TR 2015/3EC - Compendium

Ruling Compendium – TR 2015/3

This is a compendium of responses to the issues raised by external parties to draft Taxation Ruling TR 2015/D1 *Income tax: income tax matters relating to bodies corporate constituted under strata title legislation*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	**References to State and Territory Legislation**	
1.1	The TR should be more principles based and not refer to the specific State/Territory legislation. The legislation often changes and the TR becomes out of date as a result.	The legislation should be included for ease of reference. A table with the specific State and Territory legislation is included in the Appendix so that the Ruling can be updated more easily if the legislation changes.
2	**Mutual Income**	
2.1	**Penalties Example 1 (paragraphs 19 to 21) and paragraphs 68 to 70 of the explanation** The reasoning behind the distinction between penalty interest paid for late payment of levies and payments for tribunal imposed penalties for contravention of by-laws is not clear. There is no precedential support for the position and this distinction was not made in any previous rulings. This treatment should only apply after the issue of the Draft Ruling.	The distinction lies in the fact that a payment for a penalty for contravention of a by-law is not a mutual dealing because it is not made in the capacity as a member of a fund but as a person who has contravened a by-law. A sentence has been added to paragraph 28 to clarify this. Having regard to the Practice Statement Law Administration PS LA 2011/27, we do not consider it appropriate to apply this part of the Ruling on a prospective basis only.

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2.2	**Rent for movable goods and chattels** Paragraph 25 states that income from the use of moveable goods and chattels owned by the strata title body is assessable income of the strata title body. No distinction has been made between proprietors and non-proprietors. At paragraph 71 the second dot point states the payments made by proprietors for the use of personal property of the strata title body will be mutual income. Agree with this. Suggest a comment be made at paragraph 25 excluding the payments by proprietors for use of goods and chattels.	Agreed, see paragraph 37.
3	**Income derived from personal property**	
3.1	**Income derived from the ownership and use of other personal property** Paragraph 25 states the strata title body is assessable on income from personal property. Paragraph 89 excludes that part of the income received from proprietors. However paragraph 33 specifies that common property is owned by individual proprietors and therefore the depreciation is the proprietors. This is incorrect. There is confusion in relation to ownership of the moveable property. Moveable property can be owned by the strata title body in its own right and appear on its balance sheet as does funds banked. It also leads to inconsistency in the treatment of income and its directly related expense.	The Ruling makes the distinction between personal property owned by the strata title body and common property more clear. Where the Division 40 asset is personal property, the deduction will be allowed to the strata title body. Where the asset is common property the treatment outlined in paragraphs 41 allows the Division 40 (or Division 43) deduction to the entity returning the income from the common property.

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4	**Ownership of common property**	
4.1	**Ownership of common property** Paragraph 80 is confusing in relation to the ownership of common property in South Australia. It needs to be explained that there are two governing Acts functioning simultaneously and ownership of the common property differs depending on which Act applies.	Agreed. The legislation is now extracted at Appendix 2. Paragraphs 39 to 41 and 90 to 98 set out how common property is dealt with and the effect of the different legislation.
4.2	**Income from the use of common property** It is suggested that an example be included in relation to paragraphs 27 and 28 on the income from common property. It is recommended that the example be about the income derived from telecommunications companies for allowing cellular telephone towers to be affixed to the common property as this is often a contentious issue in practice.	Agreed. See example 3.
5	**Distributions to members**	
5.1	**Distributions of profits to members** Where it refers to distribution of profits to members (paragraphs 30, 31 and 90), there is no mention of franking and imputation requirements. There was in IT 2505. Suggest it gets included and as the distributions would be on winding up we recommend that reference is made to section 47 of the *Income Tax Assessment Act 1936* (ITAA 1936).	Agreed, see paragraphs 33, 73 and 74.
5.2	Where income is not physically paid out to the proprietor and they have no right to physical receipt of it, they should not be required to include it in their assessable income.	Subsection 6-5(4) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that income is derived if it has been applied or dealt with on your behalf. This is explained in paragraph 96.

