

Tax Pooling and the Imputation Credit (IC) Regime

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KEY TERMS & BACKGROUND

IC regime fundamentals

- ✓ Designed to eliminate double taxation on company profits
- ✓ Imputation period runs from 1 April to 31 March for all regardless of balance date
- ✓ ICs tracked via Imputation Credit Account (ICA) and annual return (IR4J) filed with the income tax return
- ! Debit balances charged imputation penalty tax of 10%

IC regime fundamentals

Credits generated by:

- Income tax paid
- RWT on interest received
- ICs on dividends received
- Other situations

Debits generated by:

- Company attaches ICs to dividends
- Shareholding change of more than 33% occurs
- Other situations

7. Credits - see the guide for further details.

Payments

Income tax paid for 1989 and subsequent years **7A ▶** \$

RWT on interest received **7B ▶** \$

Imputation

Imputation credits attached to dividends received **7C ▶** \$

If you are a public unit trust or group investment fund and maintain a supplementary available subscribed capital account (SASCA), see the guide for further details.

Other (please specify)

Other credits **7D ▶** \$

8. Debits - see the guide for further details.

Refunds

Income tax refunded for 1989 and subsequent years **8A ▶** \$

Imputation

Imputation credits attached to dividends paid **8B ▶** \$

Other, including change of shareholding adjustment (please specify)

Other debits **8C ▶** \$

Tax pooling transactions

Own-funds (deposits)

Arise from taxpayers paying “depositing” their tax directly into the pool rather than their taxpayer IR account

- Effective date is the date of the deposit
- Typically, transferred to taxpayers’ IR account once tax return is finalised
- Retain their effective date on transfer to IR, regardless of when the transfer happens

ICs recognised on the date of the deposit

Purchased funds

Arise from taxpayers acquiring tax pool positions from another taxpayer

- Includes buy and finance, and swap transactions
- Effective date is the date purchased
- Can be held in the pool **but** must be transferred within 75 days of the taxpayer's terminal date, or they lose their effective date.

ICs recognised when tax is transferred to the taxpayer’s IR account

ICS AND TAX POOLING TRANSACTIONS

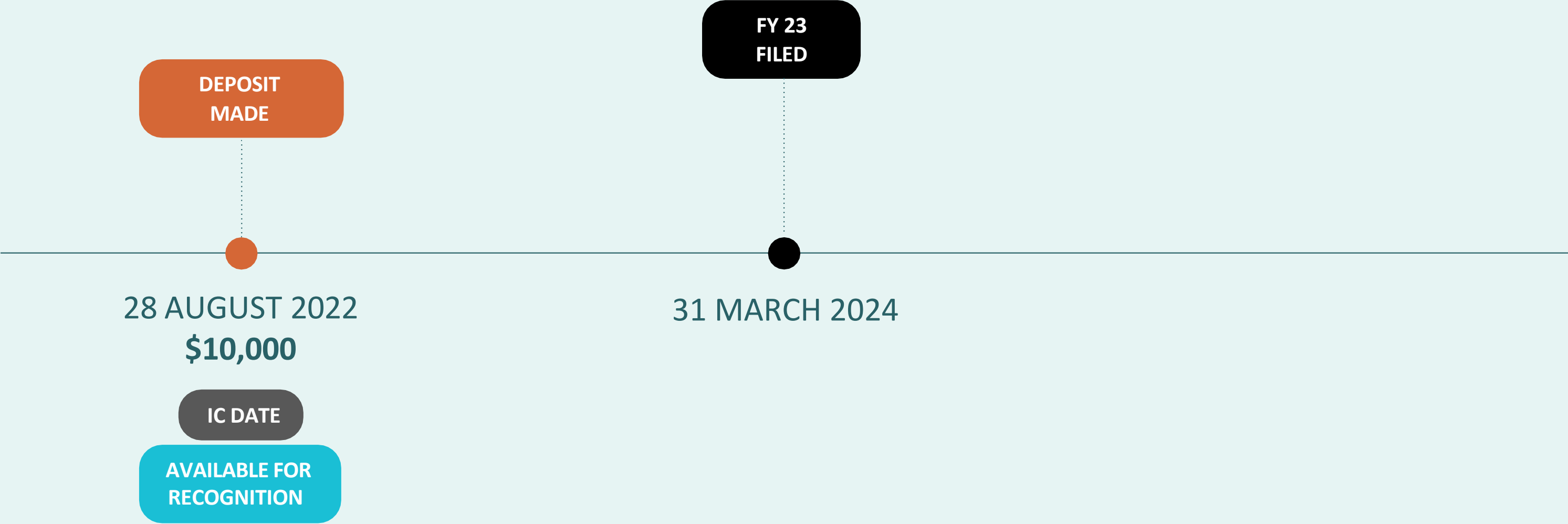
Own-funds (deposits)

SITUATION

Initech Limited (Initech) deposits \$10,000 into the Tax Traders tax pool on 28 August 2022.

