PS LA 2007/7 - The use of the Commissioner's power to make default assessments of taxable income in respect of attributable income

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Practice Statement Law Administration

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This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax office staff must follow their business line's escalation process.

SUBJECT:	**The use of the Commissioner's power to make default assessments of taxable income in respect of attributable income**
PURPOSE:	**To guide staff on default assessments using the powers provided by section 167 of the *Income Tax Assessment Act 1936* in respect of the attributable income of taxpayers**

1. All legislative references in this practice statement are to the *Income Tax Assessment Act 1936*, unless otherwise stated.

BACKGROUND

2. When the Commissioner makes an assessment under section 166 of the amount of the taxable income of a taxpayer and of the tax payable thereon, it is usually based on the return(s) lodged by the taxpayer.

3. However, if there is default in furnishing a return or the Commissioner is not satisfied with a return furnished or has reason to believe that any person who has not furnished a return has derived taxable income, the Commissioner may make an assessment under section 167 of the amount upon which in his judgment income tax ought to be levied. That amount is then taken to be the taxable income of that person for the purposes of section 166.

4. Australia's controlled foreign company, foreign investment fund and transferor trust regimes (the attribution regimes) operate to attribute certain income to Australian residents who have interests in a foreign company or trust, or who have transferred property or services to a foreign trust.

STATEMENT

5. Officers should use the section 167 default assessment power where available information indicates that a taxpayer may be affected by the attribution regimes and the circumstances exist under which section 167 may be used. However, officers are not required to follow this practice statement if there are other considerations which may preclude the operation of the attribution regimes, for example sham transactions.

6. A taxpayer may be affected by the attribution regimes where the available information indicates the following:

   - the taxpayer has transferred property (including funds) or services to an offshore entity in a nil, low or preferential tax jurisdiction
   - the taxpayer is a shareholder in an offshore entity in a nil, low or preferential tax jurisdiction
   - the taxpayer exercises control over an offshore entity in a nil, low or preferential tax jurisdiction
   - the taxpayer has an interest in, or is entitled to acquire an interest in an offshore entity in a nil, low or preferential tax jurisdiction, or
   - the taxpayer is an associate of an entity with any of the abovementioned attributes.

7. Officers considering a section 167 default assessment in respect of attributable income will need to identify the relevant steps involved in applying the particular attribution provisions, and the conclusions of fact required to support those provisions, which will form the basis of their decision.

8. Officers making a section 167 default assessment should make the assessment as soon as sufficient information is available to provide a reasonable basis for the calculation of the taxpayer's attributable, and therefore taxable, income.

9. Generally, except in cases of urgency, officers should advise the taxpayer in advance of our intention to issue such an assessment and the proposed basis for the calculation of attributable income. Examples where urgency might require an officer to immediately issue such an assessment include where evidence indicates a risk of dissipation of assets or a taxpayer fleeing the jurisdiction.

10. Where sufficient information to enable calculation of the attributable income of a taxpayer is not already available from the taxpayer or third parties, officers should make appropriate efforts to gather that information from the taxpayer.

11. Section 167 default assessments should also be contemplated where available information suggests that a taxpayer has moved funds, property or services offshore in situations where the foreign source income attribution rules may not apply, that is, where the taxpayer appears to have earned income directly from a foreign source rather than through an entity.

EXPLANATION

12. In addition to determining final taxable income, the Commissioner's power to make default assessments extends to drawing conclusions of fact or making subordinate calculations to facilitate such a final assessment of taxable income. In *Bailey v. Federal Commissioner of Taxation* (1977) 136 CLR 214 at 217) Barwick CJ said:

> [T]he process of assessment requires the application of the Act to the facts as known and accepted by the Commissioner. He must of necessity, as part of that process, adopt a view of the relevant facts. They must be facts that disclose a taxable income.

13. These facts are a prerequisite for triggering the application of the various provisions of the Act. In *Commissioner of Taxation v. Dalco* [1990] 168 CLR 614 Toohey J said (at 630):

> Section 6(1) of the Act relevantly defines 'assessment' to mean 'the ascertainment of the amount of taxable income and of the tax payable thereon'. The view of Kitto J in *Batagol v. FCT* (1963) 109 CLR 243 at 252; 9 AITR 207, that 'assessment' means 'the completion of the process by which the provisions of the Act relating to liability to tax are given concrete application in a particular case with the consequence that a specified amount of money will become due and payable as the proper tax in that case' was generally shared by the other members of the court in that case and was endorsed by Mason and Wilson JJ in *F J Bloemen Pty Ltd v. FCT* (1981) 147 CLR 360 at 371-2; 11 ATR 914; 35 ALR 104.