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6	**Capital allowances**	
6.1	**Capital allowances example** The significance of 6 October 2001 is not explained in example 4. Suggest that example 4 explain that 6 October 2001 is the date the state legislation changed.	This example has now been removed. It applied to a specific legislative change occurring on 6 October 2001 and does not have any ongoing significance.
6.2	**Interaction between depreciation and deductions for contributions and levies** Agree with the explanation of the law expressed at paragraph 35, but consider the example needs to be re-worked to avoid confusion in relation to depreciation and the deductibility of already tax-deducted strata contributions.	Agreed. The example has been removed to avoid confusion and the explanation amended to make it clear that no deduction is available for depreciation in this situation. This is covered in the *Guide for Rental Property Owners*.
6.3	It is unclear how 'multi-owner' strata buildings are dealt with. In such arrangements there is more than one strata title body (one for the residential lots and one for the commercial lots) with various easements and other rights governing the access and use of share facilities.	Because of the considerable variance in the arrangements described in the comment, it is not possible to deal with this in a Ruling on strata schemes more generally.

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7	**Capital works**	
7.1	The comments and example relating to capital works are confusing and not well explained. The comments are referring to a lessee being entitled to claim a deduction for the capital expenditure they incur. However this does not appear to be relevant to the situation described in the example which is about the state law that changes the way the strata title body holds the common property from a trustee to an agent. It would be more relevant to discuss the rule in Division 43 regarding the claiming of capital works deductions where there is a change of ownership.	This example has been removed as it refers to a specific legislative change occurring on 6 October 2001 and no longer has ongoing significance. Claiming capital works deductions where there is a change in ownership is dealt with in the *Guide for Rental Properties Owners*.
7.2	The treatment of capital works is at odds with actual practice.	The requirements for claiming a deduction for capital works for owners of rental properties is covered in the *Guide for Rental Properties Owners*.
7.3	Paragraph 105 should address who has ownership of the common property for the purposes of the building write–off, in a similar way to depreciation claims in paragraph 98.	Agreed. This is now covered at paragraphs 90 to 98.
8	**Deductibility of expenses**	
8.1	The position on the deductibility of repairs under section 25-10 of the ITAA 1997 in relation to common property and who is entitled to make a claim should be provided.	This is covered in the *Guide for Rental Property Owners*.

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8.2	Deductibility of expenses needs to be covered in more detail.	The Ruling sets out the principles. Specific questions can be dealt with through the private ruling process.
9	**Apportionment**	
9.1	There is insufficient discussion of what a fair and reasonable method of apportionment might be.	There is further discussion on apportionment at paragraphs 73 to 75. Paragraph 74 provides a formula as an example of what is considered fair and reasonable.
10	**Practical Compliance Issues**	
10.1	The approach in paragraphs 112 to 115 of the explanation results in significant compliance costs as the strata title body could be required to lodge a company return for non-mutual receipts and a trust return for income from common property held on trust.	This has been addressed through the approach outlined at paragraph 41.
10.2	**Unnecessary compliance costs/ practical implications** Where the strata title body's only non-mutual assessable income represents record access fees and the like, it will commonly have no taxable income. There is therefore a significant compliance burden in preparing a tax return and it is recommended that the tax ruling include the following, 'where costs for accessing body corporate records are fully paid to a body corporate manager, such that the body corporate has nil net income, then a tax return does not need to be submitted.'	The requirement to prepare a tax return in these circumstances has not been changed by the Ruling and is in accordance with the Legislative Instrument issued by the Commissioner each year.

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10.3	The draft ruling implies that the strata title body now will have to keep a depreciation schedule of common property or other records to proprietors to maintain their own schedules.	The requirement to substantiate income tax returns has not been changed by this Ruling.
10.4	**Income earned from common property held by the strata title body** It is difficult and time consuming for the managers of the strata title body to identify and record income derived from common property and report it to the owners according to their lot entitlements. It would be easier and a more effective means of revenue collection if the strata title body was responsible for paying tax on the income earned from the common property.	Which entity returns the income is a function of which entity derives the income. Regarding income from common property as set out in paragraphs 90 to 98 of the Ruling, that income will be returned either by the proprietor as the outright owner or the proprietor as the beneficial owner. Under the current law the strata title body, in its capacity as company, cannot return and pay tax on this income to the exclusion of the proprietors.
10.5	Problems arise in determining liability where the property is sold during the year. It is not clear whether apportionment applies in these circumstances and if it does a practical problem is often there is no current mailing address for the previous lot owner.	If a lot is sold during the year, a fair and reasonable method of apportioning the income from common property should be adopted.