This is treated in the same manner as a direct payment of tax to IR.

Included in the IR4J when FY23 is filed on 31 March 2024.



Section OB 5: the company will have an IC as at the date of the deposit.

Purchased Funds: Buy

SITUATION

Initech files their return for FY23 on 31 March 2024 including their IR4J.

Initech purchases \$10,000 of 28 August 2022 tax on 10 May 2024.

The tax transferred to IR on 15 May 2024.

When does Initech recognise the credit in its ICA?

15 May 2024



Purchased Funds: Finance

SITUATION

Initech arranges a \$10,000 finance for their 28 August 2022 instalment and pays the interest of \$1,000 on the tax date.

Initech files their FY23 return on 31 March 2024

The arrangement matures on 10 May 2024 and Initech settles this on time.

They transfer the tax to their IR account on 15 May 2024.

When does Initech recognise their ICA credit?

15 May 2024



Sell or refund

Sales and refunds generate an imputation debit that is recognised immediately, but the date the debit is applied by following three steps:

STEP 1

Apply the debit to 31 March of most recently completed imputation year to the extent there is a credit balance.

STEP 2

Apply any remaining debit to transaction date to the extent a credit balance is available.

STEP 3

Apply any remaining debit to 31 March of the most recently completed imputation year.

Own-funds: Sell or refund

SITUATION
9 May 2024, Initech decide to sell the 28 August 2022 deposit, resulting in a \$10,000 imputation debit. We need to enter the debit into the ICA immediately.
At what dates will the debit be applied to the ICA?



Own-funds: Sell or refund

STEP 1:

Apply the debit to 31 March of most recently completed imputation year to the extent there is a credit balance.

Total to apply: **\$10,000**
1. Debit dated 31 March 2024 (\$5,000)

Remainder to apply **\$ 5,000**



Section OB 34: the company will have an imputation debit as per subsections (1)(a)(i) and (2), with the date of the debit date being in the order provided in subsection (4).

Own-funds: Sell or refund

STEP 2:

Apply any remaining debit to transaction date to the extent a credit balance is available.

Total to apply:	\$10,000
1. Debit dated 31 March 2024	(\$5,000)
2. Debit dated 9 May 2024	(\$3,000)
Remainder to apply	\$ 2,000



Section OB 34: the company will have an imputation debit as per subsections (1)(a)(i) and (2), with the date of the debit date being in the order provided in subsection (4).

Own-funds: Sell or refund

Total to apply:	\$10,000
1. Debit dated 31 March 2024	(\$5,000)
2. Debit dated 9 May 2024	(\$3,000)
3. Debit dated 31 March 2024	(\$2,000)
Remainder to apply	\$0

STEP 3:

Apply any remaining debit to 31 March of the most recently completed imputation year.



Imputation debit balance at 31 March 2024 of \$2,000



Taxpayer subject to imputation penalty tax of \$200 (10%)

**DEBIT OF \$2,000
TO BE APPLIED**

28 AUGUST 2022
\$10,000
DEPOSIT PAID

CREDIT
RECOGNISED

31 MARCH 2024
IC BALANCE:
~~\$5,000~~
\$0
(\$2,000)

IC DATE

7 MAY 2024
DEPOSIT PAID:
\$3,000

9 MAY 2024
IC BALANCE:
~~\$3,000~~
\$0

IC DATE

Section OB 34: the company will have an imputation debit as per subsections (1)(a)(i) and (2), with the date of the debit date being in the order provided in subsection (4).

Purchased funds: Sell or refund

Where a taxpayer sells purchased funds held in the tax pool, a sale would result in a debit without any associated IC having been recognised.

In such circumstances the following imputation timing rules apply:



IC of sale or refund is recognised immediately with an effective date on date of sale or refund (section OB 6)



Imputation debit of sale or refund follows the same timing rules (section OB 34)

Purchased funds: Sell or refund

Debit to apply:	\$15,000
1. Debit dated 31 March 2024	(\$10,000)
2. Debit dated 15 April 2024	(\$5,000)
Remainder to apply	\$0

SITUATION

Imputation Limited has \$20,000 of 28 July 2023 purchased funds held in the pool. On 15 April 2024 they decide to sell \$15,000 these funds.

At what date(s) will the credit and debit be recognised?



Section OB 34: the company will have an imputation debit as per subsections (1)(a)(i) and (2), with the date of the debit date being in the order provided in subsection (4).