14. Where available information indicates that a taxpayer is affected by Australia's attribution regimes, the default assessment power under section 167 may be used to adopt a view of the relevant facts that will facilitate the calculation of attributable income under Part X, Part XI or Division 6AAA of Part III of the *Income Tax Assessment Act 1936*. To ensure a reasonable basis exists for using section 167 in this context, it will be necessary to identify and address the necessary legal requirements. This will include adopting a reasonable basis from available evidence and surrounding economic circumstances for determining any of the following matters.

Controlled Foreign Companies (CFC) – Part X

- The degree of control or influence capable of being exercised by a taxpayer over a person or entity, including whether the taxpayer's circumstances meet the tests for control under:
  - strict control under paragraph 340(a)
  - assumed control under paragraph 340(b), and
  - de facto control under paragraph 340(c).
- Whether a taxpayer is an associate of a person or entity for the purposes of the section 318 associate test, including whether they have sufficient influence over that person or entity.
- Whether a taxpayer has an entitlement to acquire an interest in a CFC under the definition contained within section 322, including in situations where the taxpayer might otherwise not be an attributable taxpayer. For example, where they might have a contingent interest and the entitlement to acquire would crystallise this contingency, if exercised.
- Whether a company or a trust is an Australian 1% entity under section 317.

- The amount of an indirect control interest for the purposes of section 349.
- The amount of a direct control interest for the purposes of section 350.
- The amount of a direct attribution interest for the purposes of subsection 356(1), including determining the nature of an interest that a taxpayer may be entitled to acquire in an entity under section 322.
- Whether an indirect attribution interest exists under subsection 357(1), including determining the nature and extent of any tracing interests that may exist in entities within a chain of ownership.
- An attribution percentage for a taxpayer under section 362, based upon determining indirect and direct shareholdings, taking into account surrounding economic circumstances (including a finding of paragraph 340(c) de facto control) that indicate the likely presence of paragraph 340(a) or 340(b) control through relevant shareholdings.
- The attributable income of a CFC under Div 7 of Part X, or any element within that calculation.
- Whether the active income test is satisfied for a CFC under Division 8 of Part X, or any element relevant to that test.
- The amount of attributable income of a CFC that should form part of the taxable income of an attributable taxpayer for the purposes of section 166 as a result of section 456.

Foreign Investment Funds (FIF) – Part XI

- Whether a taxpayer has an interest in a foreign company for the purposes of paragraph 483(1)(a).
- Whether a taxpayer has an entitlement to acquire an interest (under section 475) in a foreign company as a FIF for the purposes of paragraph 483(1)(b), including in situations where the taxpayer might otherwise not hold such an interest. For example, where they might have a contingent interest and the entitlement to acquire would crystallise this contingency, if exercised.
- Whether a taxpayer has an interest in a foreign trust for the purposes of paragraph 483(2)(a).
- Whether a taxpayer has an entitlement to acquire an interest (under section 475) in a foreign trust as a FIF for the purposes of paragraph 483(2)(b), including in situations where the taxpayer might otherwise not hold such an interest. For example where they might have a contingent interest and the entitlement to acquire would crystallise this contingency, if exercised.
- Whether a taxpayer has an interest in a foreign life policy (FLP) for the purposes of subsection 483(3).
- Whether an interest in a FIF or FLP is held by a bare trust under which a taxpayer is absolutely entitled for the purposes of section 484.
- What should be the notional accounting period for a FIF under section 486.
- What should be the notional accounting period for a FLP under section 487.

- Whether a taxpayer is an associate of a person or entity for the purposes of the section 318 associate test, as modified by section 491, including whether they have sufficient influence over that person or entity.
- Whether there has been a disposal or acquisition of an interest in a FIF for the purposes of section 489, at the time specified in section 489 for the consideration specified in section 490.
- Whether a taxpayer qualifies for an exemption specified in Divisions 2 to 15 of Part XI in respect of their interest in certain FIFs, including calculations necessary to determine such eligibility.
- The amount of FIF income to be included in the assessable income of a taxpayer with an interest in a FIF or FLP for the purposes of Division 16 of Part XI, including any elements in calculations necessary under Division 18 of that Part.
- The amount of FIF losses applicable under Division 17, including any elements in calculations necessary.
- The amount involved in any FIF attribution account transaction for the purposes of Divisions 19 and 20.

