of the ITAA 1997
Non-share dividends <sup>5</sup>	Yes: section 974-120 of the ITAA 1997
Interest (or payments in the nature of interest) <sup>6</sup> except: <ul style="list-style-type: none"> <li>where the entity <ul style="list-style-type: none"> <li>is a financial institution<sup>7</sup>, or</li> <li>is a 'registered entity' that carries on a general business of providing finance on a commercial basis<sup>8</sup>, or</li> <li>holds an 'Australian credit licence' or is a 'credit representative' of another entity that holds such an</li> </ul> </li> </ul>	No: interest (or payments in the nature of interest) Yes: financial institution: section 202A of the ITAA 1936 Yes: registered entity: subsection 5(3) of the <i>Financial Sector (Collection of Data) Act 2001</i> (FSCDA) Yes: providing finance: subsection 32(1) of the FSCDA Yes: Australian credit licence: subsection 35(1) of the <i>National Consumer Credit Protection Act 2009</i> (NCCPA) Yes: credit representative: subsections 64(2) and 65(2) of the NCCPA Yes: financial services licensee: section 761A of the <i>Corporations Act 2001</i> Yes: authorised representative:

<sup>2</sup> This takes its meaning from section 328-115 of the *Income Tax Assessment Act 1997* (ITAA 1997).

<sup>3</sup> Paragraph 23AA(b).

<sup>4</sup> Paragraphs 23AB(1)(a) and (b).

<sup>5</sup> Paragraph 23AB(1)(c).

<sup>6</sup> Paragraph 23AB(1)(d).

<sup>7</sup> Subparagraph 23AB(2)(a)(i).

<sup>8</sup> Subparagraph 23AB(2)(a)(ii).

<ul style="list-style-type: none"> <li>– Australian credit licence<sup>9</sup>, or</li> <li>– is a ‘financial services licensee’ whose licence covers dealings in securities, or is an ‘authorised representative’ of such a financial services licensee, or</li> <li>• to the extent that it is a return on an equity interest in a company.<sup>10</sup></li> </ul>	section 761A of the <i>Corporations Act 2001</i>
Royalties <sup>11</sup>	Yes <sup>12</sup> : subsection 6(1) of the ITAA 1936
Rent <sup>13</sup>	No: rent means the consideration payable by a tenant to a landlord for the exclusive possession and use of land or premises <sup>14</sup>
A gain on a qualifying security <sup>15</sup>	Yes: qualifying security: Division 16E of Part III of the ITAA 1936
A net capital gain <sup>16</sup>	Yes: net capital gain: sections 102-5 and 165-111 of the ITAA 1997
An amount included in the assessable income of a partner or a beneficiary from a trust or partnership, to the extent it is referable to an amount that is otherwise BREPI <sup>17</sup>	No: this is the corporate tax entity’s share of net income worked out under Divisions 5 and 6 of Part III of the ITAA 1936 (and Subdivisions 115-C and 207-B of the ITAA 1997) to the extent it is attributable to BREPI

### Interest (or payments in the nature of interest)

9. Interest (or payments in the nature of interest) is BREPI<sup>18</sup>, except in the circumstances outlined in Table 1.

<sup>9</sup> Subparagraph 23AB(2)(a)(iii).

<sup>10</sup> Paragraph 23AB(2)(b).

<sup>11</sup> Paragraph 23AB(1)(d).

<sup>12</sup> Section 4 *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018* incorporates the definition of royalties from the ITAA 1936 into the ITRA 1986.

<sup>13</sup> Paragraph 23AB(1)(d).

<sup>14</sup> Taxation Determination TD 2006/78 *Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent?*

<sup>15</sup> Paragraph 23AB(1)(e).

<sup>16</sup> Paragraph 23AB(1)(f).

<sup>17</sup> Paragraph 23AB(1)(g).

<sup>18</sup> Paragraph 23AB(1)(d).

### **What is interest?**

10. Interest means 'the return, consideration, or compensation for the use or retention by one person of a sum of money belonging to, or owed to, another, and that interest must be referable to a principal'.<sup>19</sup>

### **Payments in the nature of interest**

11. Payments in the nature of interest must have the character of return or profit to the lender for the use of money belonging to, or owed to another.<sup>20</sup> Whether a payment has this character turns on its substance, no matter how it is calculated.<sup>21</sup> For example, payments are not in the nature of interest if they are payable under a clause in a contract that requires a borrower to pay a lender's costs and liabilities a lender incurs to establish a loan, or under an indemnification clause to pay amounts of tax payable on interest received.<sup>22</sup>

### **Royalties**

12. 'Royalties' in paragraph 23AB(1)(d) has the meaning given by subsection 6(1) of the ITAA 1936.<sup>23</sup> The ATO's views on the meaning of royalty are contained in the advice listed in Appendix 1.