Swap transactions

Imputation credits and debits arising from a swap transaction are considered as two separate transactions:

1

Purchase transaction (section OB 6)
IC recognised on transfer

2

Sale transaction (section OB 34)
Follow three step process

GROUPS OF COMPANIES

SECTION RP 17B(4B)

If a person is part of a group of companies (at least 66% commonly owned), that person can include the other companies in the group at the time at which a deposit to a tax pool is made (i.e., other companies in the group can utilise those deposit funds as their own funds).

There are mirror provisions in subpart OP of the Income Tax Act 2007 for consolidated imputation groups.

Groups of companies

Example

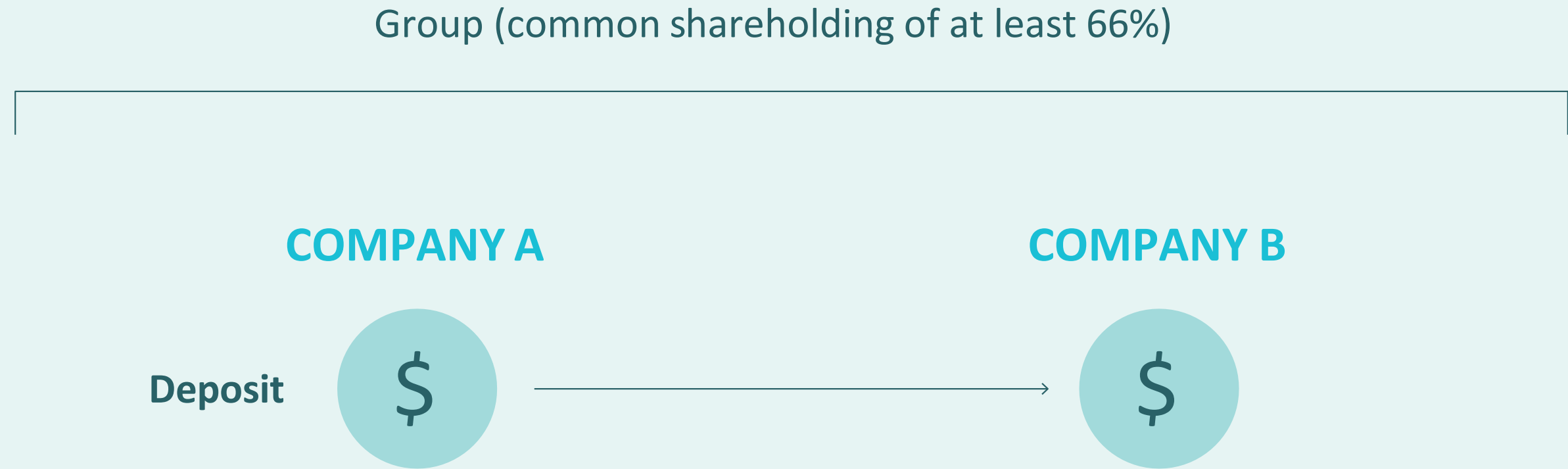
For imputation purposes, if Company A deposits funds and these are subsequently utilised by (transferred to) Company B (where both companies are part of the same group), an IC arises for Company B on the effective date of the deposited tax, and an imputation debit arises for Company A on the date of transfer.