Transferor Trusts – Division 6AAA of Part III

- Whether an entity is in position to control a trust estate for the purposes of section 102AAG.
- Whether a taxpayer has transferred property or services to a trust estate for the purposes of section 102AAJ.
- Whether a taxpayer is deemed to have transferred property or services to a trust estate for the purposes of section 102AAK, including any calculations necessary.
- The amount of interest payable on distributions from certain non-resident trust estates for the purposes of section 102AAM, including any calculations necessary.
- Whether a taxpayer is an attributable taxpayer for the purposes of section 102AAT.
- The amount of attributable income of a trust estate for the purposes of section 102AAU, including any calculations necessary.
- The amount of assessable income of a trust estate to be included in the assessable income of an attributable taxpayer under section 102AAZD, including any calculations necessary.
- Amounts relevant to the *de minimis* exclusion under section 102AAZE.

Information gathering

15. Where we have been alerted to the possible application of the attribution rules but there is insufficient material available upon which to base a section 167 default assessment, officers should attempt to obtain more information and relevant documents from the taxpayer concerned or relevant third parties to support their decision-making in respect of potential assessments. Where informal attempts to obtain information or documents are unsuccessful, this may include appropriate use of the Commissioner's formal access powers under sections 263 and 264, as per the guidance on these powers contained in the Access Manual.

16. In respect of offshore entity transactions where sufficient information is not already available, officers should also particularly consider the Commissioner's powers to obtain offshore information relevant to determining a taxpayer's attributable income, including:

    - making a request under section 264A that a taxpayer produce information or documents that the Commissioner has reason to believe may be held offshore relating to that taxpayer's assessable income
    - serving upon an attributable taxpayer a substantiation notice under section 453 requesting that the taxpayer provide evidence that a CFC has passed the active income test, and
    - making a request from a treaty partner country for an exchange of information held by the revenue authorities in that country regarding any transactions that may relate to a taxpayer's attributable income.

    Officers should consult Chapter 3 of the Access Manual for guidance on the use of these options.

Examples

17. The following are examples of how to use section 167 in some common situations involving attributable income.

Example 1

18. Facsimiles and letters between two Australian resident individual taxpayers (A & B) and an offshore service provider obtained from domestic information gathering indicate that the taxpayers caused an offshore company (HavenCo) to be established in a tax haven. Banking information for the two taxpayers also indicates that they each transferred AUS$5,000,000 to a bank account in the name of the company. This evidence indicates that the offshore company operated for five years and neither A nor B reports any involvement with, or any profits received from or attributable income in respect of, the entity in their income tax returns for those years.

19. No further information is provided by A & B, notwithstanding Tax Office requests (including a section 264A notice), and no further information arises from third party enquiries.

20. Given the evidence relating to the establishment of the offshore company, and the transfer of funds to it, the case officer concludes that the taxpayers are affected by the CFC regime. The case officer also identifies the relevant steps in applying the attribution provisions and reaches the following conclusions in respect of those provisions:

- HavenCo is a CFC under section 340, including a finding that it is a resident of the tax haven
- A and B are each section 340(a) controllers of HavenCo and are therefore attributable taxpayers in respect of HavenCo
- A and B are shareholders in Haven Co and have an attributable interest in the company
- that all of HavenCo's income is passive and therefore attributable income of the CFC
- that the amount of attributable income should be calculated by reference to the average of the Australian bond rate of return (compounding) for each of the five years, and
- that A & B should have equal attribution percentages and therefore have 50% of the calculated attributable income of HavenCo attributed to them on the basis of the above calculations.

21. Accordingly, the case officer issues section 167 assessments in respect of attributable income for both taxpayers. The case officer records in the Tax Office management systems the basis for each of their decisions, including the steps taken to apply the particular provisions and the conclusions of fact required to support the application of those provisions.