13. The definition of 'royalties' in subsection 6(1) of the ITAA 1936 extends the ordinary meaning of royalties to include specified payments. For example, the expanded definition of royalties includes the right to use industrial, commercial or scientific equipment.<sup>24</sup>

### **Rent**

14. Consistent with the purpose of the amendment, 'rent' in paragraph 23AB(1)(d) means the consideration payable by a tenant to a landlord for the exclusive possession and use of land or premises.<sup>25</sup> The Commissioner's view and examples on when consideration paid for the use of land or premises will be rent for the purpose of paragraph 23AB(1)(d) are set out in TD 2006/78. As rent takes its ordinary meaning there are no statutory income tax law exceptions that apply in contrast to the definition for interest (or payments in the nature of interest).

### **A net capital gain**

15. A net capital gain for an income year is calculated using the method described in subsection 102-5(1) of the ITAA 1997.<sup>26</sup> Broadly, it is calculated by subtracting the total of

<sup>19</sup> *FCT v. Century Yuasa Batteries* 98 ATC 4380 at 4383; (1998) 38 ATR 442 at 444; *Federal Wharf Co Ltd v. DFC of T* (1930) 44 CLR 24 at p 28.

<sup>20</sup> *FCT v. Century Yuasa Batteries* 98 ATC 4380 at 4383-4.

<sup>21</sup> *Ibid.*

<sup>22</sup> *FCT v. Century Yuasa Batteries* 98 ATC 4380 at 4383-4.

<sup>23</sup> Section 4 of the Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018.

<sup>24</sup> For further guidance on what is regarded as a royalty see Taxation Ruling IT 2660 *Income tax: definition of royalties*; Taxation Ruling TR 2008/7 *Income tax: royalty withholding tax and the assignment of copyright*; Taxation Ruling TR 93/12 *Income tax: computer software*; Taxation Ruling TR 95/6 *Income tax: primary production and forestry*.

<sup>25</sup> Section 15AA of the *Acts Interpretation Act 1901*; Explanatory Memorandum to Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017; *Radaich v. Smith* (1959) 101 CLR 209, per McTiernan J; Taylor J at [6] 222; *C H Bailey Ltd v. Memorial Enterprises Ltd* [1974] 1 All ER 1003 at 1010, *United Scientific Holdings Ltd v. Burnley Borough Council* [1977] 2 All ER 62 at 76, 86, 93, 99; *The Australian Oxford Dictionary*, 1999, Oxford University Press, Melbourne; *Halsbury's Laws of England* 4th Edition Reissue, Butterworths, London 1994, vol 27(1) 'Landlord and Tenant', paragraph 212.

<sup>26</sup> Paragraph 23AB(1)(f).

capital losses made in the income year and carried forward net capital losses, from the total of capital gains made in an income year. This is then adjusted for any small business concessions to which the taxpayer is entitled.<sup>27</sup>

### **Trusts and partnerships**

16. If a company is assessed on a share of net income from a trust, or their individual interest in the net income of a partnership, it will have BREPI to the extent that the amount included in its assessable income under Divisions 5 or 6 of Part III of the ITAA 1936 is referable to BREPI of the trust or partnership.<sup>28</sup>

17. Where there is a chain of trusts or partnerships, the tests must be applied at each level.

### **Streaming of franked dividends and capital gains by the trustee of a trust**

18. Where a trust makes capital gains or receives a franked distribution, the trustee may (where they have power under the trust deed) stream these amounts to particular beneficiaries for tax purposes.<sup>29</sup> This can occur by making a beneficiary specifically entitled to these amounts.

19. Other amounts of the net income of a trust included in a corporate tax entity's assessable income (including capital gains and franked distributions to which no beneficiary is specifically entitled) are proportionately shared between beneficiaries based on their present entitlements to trust income.<sup>30</sup>

### **Apportionment of expenses**

20. In determining each beneficiary's or partner's share of net income, the trustee or partners must allocate expenses in a fair and reasonable way. Generally, expenses that can be clearly attributed to income should be allocated against that income. Indirect expenses that relate to more than one amount such as overheads, must be fairly and reasonably apportioned between different amounts.<sup>31</sup>

### **Example 1.1 – apportionment of directly referable trust income**

21. *John Smith and Smith Pty Ltd are the beneficiaries of the JD Smith Trust. The JD Smith Trust owns a commercial investment property. In the 2017–18 income year, the net income of the JD Smith Trust comprised:*

- *\$800,000 in net rental income, and*
- *\$200,000 in net fees for services.*

22. *John Smith and Smith Pty Ltd were each entitled to an equal share of the net income of the JD Smith Trust.*

23. *Rental income is BREPI<sup>32</sup>, so the amount of the trust's net income referable to rental income (\$400,000) will be BREPI. The amount referable to fees for services (\$100,000) is not BREPI.*

<sup>27</sup> Capital gains concessions are available to small business entities with an aggregated turnover of less than \$2 million.