Groups of companies

Example

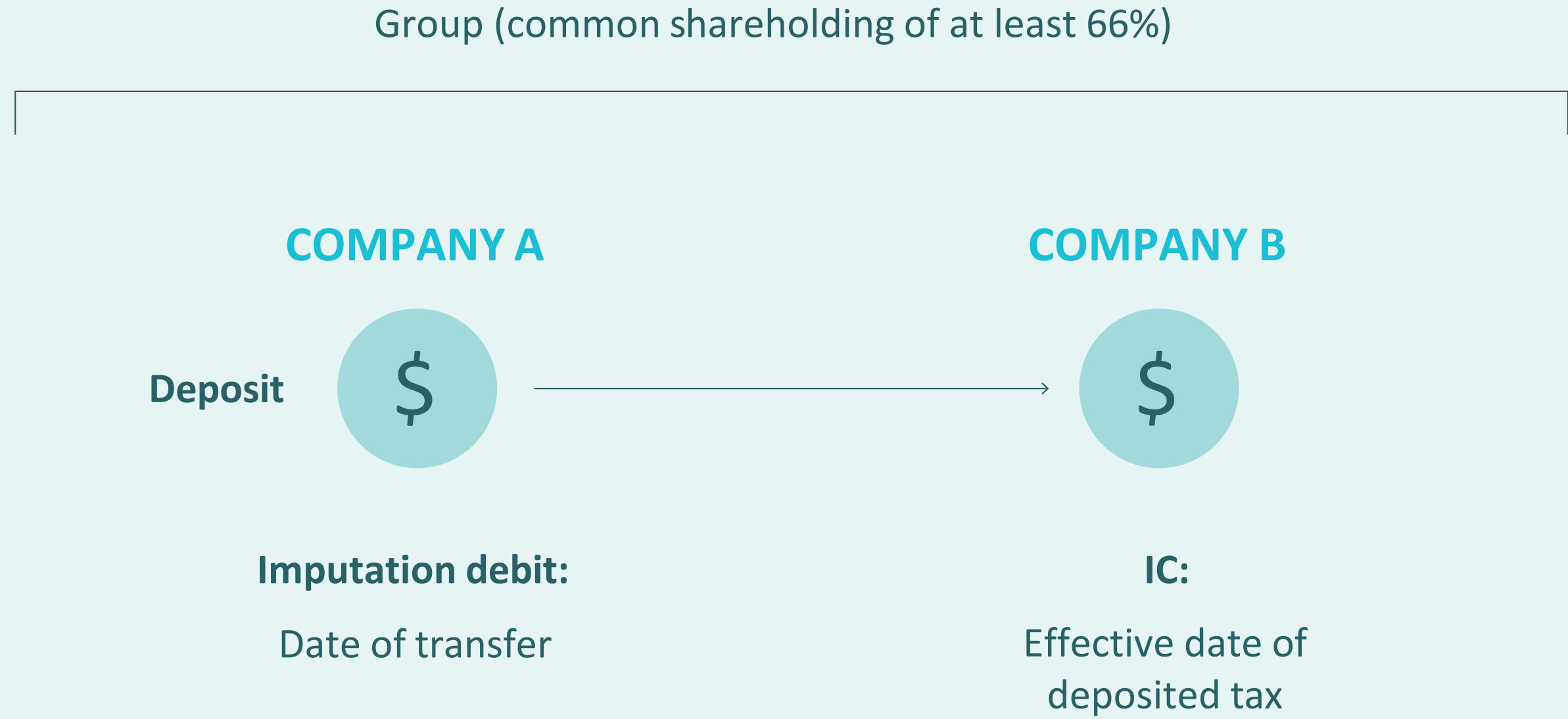
For imputation purposes, if Company A deposits funds and these are subsequently utilised by (transferred to) Company B (where both companies are part of the same group), an IC arises for Company B on the effective date of the deposited tax, and an imputation debit arises for Company A on the date of transfer.



Groups of companies

Example

For imputation purposes, if Company A deposits funds and these are subsequently utilised by (transferred to) Company B (where both companies are part of the same group), an IC arises for Company B on the effective date of the deposited tax, and an imputation debit arises for Company A on the date of transfer.

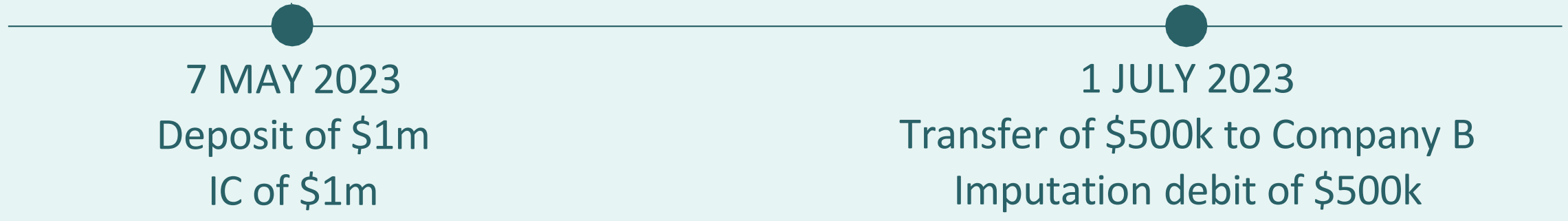


Groups of companies

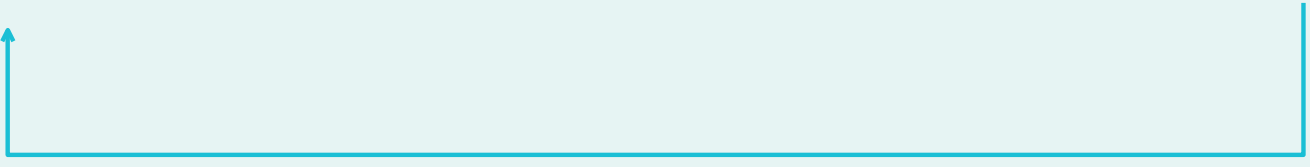
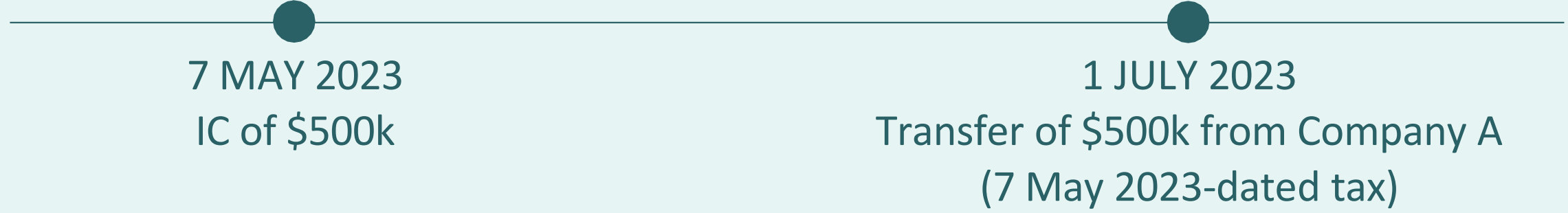
Example