Example 2

22. Emails, letters and file notes obtained from domestic information gathering indicates that the directors (C, D, E and F) of an Australian company OzCo decided to establish an offshore investment in a non-common law entity (the OzCo Anstalt) limited by shares in a tax haven to benefit OzCo's employees. Documents obtained indicate that the class of employees covered by the documents establishing the OzCo Anstalt includes the directors and their spouses, in addition to other employees. Banking information indicates that OzCo paid AUS$1,000,000 into the OzCo Anstalt each year for four years.

23. From available information obtained, after four years of operation, there is no evidence that OzCo Anstalt has made distributions to any of the employees, although it has made interest-free, non-recourse loans to C and her husband. Neither OzCo nor C, D, E or F reports any involvement with, or any profits received from or attributable income in respect of, the OzCo Anstalt in their tax returns for those years.

24. No further information is provided by OzCo or C, D, E or F notwithstanding Tax Office requests (including a section 264A notice), and no further information arises from third party enquiries.

25. Given the evidence relating to the establishment of the OzCo Anstalt, and the transactions with it, the case officer concludes that the taxpayers are affected by the CFC regime. The case officer also identifies the relevant steps in applying the attribution provisions and reaches the following conclusions in respect of those provisions (notwithstanding any other decisions about the deductibility of the payments made by OzCo to the OzCo Anstalt):

- that the OzCo Anstalt is a CFC under section 340, including a finding that it is a resident of the tax haven
- C, D, E and F are section 340(a) controllers, and therefore attributable taxpayers, in respect of the OzCo Anstalt
- that the amounts 'loaned' to C and her husband are distribution benefits paid to an associate of the CFC under section 47A and properly income of C and her husband
- that all of the amounts received from OzCo are tainted services income of the OzCo Anstalt and therefore attributable income of the CFC
- OzCo Anstalt's ongoing income from the investment of its received fees is passive and therefore attributable income of the CFC
- that the amount of passive income should be calculated by reference to the average of the Australian bond rate of return (compounding) for each of the four years, less the amount assessable to C under section 47A, and
- aside from the amount assessable to C under section 47A, that C, D, E and F should have equal attribution percentages and therefore have 25% of the attributable income of OzCo Anstalt attributed to them on the basis of the above calculations.

26. Accordingly, the case officer issues section 167 assessments in respect of attributable income for each of C, D, E and F and in respect of deemed dividends received by C and her husband. The case officer records in the Tax Office management systems the basis for each of their decisions, including the steps taken to apply the particular provisions and the conclusions of fact required to support the application of those provisions.

Example 3

27. Company formation documents obtained from another country under one of Australia's tax treaties indicates that G, an Australian resident individual taxpayer, is a guarantee member of an international business company (IBCo) located in a tax haven. IBCo has two shares (held by H & I respectively), each with a face value of AUS$1.00. Evidence obtained from domestic information gathering indicates that G caused AUS$1,000,000 in intellectual property to be transferred to IBCo for nil consideration. IBCo then uses this property for the following six years in transactions with third parties. G does not report either the initial transfer, or any capital gains applicable to it, in her return for that year. G also does not report any interest in, or any profits received from or attributable income in respect of, IBCo's activities in the following six years.

28. Limited and conflicting information is provided by G following multiple Tax Office requests (including a section 264A notice), and no further information arises from third party enquiries.

29. Given the evidence relating to the establishment of the offshore company, and the transfer of the intellectual property to it, the case officer concludes that the taxpayers are affected by the CFC regime. The case officer also identifies the relevant steps in applying the attribution provisions and reaches the following conclusions in respect of those provisions:

- IBCo is a CFC under section 340, including a finding that it is a resident of the tax haven
- G is a section 340(a) controller, and therefore an attributable taxpayer, in respect of IBCo
- G, as a guarantee member, is a shareholder in IBCo and has an attribution interest in the company
- G is assessable on the calculated difference between the market value of the intellectual property and its cost base as a capital gain at the time of the transfer
- that the income earned by IBCo from the use of the intellectual property is passive income and therefore attributable income of the CFC
- that the value of the income earned by IBCo will be calculated by reference to the average of Australian Bureau of Statistics figures for the return on investment from intellectual property of the relevant type over the six years
- that G's attribution interest in IBCo is 100%, notwithstanding the inconsequential interests notionally held by H and I
- that G's attribution percentage in respect of the attributable income of IBCo is therefore 100%, and
- that all of the attributable income of IBCo should be assessed to G on the basis of the above calculations.