<sup>28</sup> Paragraph 23AB(1)(g).

<sup>29</sup> Subdivisions 115-C and 207-B of the ITAA 1997.

<sup>30</sup> *Commissioner of Taxation v. Greenhatch* (2012) 203 FCR 134.

<sup>31</sup> *Ronpibon Tin NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47.

<sup>32</sup> Paragraph 23AB(1)(d).

**Example 1.2 – working out amount of a company's share of net income attributable to BREPI**

24. Company 1, Sub Trust 1 and Bob are beneficiaries of the Busy Trust. The net income of Busy Trust consisted of the following amounts:

- \$500,000 net business income
- \$300,000 net unfranked dividend, and
- \$200,000 net rental income.

25. For trust law purposes, the trustee of Busy Trust resolved to make Company 1 presently entitled to its net business income, Bob presently entitled to the net unfranked dividend and Sub Trust 1 presently entitled to the net rental income.

26. For tax law purposes, as Company 1 was presently entitled to \$500,000, it was presently entitled to 50% of the net income of the trust.

27. Although Company 1's share of net income is \$500,000, that amount is not referable solely to business income. The effect of Division 6 of the ITAA 1936 is that Company 1's share of net income is attributable to:

- \$250,000 of business income, which is not BREPI
- \$150,000 of unfranked dividend income, which is BREPI, and
- \$100,000 of rental income, which is BREPI.

**Example 1.3 – how to characterise income received by a trust**

28. Top Floor Co is wholly owned by the Mezanine Trust, which has two beneficiaries: Freddy and Basement Co. Top Floor Co derives only rental income. Top Floor Co pays a franked dividend to the Mezanine Trust.

29. The Mezanine Trust also derives interest from a bank account. The trustee streams the franked dividend to Basement Co for tax purposes under Subdivision 207-B of the ITAA 1997. Basement Co has no other income. The trustee makes Freddy entitled to the interest.

30. Basement Co needs to determine whether its share of the net income of the Mezanine Trust is attributable to BREPI. The franked dividend received by Mezanine Trust from Top Floor Co is not a non-portfolio dividend, as it is not paid to a company.<sup>33</sup> The franked dividend received by Mezanine Trust is BREPI.<sup>34</sup>

31. Basement Co's share of the net income of the Mezanine Trust is entirely referable to BREPI.

**Example 1.4 – apportionment of indirectly referable trust income**

32. Succotash Pty Ltd and Tom Edwards are beneficiaries of the Beta Trust. The Beta Trust is the sole beneficiary of the Central Property Trust.

33. The Central Property Trust owns commercial rental properties which it leases on normal commercial terms. In the 2017–18 income year, the Central Property Trust's net income was \$900,000, derived solely from the rental of its commercial properties. All (100%) of its net income is attributable to BREPI.

<sup>33</sup> Section 317 of the ITAA 1936.

<sup>34</sup> Paragraph 23AB(1)(a).



34. The Beta Trust was entitled to all Central Property Trust's trust income. Beta Trust's net income included \$900,000 of BREPI, attributable to the net income from the Central Property Trust.

35. The Beta Trust also earned \$100,000 in net trading income by operating a retail business. The net income of the Beta Trust for the 2017–18 income year was \$1 million.

36. The \$900,000 share of net income of the Central Property Trust is attributable solely to rental income, and so is referable to BREPI. Beta Trust has also included \$100,000 in net trading income in its net income. Of Beta Trust's \$1 million in assessable income in the 2017–18 income year, 90% is BREPI.

37. Succotash Pty Ltd is presently entitled to 50% of the trust income of the Beta Trust. Half (50%) of the net income of the Beta Trust is included in its assessable income.

38. Succotash Pty Ltd earned no other income in the 2017–18 income year. Its 2017–18 assessable income was \$500,000, consisting entirely of the Beta Trust distribution. Succotash Pty Ltd's 2017–18 aggregated turnover was \$500,000.