For example, Company A and Company B are part of the same group of companies. Company A deposits \$1m of funds at 7 May 2023, and subsequently transfers \$500k to Company B on 1 July 2023. In this instance, \$500k of ICs arise for Company B on the effective date of the deposited tax (7 May 2023), and an imputation debit arises for Company A on the date of transfer (1 July 2023).

COMPANY A



COMPANY B



SHAREHOLDER CONTINUITY BREACHES

Shareholder continuity breaches

ICs can only be passed on to shareholders if shareholder continuity of at least 66% is maintained



The timing of ICs and debits arising from completed or planned tax pooling transactions around a shareholder breach date should be carefully considered, to mitigate:

- Unexpected loss of ICs by either shareholder group
- Unexpected debit position on shareholder breach



There are provisions to avoid having a “double debit” scenario



Seen as a high-risk area by professional indemnity insurers

Shareholder continuity breach

Example 1

SITUATION

Rob sells 100% of his shareholding in Initech to Naomi on 30 June 2024, resulting in a shareholder continuity breach.

Any ICs as at the date of change in shareholding are forfeited.



Shareholder continuity breach

Example 1

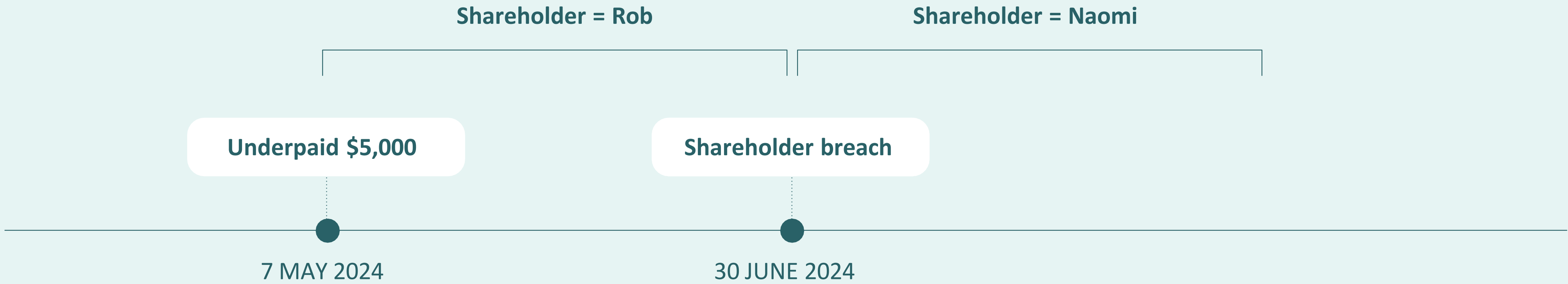
Following the acquisition, Naomi determines that Initech has underpaid its 7 May 2024 provisional tax instalment by \$5,000, which she is looking to resolve by purchasing tax from Tax Traders on 20 August 2024 (set up for immediate on-transfer to IR).



Shareholder continuity breach

Example 1

Following the acquisition, Naomi determines that Initech has underpaid its 7 May 2024 provisional tax instalment by \$5,000, which she is looking to resolve by purchasing tax from Tax Traders on 20 August 2024 (set up for immediate on-transfer to IR).



Shareholder continuity breach

Example 1

Following the acquisition, Naomi determines that Initech has underpaid its 7 May 2024 provisional tax instalment by \$5,000, which she is looking to resolve by purchasing tax from Tax Traders on 20 August 2024 (set up for immediate on-transfer to IR).



Shareholder continuity breach

Example 1

Based on the timing of IC credits outlined in section OB 6, the ICs will arise on 7 May 2024.