30. Accordingly, the case officer issues section 167 assessments in respect of attributable income for G. The case officer records in the Tax Office management systems the basis for their decision, including the steps taken to apply the particular provisions and the conclusions of fact required to support the application of those provisions.

Example 4

31. Letters, facsimiles and witness statements obtained from domestic information gathering indicates that JCo, an Australian resident company controlled by J, established an international company (IntlCo) located in a tax haven. This evidence indicates that IntlCo has a single share with a face value of AUS$1.00, held by K who works for a tax planning and asset protection services entity in the tax haven. This evidence also indicates that JCo conducted a series of transactions to allegedly obtain goods from IntlCo over a period of four years and income tax returns indicate that JCo claimed deductions for those costs in its tax return for each year. From those returns, JCo does not report any interest in, or any profits received from or attributable in respect of, IntlCo's activities in the four years. In addition, the evidence indicates that J obtained an interest-free loan from IntlCo in the second, third and fourth years for 85% of the amount charged by IntlCo. In addition, in his

income tax returns, J does not report any interest in, or any profits received from or attributable in respect of, IntlCo's activities in any of the four years.

32. Limited information is provided by JCo and J, notwithstanding multiple Tax Office requests (including a section 264A notice to each taxpayer), and no further information arises from third party enquiries.

33. Given the evidence relating to the establishment of the offshore company, and the nature of the transactions between it and JCo, the case officer concludes that the taxpayers are affected by the CFC regime. The case officer also identifies the relevant steps in applying the attribution provisions and reaches the following conclusions in respect of those provisions (ignoring the potential application of Division 13 in respect of transfer pricing and any questions in relation to the deductibility of the expenses under section 8-1 of the *Income Tax Assessment Act 1997*):

- IntlCo is a CFC under section 340, including a finding of fact that IntlCo is a resident of the tax haven
- that K is a nominee of JCo in respect of the single share in Intl Co making JCo a section 340(a) controller based upon an entitlement to acquire that share, and therefore an attributable taxpayer, in respect of IntlCo
- that the amounts 'loaned' to J are distribution benefits paid to an associate of the CFC under section 47A and properly income of J
- that the income earned by IntlCo from the provision of the goods is tainted as the goods were not substantially altered or transformed by IntlCo and therefore is attributable income of the CFC
- that JCo's attribution interest in IntlCo is 100%, notwithstanding the nominee shareholding notionally held by K and I
- that JCo's attribution percentage in respect of the attributable income of IntlCo is therefore 100%, and
- that all of the attributable income of IntlCo should be assessed to JCo on the basis of the above calculations.

34. Accordingly, the case officer issues section 167 assessments in respect of attributable income for JCo and deemed dividends for J. The case officer records in the Tax Office management systems the basis for each of their decisions, including the steps taken to apply the particular provisions and the conclusions of fact required to support the application of those provisions.

Example 5

35. Third party documentary evidence (loan application documents and emails) obtained from domestic information gathering indicates that L, an Australian resident individual for all relevant years, caused the creation of a discretionary foreign trust HavenTrust, with its sole trustee being MCo, resident in a tax haven. In addition, this evidence indicates that members of L's family who are Australian residents are listed as potential beneficiaries. Banking and AUSTRAC information indicates that over a period of six years L made, or caused to be made, a series of transactions with HavenTrust that include direct or indirect transfers of funds valued at AUS$1,000,000 (Year 1). In addition, a media article from a reputable financial publication about tax haven investment trusts lists the

assets of HavenTrust as being the equivalent of AUS$10,000,000 in Year 1. Income tax returns indicate that L does not report these transfers, or any profits received from or attributable income in respect of, HavenTrust's activities in the six years. Enquiries have identified no other taxpayer who may have been an attributable taxpayer in respect of HavenTrust and there are no indications from the available evidence of any actual distributions to L's family during those years.

36. Limited information is provided by L notwithstanding multiple Tax Office requests (including a section 264A notice), and no further information arises from third party enquiries (including an Exchange of Information with a treaty partner involved in an audit of MCo's activities as a promoter of tax avoidance schemes).