39. Of the \$500,000 share of net income of the Beta Trust on which Succotash Pty Ltd is assessed, 90% is referable to BREPI. Succotash Pty Ltd did not qualify for the lower corporate tax rate of 27.5% in the 2017–18 income year and is taxable at the 30% rate.

#### **Example 1.5 – apportionment of trust expenses**

40. Orange Grove Co is the beneficiary of the Orange Trust, which owns and operates a small citrus grove. In the 2017–18 income year, the Orange Trust received:

- \$850,000 from the sale of oranges, and
- \$400,000 from renting out parts of the grove.

41. In the 2017–18 income year the Orange Trust paid an accountant to handle the financial affairs to the Trust, which cost \$50,000. It also hired labourers to assist in the sale of oranges, which cost \$150,000, and staff to manage the renting of the grove, which cost \$100,000.

42. In determining its net income, the Orange Trust allocated its expenses against its two sources of income. The cost of \$150,000 for hiring labourers was attributed to trading income from the sale of oranges, reducing that amount to \$700,000. The cost of \$100,000 for hiring staff to manage the renting of the grove was attributed to rental income, reducing that amount to \$300,000. The accountant's cost of \$50,000 related to both income amounts and needed to be apportioned on a fair and reasonable basis. In these circumstances, an apportionment that reflected the proportions of each income source was considered to be fair and reasonable.

43. The \$50,000 spent on an accountant was apportioned in the following way:

- \$35,000 was attributed to the income from selling oranges (i.e.  $\$50,000 \times \$700,000 / (\$700,000 + \$300,000)$ ), reducing that amount to \$665,000, and
- \$15,000 was attributed to the income from renting the grove (i.e.  $\$50,000 \times \$300,000 / (\$300,000 + \$700,000)$ ), reducing that amount to \$285,000.

44. Orange Grove Co was presently entitled to all of the trust income of the Orange Trust in the 2017–18 income year. Its assessable income therefore included all of the net income of the Orange Trust totalling \$950,000. Orange Grove Co included no other income in its assessable income. Of the \$950,000, the \$285,000 referable to rental income was BREPI.<sup>35</sup> The remaining \$665,000 was referable to trading income, which is not BREPI.

<sup>35</sup> Paragraph 23AB(1)(d).

45. *Orange Grove Co had 42.9% BREPI and an aggregated turnover of \$950,000, below the 2017–18 threshold of \$25 million. Orange Grove Co qualified for the lower corporate tax rate of 27.5% in the 2017–18 income year.*

### **Imputation**

46. This section provides guidance on the imputation consequences of the lower corporate tax rate and the distinction between the corporate tax rate and the '**corporate tax rate for imputation purposes**'.

47. The franking credit a corporate tax entity may attach to a frankable distribution cannot exceed the maximum franking credit for the distribution.<sup>36</sup> The maximum franking credit is worked out by reference to the corporate tax entity's corporate tax rate for imputation purposes.<sup>37</sup>

48. A corporate tax entity's corporate tax rate for imputation purposes is worked out differently to its tax rate. This means a corporate tax entity's tax rate for an income year may be different to the rate it can frank dividends in that year.

49. The *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018* amends the meaning of corporate tax rate for imputation purposes from the 2017–18 income year.<sup>38</sup> From the 2017–18 income year a corporate tax entity works out its corporate tax rate for imputation purposes by:<sup>39</sup>

- assuming that its aggregated turnover, BREPI and assessable income are the same as in the previous income year, and
- applying the corporate tax rate for the current income year.

50. If the entity did not exist in the previous income year, its corporate tax rate for imputation purposes is 27.5%.<sup>40</sup>

### **Example 2.1 – company does not have a previous income year**

51. *Kookaburra Co was founded on 1 July 2017.*

52. *As Kookaburra Co did not exist in the prior income year (the 2016–17 income year), its 2017–18 corporate tax rate for imputation purposes is 27.5%.*

### **Example 2.2 – corporate tax rate is different to corporate tax rate for imputation purposes because of aggregated turnover change in consecutive income years**

53. *In the 2016–17 income year, Emu Co had aggregated turnover of \$24 million. Emu Co's 2016–17 assessable income was 55% BREPI.*

54. *In the 2017–18 income year, Emu Co had aggregated turnover of \$28 million. Emu Co's 2017–18 assessable income was 62% BREPI. Because Emu Co's 2017–18 aggregated turnover was above the aggregated turnover threshold of \$25 million, it is not a base rate entity, and had a 2017–18 corporate tax rate of 30%.*

<sup>36</sup> Section 202-60 of the ITAA 1997.