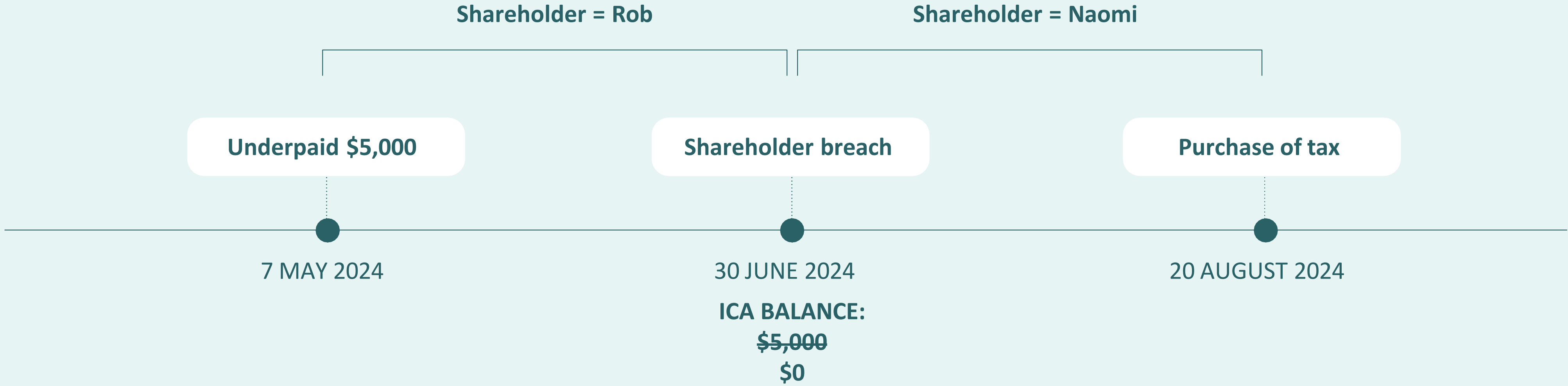


Shareholder continuity breach

Example 1

Initech will not be able to attach the ICs to dividends made to Naomi (assuming no further tax paid/deposited between date of breach in shareholder continuity and the purchase of 7 May 2024 tax on 20 August 2024).

IC date: 7 May 2024
Available for recognition from: 20 August 2024
Shareholder at recognition: Rob



Shareholder continuity breach

Example 1

Taxpayers with outstanding tax liabilities prior to a shareholder continuity breach may opt to purchase tax at a date post-breach to preserve ICs as it can result in a better economic outcome

To determine whether this approach is viable, taxpayers need to compare:



Cost of IR use of money interest and applicable penalties for late payment; against



Value of ICs to post-breach shareholders

Shareholder continuity breach

Double debit provision

Section OB 26(2) provides a credit to offset any 'double debit' where a refund occurs post breach that:

1. gives rise to a debit after the shareholding change (Step 2 debit), BUT
2. only to the extent the breach cancelled out any credit for the original deposit.

Practical concession

IR are willing to recognise a credit at the refund date to offset any 'double debit' for a refund that occurs post breach that:

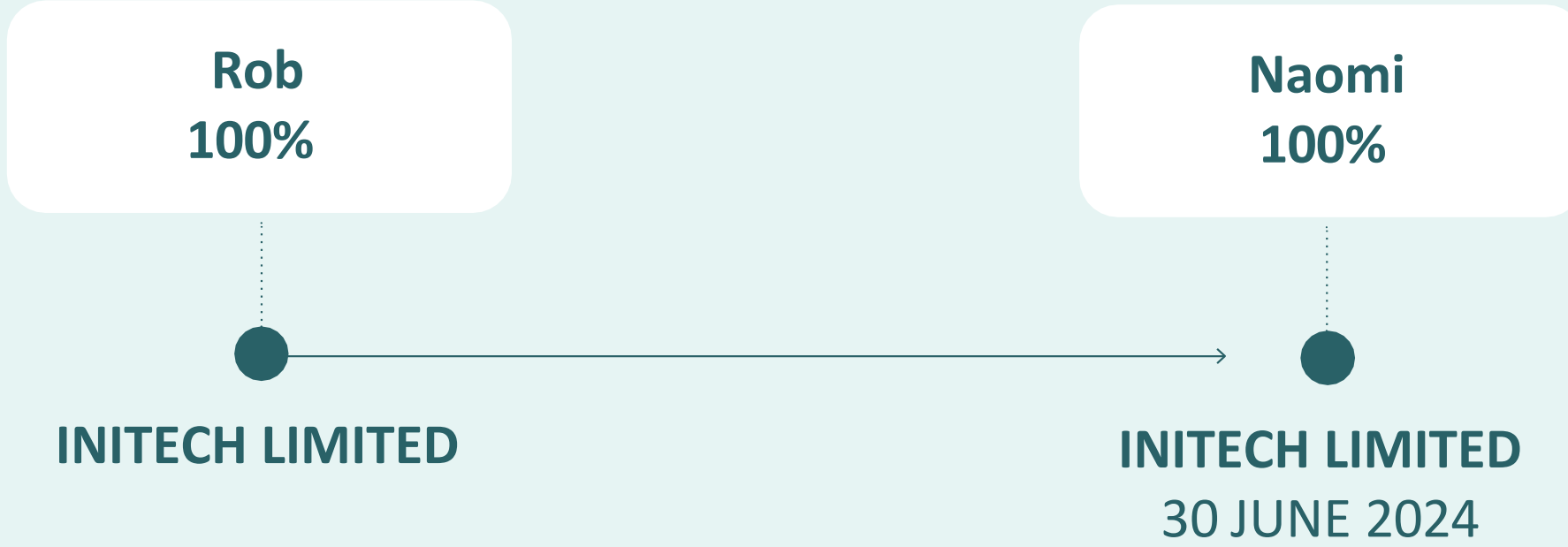
1. gives rise to a debit balance prior to the shareholding change (Step 3 debit), BUT
2. only to the extent the breach cancelled out any credit for the original deposit.