37. Given the evidence relating to the establishment of the offshore company, and the transfer of funds to it, the case officer concludes that the taxpayers are affected by the Transferor Trust regime. The case officer also identifies the relevant steps in applying the attribution provisions and reaches the following conclusions in respect of those provisions:

- HavenTrust is a discretionary trust, with a finding of fact that its sole trustee (MCo) is resident in an unlisted country (the tax haven)
- L is an attributable taxpayer in respect of HavenTrust based upon the direct and indirect transfers of funds
- based upon the evidence, L could obtain information necessary to calculate the attributable income of HavenTrust, despite the lack of response to Tax Office enquiries, meaning that section 102AAZD(4) will not apply
- based upon the reported assets of HavenTrust, the notional attributable income will be calculated on the value of AUS$10,000,000 in Year 1, compounding through years 2 to 6, calculated by reference to the average of Australian Bureau of Statistics figures for the net return on investment from foreign investments over the six years
- that L has not provided complete information in approved form regarding other persons who made transfers of property or services to HavenTrust, so that section 102AAZD(3) will not apply
- that L's attribution percentage in respect of the attributable income of HavenTrust will therefore be 100%, and
- that all of the attributable income of HavenTrust should be assessed to L, on the basis of the above calculations.

38. Accordingly, the case officer issues section 167 assessments in respect of attributable income for L. The case officer records in the Tax Office management systems the basis for their decision, including the steps taken to apply the particular provisions and the conclusions of fact required to support the application of those provisions.

Amendment history

Date of amendment	Part	Comment
15 November 2011	Contact details	Updated
4 July 2011	Contact details	Updated.
8 June 2007	Example 5	Amended to correct references.

Subject references	default assessments attributable income
Legislative references	ITAA 1936 6(1) ITAA 1936 Pt III ITAA 1936 47A ITAA 1936 Pt III Div 6AAA ITAA 1936 102AAG ITAA 1936 102AAJ ITAA 1936 102AAK ITAA 1936 102AAM ITAA 1936 102AAT ITAA 1936 102AAU ITAA 1936 102AAZD ITAA 1936 102AAZE ITAA 1936 166 ITAA 1936 167 ITAA 1936 170 ITAA 1936 263 ITAA 1936 264 ITAA 1936 264A ITAA 1936 Pt X ITAA 1936 317 ITAA 1936 318 ITAA 1936 322 ITAA 1936 340(a) ITAA 1936 340(b) ITAA 1936 340(c) ITAA 1936 349 ITAA 1936 350 ITAA 1936 356(1) ITAA 1936 357(1) ITAA 1936 362 ITAA 1936 453 ITAA 1936 456 ITAA 1936 Pt XI ITAA 1936 475 ITAA 1936 483(1)(a) ITAA 1936 483(1)(b) ITAA 1936 483(2)(a) ITAA 1936 483(3) ITAA 1936 484 ITAA 1936 486 ITAA 1936 487 ITAA 1936 489

	ITAA 1936 490 ITAA 1936 491 ITAA 1936 Pt XI Div 2 ITAA 1936 Pt XI Div 3 ITAA 1936 Pt XI Div 4 ITAA 1936 Pt XI Div 5 ITAA 1936 Pt XI Div 6 ITAA 1936 Pt XI Div 7 ITAA 1936 Pt XI Div 8 ITAA 1936 Pt XI Div 9 ITAA 1936 Pt XI Div 10 ITAA 1936 Pt XI Div 11 ITAA 1936 Pt XI Div 11A ITAA 1936 Pt XI Div 12 ITAA 1936 Pt XI Div 13 ITAA 1936 Pt XI Div 14 ITAA 1936 Pt XI Div 15 ITAA 1936 Pt XI Div 16 ITAA 1936 Pt XI Div 17 ITAA 1936 Pt XI Div 18 ITAA 1936 Pt XI Div 19 ITAA 1936 Pt XI Div 20
Related public rulings	
Related practice statements	
Case references	Bailey v. Federal Commissioner of Taxation (1977) 136 CLR 214; (1977) 77 ATC 4096; (1977) 7 ATR 251 Batagol v. FCT (1963) 109 CLR 243 at 252; 9 AITR 207 F J Bloemen Pty Ltd v. FCT (1981) 147 CLR 360 at 371-2; 11 ATR 914; 35 ALR 104; (1981) 81 ATC 4280 Commissioner of Taxation v. Dalco [1989-1990] 168 CLR 614; (1990) 90 ATC 4088; (1990) 20 ATR 1370
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