<sup>37</sup> Subsection 995-1(1) of the ITAA 1997.

<sup>38</sup> Schedule 2 Part I Clause 2 of the *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018*.

<sup>39</sup> Subsection 995-1(1), paragraph (a) of definition of *corporate tax rate for imputation purposes* of the ITAA 1997.

<sup>40</sup> Subsection 995-1(1), paragraph (b) of definition of *corporate tax rate for imputation purposes* of the ITAA 1997.

55. *Emu Co had a 2017–18 corporate tax rate for imputation purposes of 27.5%. This is because its aggregated turnover and base rate passive income, to calculate its corporate tax rate for imputation purposes in the 2017–18 income year, is below the \$25 million dollar threshold, and less than 80%.*

**Example 2.3 – corporate tax rate is different to corporate tax rate for imputation purposes because of a change in the percentage of BREPI in consecutive income years**

56. *In the 2017–18 income year, Cockatoo Co had an aggregated turnover of \$48 million. Cockatoo Co's 2017–18 assessable income was 82% BREPI.*

57. *In the 2018–19 income year, Cockatoo Co had aggregated turnover of \$46 million. Cockatoo Co's 2018–19 assessable income was 75% BREPI. Cockatoo Co's 2018–19 aggregated turnover was below the aggregated turnover threshold of \$50 million, and its BREPI was below the 80% threshold. Therefore, it was a base rate entity, with a 2018–19 corporate tax rate of 27.5%.*

58. *Cockatoo Co has a 2018–19 corporate tax rate for imputation purposes of 30%. This is because its BREPI for the purpose of determining its corporate tax rate for imputation purposes is above the 80% threshold.*

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**Commissioner of Taxation**

24 August 2018

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**Appendix 1 – Related ATO rulings and guidance**

59. The first column lists amounts of assessable income that are 'base rate entity passive income'. The second column lists other guidance material relevant to those amounts.

<b>Base rate entity passive income</b>	<b>Other guidance material</b>
Corporate distributions (but not including non-portfolio dividends) and franking credits on these distributions <sup>41</sup>	Taxation Ruling 2012/5 <i>Income tax: section 254T of the Corporations Act 2001 and the assessment and franking of dividends paid from 28 June 2010</i>
Interest (or payments in the nature of interest) <sup>42</sup>	Taxation Ruling TR 2002/4 <i>Income tax: taxation implications of the Century Yuasa Batteries decision</i> Taxation Ruling TR 2004/17 <i>Income tax: indemnification of royalty withholding tax</i>
Royalties <sup>43</sup>	Taxation Ruling IT 2660 <i>Income tax: definition of royalties</i> Taxation Ruling TR 2008/7 <i>Income tax: royalty withholding tax and the assignment of copyright</i> Taxation Ruling TR 93/12 <i>Income tax: computer software</i> Taxation Ruling TR 95/6 <i>Income tax: primary production and forestry</i>
Rent <sup>44</sup>	Taxation Ruling TD 2006/78 <i>Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent?</i> Draft Consolidation Taxation Ruling TR 2002/14DAC3 <i>Income tax: taxation of retirement village operators</i>
A gain on a qualifying security <sup>45</sup>	Taxation Ruling TR 96/3 <i>Income tax: 'periodic interest' in Division 16E of the Income Tax Assessment Act 1936</i> Taxation Ruling 96/14 <i>Income tax: traditional securities</i>
An amount included in the assessable income of a partner or a beneficiary from a trust or partnership, to the extent it is referable (either directly or indirectly) to an amount that is otherwise BREPI <sup>46</sup>	Draft Taxation Ruling TR 2012/D1 <i>Income tax: meaning of 'income of the trust estate' in Division 6 of Part III of the Income Tax Assessment Act 1936 and related provisions</i>

<sup>41</sup> Paragraphs 23AB(1)(a) and (b).

<sup>42</sup> Paragraph 23AB(1)(d).

<sup>43</sup> Paragraph 23AB(1)(d).

<sup>44</sup> Paragraph 23AB(1)(d).

<sup>45</sup> Paragraph 23AB(1)(e).

<sup>46</sup> Paragraph 23AB(1)(g).

## **Appendix 2 – Your comments**

60. You are invited to comment on this draft Law Companion Ruling including the proposed date of effect. Please forward your comments to the contact officer by the due date.

**Due date:** **5 October 2018**

Contact officer details have been removed following publication of the final ruling.

**References**

ATOlaw topic(s)	Income tax ~~ Corporate tax rate
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