Shareholder continuity breach

Example 2

SITUATION

Rob sells 100% of the shareholding in Initech to Naomi on 30 June 2024 resulting in a shareholder continuity breach.

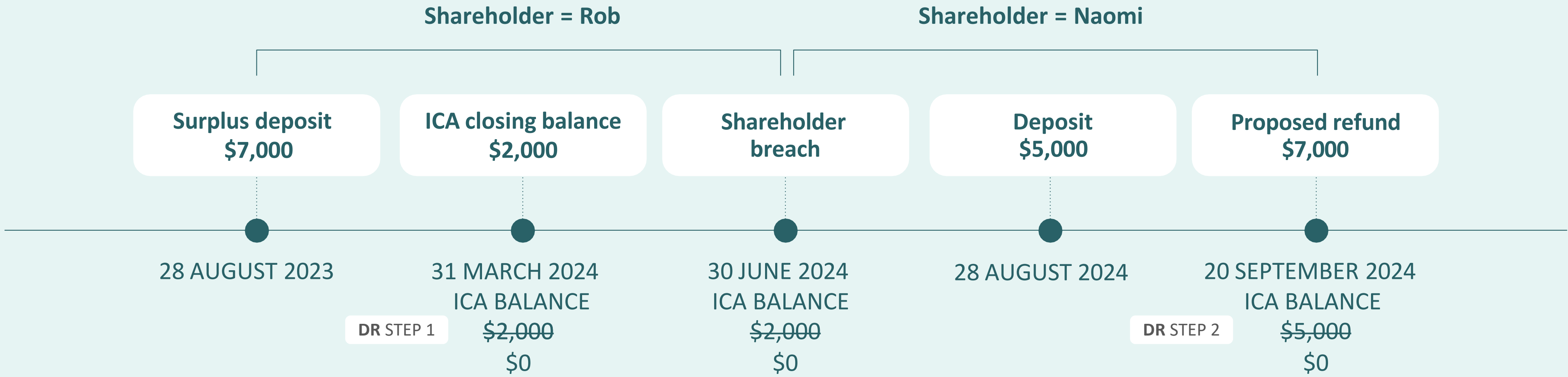


Shareholder continuity breach

Example 2

In September 2024 Initech determines that their 28 August 2023 deposit of \$7,000 is surplus and is proposing to get a refund from Tax Traders.

When does the debit for the proposed refund occur in this example?

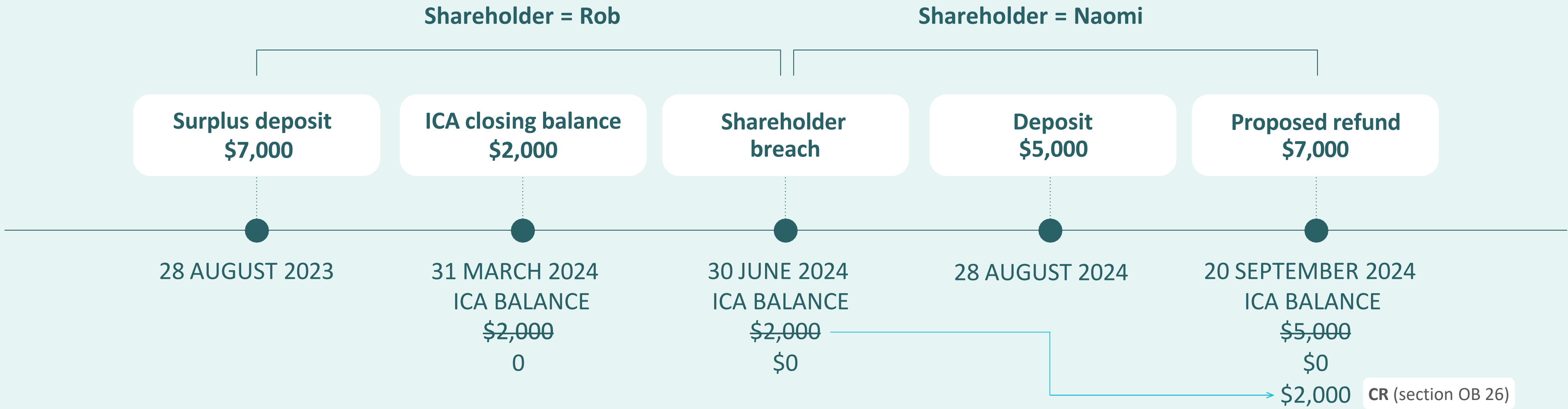


Shareholder continuity breach

Example 2

Initech’s shareholder Naomi was subject to an imputation debit for tax which it did not enjoy credit for at time of payment. To prevent this occurring, section OB 26(2) provides a credit to offset any ‘double debit’ where a second debit for a refund occurs **after a shareholding change** (to the extent the shareholder change cancels out any credit for the original deposit).

Initech can recognise a \$2,000 IC on 20 September 2024 to partially offset the \$5,000 imputation debit.



Shareholder continuity breach

Example 3

Initech has a closing balance of nil as at 31 March 2024 and makes deposits \$1m on 7 May 2024. There is a breach of shareholder continuity on 8 May 2024 and on 9 May 2024, Initech requests a refund from Tax Traders on 9 May 2024.

What is the impact of the ICA?



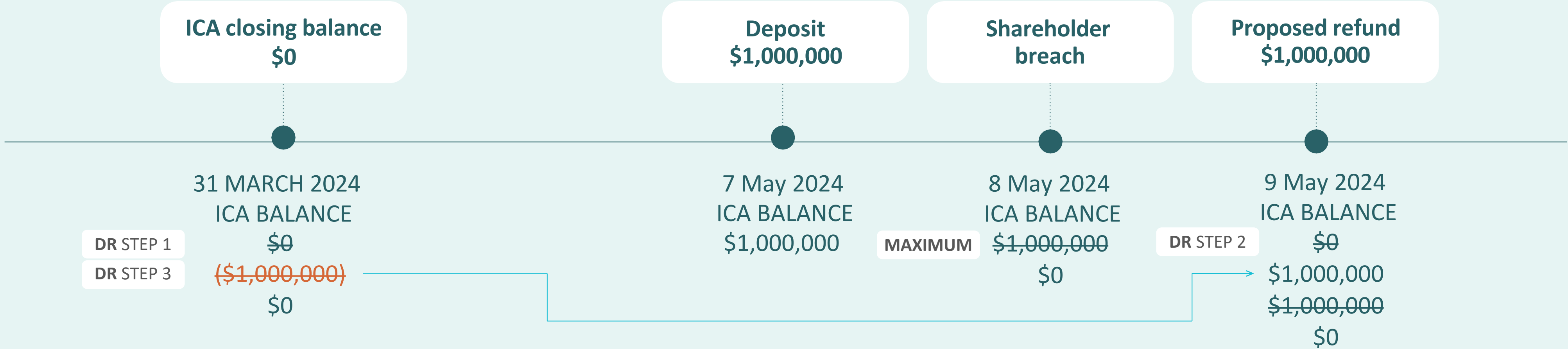
Shareholder continuity breach

Example 3

Concession: IR are also willing to recognise a credit at the refund date to offset any 'double debit' for a refund that occurs post breach that:

1. gives rise to a debit balance *prior* to the shareholding change (step 3), BUT
2. only to the extent the breach cancelled out any credit for the original deposit.

We have to go through the three-step debit process first to ascertain how much of the original deposit was forfeited upon a breach of shareholder continuity that gave rise to a debit balance at the prior 31 March.



PRACTICAL CONSIDERATIONS

Amending imputation positions

Where a tax pooling transaction amends an ICA for which an IR4J has already been filed, you should:

Send IR a secure message advising of the change **and**



Amend subsequent IR4J's opening balance to reflect increased position



File an amended IR4J if the change results in a debit position, or results in a change to a debit position

Using tax pooling to manage an IC position:



Depositing in the tax pool, prior to a given 31 March, for IC purposes is another way to manage an IC position (but it is important funds are preserved as deposits and not swapped!)



If a taxpayer has a tax liability, you can purchase tax at an earlier tax date to bolster the IC position at imputation year end

For example, a March balance date taxpayer may opt to purchase their \$10,000 shortfall at 28 March rather than P3 (7 May)



Tax pooling should not be used solely to manage an IC position, for example by purchasing tax where the taxpayer has no tax liability in the period

Thanks!

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